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TREASURY, POSTAL SERVICE, AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR  
FISCAL YEAR 1982

GOVERNMENT  
Storage

JUN 9 1981

HEARINGS

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SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

COMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL  
GOVERNMENT APPROPRIATIONS

EDWARD R. ROYBAL, California, *Chairman*

JOSEPH P. ADDABBO, New York  
DANIEL K. AKAKA, Hawaii  
SIDNEY R. YATES, Illinois  
DAVID R. OBEY, Wisconsin

CLARENCE E. MILLER, Ohio  
ELDON RUDD, Arizona  
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Carolina

AUBREY A. GUNNELS and C. WILLIAM SMITH, *Staff Assistants*

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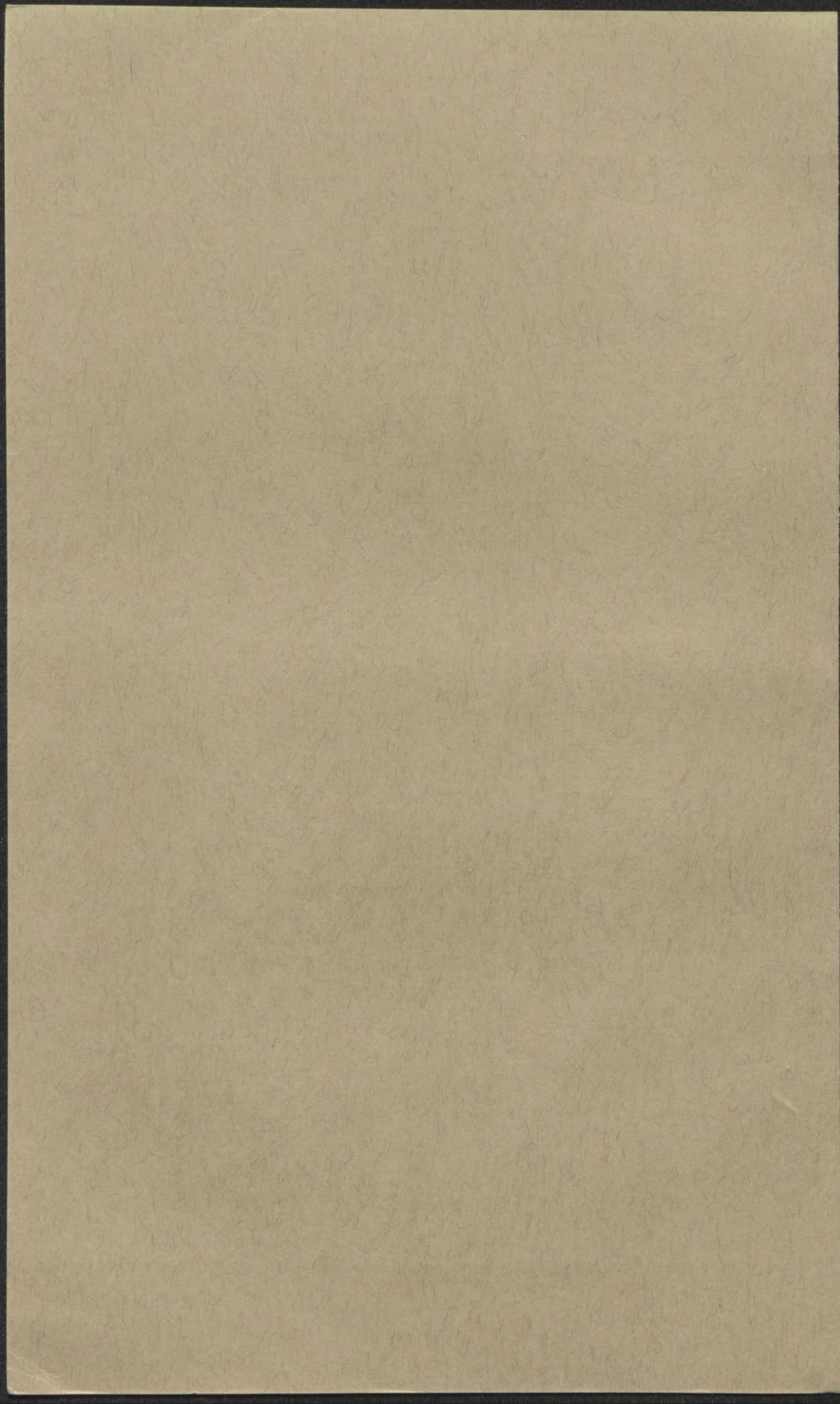
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TREASURY, POSTAL SERVICE, AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR FISCAL  
YEAR 1982

WEDNESDAY, MARCH 18, 1981.

UNITED STATES TAX COURT

WITNESSES

C. MOXLEY FEATHERSTON, CHIEF JUDGE  
THEODORE TANNENWALD, JR., JUDGE  
CHARLES S. CASAZZA, CLERK OF THE COURT  
DONALD H. BAXTER, BUDGET OFFICE

Mr. ROYBAL. The committee will now hear testimony on behalf of the United States Tax Court regarding their appropriation request for fiscal year 1982.

Will you proceed, Judge Featherston?

Judge FEATHERSTON. We are pleased to have this opportunity to meet with the committee and to discuss our appropriation request for fiscal year 1982.

INTRODUCTION OF CHIEF JUDGE DESIGNATE

With me are Mr. Charles S. Casazza, Clerk of the Court, Mr. Donald H. Baxter, Budget Office, and Judge Theodore Tannenwald, who has been designated to serve as Chief Judge of the Court effective July 1, 1981.

We wanted him to have an opportunity to meet the committee and the staff at this time.

It has been customary in the past on these occasions for the Court to supply to the committee a biographical sketch of the new Chief Judge, and if you so desire I will make that biographical statement available at this time.

Mr. ROYBAL. The committee will receive the biographical sketch and place it in the record at this point.

[The biographical sketch of Judge Tannenwald follows:]

BIOGRAPHICAL STATEMENT

*Theodore Tannenwald, Jr.*—Born July 28, 1916, Valatie, New York. Married Selma Peterfreund; two sons, Peter and Robert. Attended Brown University, A.B. 1936, graduated summa cum laude in Political Science and Mathematics; Phi Beta Kappa; Sigma Xi; Delta Sigma Rho. Attended Harvard Law School, LL.B. 1939, graduated magna cum laude; Fay Diploma for highest three-year average. D.D.L. 1976, University of Cincinnati; D.H.L. 1976, Hebrew Union College—Jewish Institute of Religion. Admitted to the New York Bar, 1939; District of Columbia Bar, 1946. Engaged in the practice of law since 1939 (partner 1947–1965) law firm of Weil, Gotshal & Manges, except for absences during World War II and for service with the Federal Government, which included service as Principal Assistant, Lend

Lease Administration, and Acting Assistant Chief, Foreign Funds Control Division, Department of State, 1942-1943; Special Consultant to the Secretary of War, 1943-1945; Consultant to Secretary of Defense, James Forrestal, 1946-1949; Counsel to Special Assistant to President Truman, W. Averell Harriman, 1950-1951; Assistant Director for Mutual Security, 1951 to Apr. 1, 1953; and Member of President Kennedy's Task Force on Foreign Assistance and Special Assistant to Secretary of State, Apr. 1961-Sept. 1961. Also served for the State of New York as Special Counsel to the Moreland Commission for the Investigation of Workmen's Compensation, Sept. 1955 to Apr. 1958. Professorial Lecturer, George Washington University School of Law, 1968-1976. Member, American Law Institute, American Bar Association (Tax Section), Federal Bar Association, Association of the Bar of the City of New York. Member and Honorary Chairman, Board of Governors, Hebrew Union College—Jewish Institute of Religion; Member, Council on Foreign Relations; Member, American Jewish Committee (Member of Board of Governors and Chairman, National Advisory Panel). Appointed in 1965 to the United States Tax Court for the term expiring June 1, 1974, to succeed Judge Clarence V. Opper, deceased; reappointed in 1974 for a term expiring June 1, 1989.

Judge FEATHERSTON. Mr. Chairman, as a personal note, let me say I would like to express my thanks and appreciation to you and the committee for the very considerate treatment which I have received.

The staff members, Mr. Gunnels and Mr. Smith, have been particularly helpful to me. We have had an open and candid relationship, and I feel that the public interest has been served.

I understand that the formal statement which we have filed with the committee will be included also in the record at this time.

Mr. ROYBAL. That is correct; the statement will be included in its entirety at this point.

[The statement of Judge Featherston follows:]

#### STATEMENT BY CHIEF JUDGE C. MOXLEY FEATHERSTON, U.S. TAX COURT

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before this Committee and present the United States Tax Court's appropriation request for the fiscal year 1982.

The Tax Court's fiscal year 1982 budget request is for \$12,404,000 and 258 permanent positions. This reflects an increase of \$1,310,000 and 19 positions over the authorization for fiscal year 1981, including in such authorization the \$446,000 civilian pay supplemental and the \$221,000 supplemental appropriation currently being reviewed by this Committee, to cover the cost of providing three additional presidentially appointed Judges.

The Court's fiscal year 1982 budget request reflects our judgment as to the Court's needs for handling an enormously increased docket of cases. Specific details regarding this request are contained in the accompanying justification book, and I am available to answer questions on that material.

But first I would like to present, if I may, a brief description of our needs. In making this request for additional funds for fiscal year 1982, we are fully aware of the strenuous efforts the Congress and the President are making to curtail Government expenditures. We do not for one moment question the wisdom of those efforts. However, the Tax Court is facing a drastically increased caseload which, in the public interest, must receive attention. We deeply feel that we would be remiss in our duty and responsibility should we fail to call the problem to your attention and request the funds which, in our judgment, the Tax Court needs during fiscal year 1982 to handle its work.

Apart from increased costs which are largely due to inflation or statutory provisions (such as annualizing compensation adjustments, travel, transportation of files, reporting, GSA annual user charges, telephone service, etc.), the Court is requesting funds for the employment of three additional Commissioners (Special Trial Judges) and their staffs (a total of 9 employees) and the employment of additional employees (10 in number) in our Clerk's office to help process paperwork required in handling our large inventory of pending cases.

#### THE COURT'S WORKLOAD

At the hearing before this Committee on March 10, 1981, we described the rapidly increasing caseload that the Court is being called upon to handle. Ten years ago, in

fiscal year 1970, the Court received 7,390 new cases. By fiscal year 1975 the number of new cases had risen to 11,213. In fiscal year 1980, the Court received 22,009 new cases. Thus, in the last 10 years the number of new cases has tripled and in the last 5 years almost doubled. The inventory of pending cases rose from 12,040 at the end of fiscal year 1970 to 16,448 at the end of 1975. At the end of fiscal year 1980, the inventory of pending cases stood at 34,856.

Every available piece of evidence indicates that this upward trend in the workload will continue unless a major policy change is made at the Internal Revenue Service audit level. One major source of the litigation increase is the Service's aggressive program for the audit of what it has called "abusive" tax shelters. The Annual Report of the Commissioner recently published for the fiscal year 1980 states that: "At the end of the year 193,933 returns with tax shelter issues were in the examination processes." Informal statements by the Internal Revenue Service indicate that, at a minimum, roughly 15,000 tax shelter cases will be docketed in the Tax Court in fiscal 1981. This is, of course, in the addition to the regular flow of nonshelter cases. In the justification material which we have filed with the Committee we have estimated that 26,450 new cases will be received in fiscal year 1981, and 32,000 in fiscal 1982, and those estimates, we believe, are conservative ones.

Thus rapidly rising trend in its workload led the Court to request the three additional presidentially appointed Judges authorized by the Congress in P.L. 96-439 approved October 13, 1980. This authorization was granted only after hearings before the Ways and Means Committee were held on April 1, 1980, at which the present and prospective workload of the Court was examined in considerable detail. At the March 10, 1981, hearing before this Committee, we reviewed our needs for the current year and requested supplemental funds to cover the costs of the three additional presidentially appointed Judges and their staffs for the 4-month period June 1 through September 30, 1981. As I explained at that hearing, this was the first increase in the authorization of presidentially appointed Judges since 1926. We have no plans at this time to request that the authorization of presidentially appointed Judges be increased again within the foreseeable future but, as I shall explain, we do need the services of three additional Commissioners (Special Trial Judges).

#### THE COURT'S WORK PRODUCTION

In a continuing effort to carry the burgeoning caseload, the Court as a whole has stepped up its work production. The number of opinions written by the Court rose from 573 in 1970, to 796 in 1975, and to 1,397 in 1980. The number of cases closed by the Court rose from 6,610 in fiscal year 1970, to 8,616 in fiscal year 1975, and to 14,470 in fiscal 1980.

These increases in the Court's work production in terms of opinions and case closings were made possible in large part by the enactment of the "small tax case" procedures in the Tax Reform Act of 1969. Under these procedures the Court was authorized to appoint Commissioners (Special Trial Judges) to hear "small tax cases." Of the 796 opinions written in fiscal year 1975, 271 were written in the small tax cases and 525 in regular cases. Of the 1,397 opinions produced in fiscal year 1980, 633 were written in small tax cases and 764 in regular cases.

#### SMALL TAX CASE PROCEDURES

Under the small tax case procedures, which are optional with the taxpayer, trials are conducted as informally and promptly as possible; the rules of evidence are relaxed; neither party is required to file a brief; and neither party may appeal. Most taxpayers handle their cases without attorneys. The Court hears these cases in 116 cities throughout the country, at places as convenient as possible for the taxpayers. Initially, the jurisdictional limit for the small tax cases was \$1,000 for each taxable year. Beginning January 1, 1974, it was raised to \$1,500. Effective June 1, 1979, Public Law 95-600 raised the jurisdictional amount to \$5,000 for a taxable year.

While the small tax case procedures at the time they were adopted were not conceived primarily as a means of relieving the presidentially appointed Judges of part of their workload, those procedures have served that purpose to an appreciable extent. In view of the enormous increase in the number of docketed cases, it is fortunate that Congress saw fit to authorize these procedures. The Court has 10 Commissioners (Special Trial Judges) assigned mainly to handle the small tax case work. In addition, in the larger cities, they hear some cases in which the small tax case election could have been made but was not. They also hear a limited number of cases requiring protracted trials. Their findings in these last two categories of cases are reviewed and adopted or modified by the presidentially appointed Judges.

The number of cases in which the Small Tax Case election has been made has increased steadily since the provisions were adopted. The following table shows the number of all cases filed, the number of cases in which the small tax case election was made, and the number of small tax cases pending at the end of each year since 1971:

Year	All cases filed	Small tax case elections	Small tax cases pending
1971.....	8,335	1,349	1,134
1972.....	9,245	2,754	1,820
1973.....	9,181	2,596	1,793
1974.....	8,757	2,396	1,621
1975.....	11,213	3,290	2,322
1976.....	11,483	3,532	2,654
3 months.....	2,985	853	2,744
1977.....	12,339	3,887	3,160
1978.....	13,740	4,316	3,677
1979.....	17,126	6,028	4,931
1980.....	22,009	8,703	7,602

During the first 5 months of the current fiscal year (October 1, 1980 through February 28, 1981), 3,667 small tax case elections were made compared with 2,831 during the corresponding 5-month period of fiscal year 1980. It appears that this increase in small tax case elections beginning with fiscal year 1979 is due in substantial part to the increase in the jurisdictional amount to \$5,000 authorized in the Revenue Act of 1978.

The small tax case procedures as conceived by Congress contemplated that the cases would be heard and disposed of promptly. Expeditious handling of these small cases helps maintain confidence in the efficiency and fairness of the revenue and judicial systems. Delays not only tend to undermine such confidence but defer the availability to the Treasury of the revenue ultimately found to be owed. The time lag between the dates of the trial and the opinions in these cases has increased from an average of 2.6 months in fiscal year 1977 to 4.7 months in fiscal year 1980.

The three additional Commissioners (Special Trial Judges) are urgently needed to enable the Court to cope with the situation which I have described.

#### ADDITIONAL CLERICAL EMPLOYEES

Orderly administration of the Court's work requires great care in processing this heavy load of cases from the time they are filed until they are closed. The Court's jurisdiction to hear and decide deficiency cases, for example, depends upon the timely filing of a petition with the Court, and inaccurate records on filing dates may lead to injustices. The files must be in proper order when they are shipped for use at trial sessions. For those cases in which appeals are taken, the files must be prepared with great care so that the appellate courts can properly review this Court's opinions.

To help manage this heavy burden of paperwork we are requesting funds for 10 additional positions in our Clerk's Office.

As we have pointed out, the number of new cases received by the Court has more than tripled in the last 10 years, and we anticipate a continuing upward trend in our work. Yet the number of Court employees (other than Judges and Special Trial Judges and their staffs) in 1972 stood at 74, and the increase we are requesting for fiscal year 1982 will bring the total number of such employees to 116. The present employees simply cannot efficiently continue to process the paperwork in the enormous inventory of cases.

#### CONCLUSION

The 34,865 cases pending in the Tax Court at the end of fiscal year 1980 involved deficiencies determined by the Internal Revenue Service in the amount of \$5,580,494,200. To the extent that it is owed, the revenue ultimately involved in those cases cannot be collected until they have been heard and decided or otherwise disposed of. Delays in closing those cases deprive the Treasury of revenues which are due. To the extent that the determined tax liabilities are not in fact owed, they create financial uncertainties for corporation, business men and individuals in making business, investment, and other decisions. In our judgment making the

requested funds available to the Court will serve the fiscal objectives of the Congress and the President.

Mr. Chairman, I will be pleased to attempt to answer any questions the Committee may have.

Judge FEATHERSTON. We are requesting an appropriation of \$12,404,000 for fiscal year 1982. This represents an increase of \$1,310,000 and 19 positions over the authorization for fiscal year 1981, including in that authorization the \$446,000 supplemental appropriation request to cover the October 1980 civilian pay raise, and \$221,000 in a program supplemental request for the 3 additional presidentially appointed judges, with respect to which we testified before this committee on March 10, 1981.

I understand that the committee is now considering those requests for supplemental funds.

We are, of course, aware of the strenuous efforts that are being made by the Congress and the President to reduce government expenditures and bring the budget into balance.

We do not question the wisdom of those efforts, but the Tax Court is facing an enormously increasing workload, and if we do not have the personnel to handle that workload, delays will ensue which will affect the collection of revenue and create uncertainties for the taxpayers who have brought their cases to the Tax Court.

#### CASELOAD INCREASE

We feel that we have an obligation and responsibility to bring our needs to the attention of the committee, and we are deeply convinced that the public interest requires that this caseload be given the attention of the Court.

When we met with this committee on March 10 we described the increased caseload which we are facing. You may recall that I pointed out the number of new cases had tripled during the last ten years and, had doubled during the last five years. We received over 22,000 new cases in fiscal year 1980 alone.

On September 30, 1980, we had an inventory of 34,865 cases representing determined deficiencies in excess of \$5½ billion. Every piece of available evidence that we have available at this time indicates that this upward trend will continue.

One of the big factors in this growth is the fact that the Internal Revenue Service is engaged in an aggressive audit program of what it refers to as "abusive" tax shelters.

We have been informally advised that the Court may expect to receive as many as 15,000 of these tax shelter cases during the current year in addition to the normal influx of the regular cases.

The justification material which we have supplied to the committee contains an estimate of 26,450 new cases in the fiscal year 1981, and 32,000 cases in the fiscal year 1982.

At this point, these estimates, we believe, are reasonable and in fact conservative. The Tax Court has sought very diligently to carry this workload. The number of opinions that we have written has increased yearly. The number of cases we have closed has increased yearly. I have outlined those statistics in my statement, and I will not repeat them at this time.

## SMALL TAX CASE PROCEDURE

One of the big factors that has made it possible for us to increase our production is that in the Tax Reform Act of 1969 the Congress authorized the Court to appoint Commissioners, whom we refer to as Special Trial Judges, to hear the small tax cases.

The small tax case procedure is optional with the taxpayer and most of these are heard by the Commissioners or Special Trial Judges.

The trials are conducted as informally and as promptly as possible. The rules of evidence are relaxed. Neither party may file a brief. Neither party may appeal, and most of the cases are handled without the taxpayer being represented by an attorney.

Mr. ROYBAL. Good.

Judge FEATHERSTON. These cases are heard in about 116 cities throughout the United States. The number of cases in which the election has been made has grown year by year, and this has been particularly true since the enactment of the Revenue Act of 1978, when the jurisdictional amount was increased from \$1,500 to \$5,000 in an individual tax year.

The small tax case election was made in 8,703 cases in fiscal year 1980. We had pending at the end of that fiscal year 7,602 such cases. Now, the taxpayers who bring those cases are, generally speaking, wage earners and small businessmen. They are the people that are sometimes referred to as middle class America, and they have run into problems with the tax laws.

## NEED FOR ADDITIONAL SPECIAL TRIAL JUDGES

They expect prompt attention to their cases, and we are concerned that the build-up of the number of pending cases makes it impossible for us to meet the schedule which we strive to follow.

For example, the average time lag from the trial of a small tax case to an opinion increased from 2.6 months in 1977 to 4.7 months in fiscal year 1980.

We feel that we have reached the point where we need more Commissioners, in addition to the 10 that we now have to hear the small tax cases.

They will devote most of their time to these cases but we will also use them in the larger cities to hear some of the cases in which the small tax case election could have been but was not made.

In addition, we will use them to hear some of the cases involving long and protracted trials; that is, cases in which the trials are so long that it is impractical to place them on a regular calendar to be handled by the judges of the Court.

This request for these three additional Special Trial Judges and the annualized cost of the three presidentially appointed judges, whom we discussed on March 10, together with the additional staff and clerical personnel, explain to a very large extent the increase in the appropriation request for fiscal year 1982.

As I have indicated, we have used every means that we can conceive of to handle our enormous caseload, yet we continue to fall further behind. We have pending, as I have indicated, some 34,865 cases involving over \$5½ billion. To the extent that those

determined deficiencies are owed, the Treasury Department is deprived of taxes which are due, and to the extent that the determined deficiencies are not owed, they create financial uncertainties for corporations, businessmen and individuals in making business investments and personal decisions.

We believe, therefore, that our request for additional funds serves the fiscal objectives which have been announced by the Congress and by the President.

I would be very happy to attempt to answer any questions which you may have, Mr. Chairman.

#### CASE BACKLOG

Mr. ROYBAL. Well, Judge, I would like to review your case load again; and will you tell the committee what your backlog is at the present time?

Judge FEATHERSTON. We have an inventory of 34,865 cases.

Mr. ROYBAL. That is at the present time?

Judge FEATHERSTON. I am sorry; that is as of September 30, 1980. It is more than that today. Perhaps we could get that figure.

Mr. ROYBAL. If you project that all the way to next year, in the event that you do not get the 3 new Commissioners, what do you think the backlog would be?

Judge FEATHERSTON. Mr. Chairman, I would not be at all surprised to see as many as 50,000 cases.

Let me say that I have now been handed the figure for the number of cases pending as of February 28, 1981. The number was 36,246 cases.

Mr. ROYBAL. An increase of almost 2,000 from September to February?

Judge FEATHERSTON. That is correct. As a matter of fact, the number of new cases filed during those five months was 2,000 more than the number filed during the corresponding five months of the last fiscal year.

#### GOVERNMENT RECOVERY RATE

Mr. ROYBAL. For the record, do you have the percentage of the cases that are settled versus those that actually go to the courts?

Judge FEATHERSTON. Mr. Chairman, I do not have those precise figures available at this time.

Mr. ROYBAL. Well, they can be submitted for the record, if you so desire.

Judge FEATHERSTON. I have been handed them. With respect to the 10,723 cases closed by stipulation (settled) in the fiscal year 1980, the recovery rate by the government was 27.2 percent. The corresponding percentage for the 1,582 cases closed by opinion was 47.8.

Mr. ROYBAL. By opinion means what?

Judge FEATHERSTON. This means that one of the judges wrote an opinion in the case and a decision was entered.

Now, the number of opinions written was somewhat smaller than 1,582 because there are many situations in which a single opinion will cover more than one case. The number of opinions written during fiscal year 1980 was 1,397.

## SCOPE OF SMALL TAX CASELOAD

Mr. ROYBAL. How much of that time is spent on small tax cases?

Judge FEATHERSTON. So far as numbers are concerned, as I have indicated, there were 8,703 elections of the small tax case procedures in fiscal year 1980.

We closed 6,056 small tax cases, and we had pending at the end of the fiscal year 7,602 small tax cases.

## COMPARISON OF CASE DISPOSAL RATES

Mr. ROYBAL. Do you have any idea what the length of time that it takes to process the small cases versus the larger cases is?

Judge FEATHERSTON. Yes, sir; the small tax cases turn over much more rapidly than the larger cases. We have stressed this as a very important factor in handling the small tax cases. As I indicated before, briefs are not filed in the small tax cases whereas in the larger cases there are always post trial briefs, so that extends the time for consideration of the larger cases.

During the fiscal year 1980, the time from the trial date in the small tax cases to the date on which the opinion was filed averaged 4.7 months.

From the time that the petition was filed to the final decision of those cases, there was an average lapse of 17.3 months.

Mr. ROYBAL. Is that about average?

Judge FEATHERSTON. For the small tax cases, yes, sir. With respect to the regular cases, lapsed time, from the date of the filing to the date of the opinion was 34.5 months, nearly three years. In the regular cases which were disposed of by stipulation the period was 20.4 months, and in those cases that were dismissed on procedural grounds the lapse was 7.5 months.

Mr. ROYBAL. Well, will the time of settlement be reduced by the addition of the 3 Commissioners or is this mostly related to the backlog?

Judge FEATHERSTON. It will be reduced to some extent, and the period required for the writing of the opinions, we believe, can be reduced and brought back to where it was, let's say, in 1977.

Mr. ROYBAL. One of the things that you said a while ago caught my ear, and that is that you referred to the Commissioners, as I think you said, as three judges.

Judge FEATHERSTON. We refer to them as Special Trial Judges.

## QUALIFICATION FOR COMMISSIONERS POSITIONS

Mr. ROYBAL. Do those Commissioners have to be attorneys?

Judge FEATHERSTON. Yes, sir. Well, all of the cases involve the application of the Internal Revenue Code, and the Tax Court has never had a judicial officer who was not an attorney.

Mr. ROYBAL. Because, it seems to me that a well-qualified accountant could also serve in that capacity.

I only say that because I am an accountant. It would seem to me a well-trained accountant in this field of tax law could also serve as a Commissioner.

What do you think about that, Judge?

Judge FEATHERSTON. It is possible. Let me say that we have tried to select those Special Trial Judges strictly on the basis of their merits, and they are extremely able people.

Now, as I indicated before, in addition to handling the small tax cases, we use them to hear cases in which the election could have been made but was not. And, in addition, we sometimes use them for the very large complex cases which involve trials that run one week, two weeks, or three weeks, and occasionally longer.

We had one case that was tried before a Special Trial Judge which lasted about ten weeks.

Mr. ROYBAL. It seems to me when you are negotiating something that you are facing an accountant with the IRS, and an accountant on the other side would also be helpful. Isn't that the way it works?

Judge FEATHERSTON. Yes; in many cases, even where there are lawyers representing the taxpayer accountants are extremely helpful. The accountants participate in the handing of the preparation of many of their cases. Very frequently the lawyer will associate himself with an accountant to handle it, and you are certainly correct, that many of the issues which arise in the cases are accounting questions.

Of course, there are accounting questions which arise in the context of the Internal Revenue Code. They are not always the orthodox accounting procedures. They are affected by the Internal Revenue Code.

#### EMPLOYMENT OF STAFF ACCOUNTANTS

Mr. ROYBAL. Do you have on the staff any accountants?

Judge FEATHERSTON. No, sir.

Now, we have law clerks who assist each of the judges in the preparation of their opinions.

Mr. ROYBAL. I thought somewhere down the line you had the counterpart to a law clerk, you would also have some young, bright accountants that would be helpful.

Judge FEATHERSTON. Some of the law clerks have accounting backgrounds, but we do not employ accountants as such.

Mr. ROYBAL. Well, I am not trying to make the case for accountants as such.

Judge FEATHERSTON. I am not trying to denigrate the importance of accountants in the handling of tax matters.

#### TAXPAYERS VIEWS ON TAX LAWS

Mr. ROYBAL. Now, from the cases you handle, what would you say the general mood of the taxpayer is with regard to our tax laws? Just give me a general opinion of what your experience has been in this field and what you think the taxpayers think about our tax laws in general.

Judge FEATHERSTON. I think the great body of American taxpayers make a strong effort to file accurate and true tax returns; and I think that they are conscientious in their efforts.

I am sure that they feel just like you and I do, that the tax rates are perhaps too high and the tax bite is too deep, but I think that they make their self-assessment in the amount they think is true. There are a number of cases that we are receiving from people

referred to as "tax protesters" who are resisting the application of the laws as written by Congress, and they are creating a problem.

We have a fairly steady stream of cases where the protesters contended that the tax laws are unconstitutional, even that the 16th Amendment itself is unconstitutional. They receive a great deal of publicity. And they represent a disproportionate number of cases that we hear. If you simply judge their importance by the proportion of the cases that we hear, you get a distorted view of the respect of the great body of the American taxpayers, because the IRS does not settle any of those cases.

I think that, basically, as I have said, the American people are living with the tax laws and abiding by them.

#### PERFORMANCE OF IRS

Mr. ROYBAL. I am not really going to ask this question, but I had in mind getting your opinion of the performance of the Internal Revenue Service, whether or not you think they are doing a just job in enforcing the tax laws.

I would think the answer overall would be yes.

Would you agree?

Judge FEATHERSTON. Yes, sir; I would.

Mr. ROYBAL. Any questions, Mr. Gunnels?

#### TAX SHELTER CASES

Mr. GUNNELS. Mr. Chairman, I think it would be well for the record if Judge Featherston could pursue this tax shelter abuse that is getting a lot of media attention, and it will probably fall on the judges of the Court rather than the Special Trial Judges; would that not be so?

Judge FEATHERSTON. Yes, and the problem is growing more and more serious. Viewed from a litigation management standpoint, the tax shelter cases that we have encountered thus far fall into four broad categories.

First, there are partnerships with numerous limited partners, sometimes widely scattered. The partnerships invest in movies, oil wells, coal mines, cattle ventures, and so on. By the use of nonrecourse notes, the transactions are so structured that the limited partner invests a relatively small sum and seeks to acquire a basis which he hopes will support much larger depreciation or loss deductions. Many of these cases present valuation issues.

Second, transactions similar in character undertaken by many taxpayers with a single or limited number of establishments, illustrated by commodity straddles.

Third, separate arrangements by numerous individuals involving standard forms, illustrated by the family trust and family church cases. The taxpayers in those cases seek to reduce their taxes by attributing their earnings to another entity.

Fourth, unrelated transactions in which, for example, lithographs, paintings, or Bibles are given to charities. Again, the issues in these cases involve valuations.

The shelter cases are being filed in large numbers. As I indicated, we have been told that we can expect as many as 15,000 new shelter cases during the current year.

We have one group of over 300 cases involving transactions on the London Metal Exchange. Judge Nims is attempting to organize these cases in such a way that he will be able to dispose of the entire group by holding one or, at most, 5 or 6 trials.

He has held, I suppose, a half dozen pretrial conferences. The problem is complicated by the fact that some 50 lawyers represent the taxpayers in this group of over 300 cases, and they are scattered all over the United States from Miami to Helena, Montana

#### ESTABLISHMENT OF PRECEDENT

Mr. GUNNELS. I believe your cases do set precedent, don't they?

Judge FEATHERSTON. Oh, yes; they do. The small tax cases do not. The Tax Court cases as such do.

Mr. GUNNELS. The settlement or opinion on any of these tax shelter cases probably would prevent at least or preclude the filing of a similar case by other people who find themselves in the same situation, so maybe after the first year of going through these on some of the more common types of tax shelter cases, you might solve some of the problem.

Judge FEATHERSTON. That is possible, but many of those questions are valuation questions, and each valuation case, of course, has to be decided on its individual facts.

Mr. GUNNELS. Thank you, Judge.

Thank you, Mr. Chairman.

#### RECOGNITION OF JUDGE TANNENWALD

Mr. ROYBAL. Judge Tannenwald, I would like to compliment you on your assignment and welcome you to this committee this morning.

May I say that if you have anything to say at this time, you are now recognized.

Judge TANNENWALD. Mr. Chairman, I appreciate your kind words and I look forward to working with the committee and with the committee staff.

#### ATTORNEYS WITH ACCOUNTING BACKGROUNDS

My only addition would be to your question about accountants.

I believe that several of our law clerks are accountants and that some of them indeed are certified public accountants, and I also believe at least one of our Special Trial Judges is an accountant, and there may be more. I just don't remember.

A lot of the lawyers are also accountants, with dual certification. I know the law clerk situation, but I am just not personally familiar with the background of the Special Trial Judges, but I suspect that we have at least one or more of them that are also accountants.

#### STATUS OF JUDGES' SURVIVORS FUND

Mr. ROYBAL. Judge, will you furnish for the record the survivors annuity fund status and what the outlook for it is?

Judge FEATHERSTON. Very well.

[The information follows:]

## TAX COURT JUDGES' SURVIVORS ANNUITY FUND

The Tax Court Judges' Survivors Annuity Fund was established by Public Law No. 87-370 (26 U.S.C. 7448), approved October 4, 1961, to provide annuities to surviving spouses and certain dependent children of deceased Tax Court judges.

The principal provisions of Tax Court Judges' Survivor Annuity System are as follows:

1. A Tax Court judge who has elected the Tax Court judges retirement system may provide a survivor annuity for his or her surviving spouse and dependent children payable upon his death. Such election can be made at any time while he is a Tax Court judge. A judge electing to come under the Tax Court system waives his rights to Civil Service benefits.

2. A judge electing survivorship benefits under the plan must contribute 3 percent of his compensation as long as he lives. A surviving spouse's eligibility for annuity is established after the judge has contributed into the fund for a period of 5 years which may also include the purchase of any prior allowable service.

3. The surviving spouse's annuity is equal to the number of years of eligible judicial service multiplied by 1¼ percent and multiplied by the judge's highest 5-year average salary. This computation allows 1¼ percent credit, also, for each year of service as a Senator, Representative, member of the Armed Services or congressional employee. For other prior civil service only three-fourths of 1 percent per year is allowed. In case contributions have not been made with interest for all allowable prior service on which the surviving spouse's annuity is based, the surviving spouse's annuity includes such service credit but is reduced by 10 percent of the unpaid amount. The maximum percentage allowed in computing the surviving spouse's annuity is 37½ percent. An eligible surviving spouse must have been married to the judge for at least 2 years preceding the judge's death or must be the parent of issue by such marriage. The surviving spouse cannot receive an annuity until the age of 50 unless there is a dependent child or children.

4. The annuity payable to a dependent child is \$360 per year, not to exceed \$900 divided by the number of dependent children. If there is no surviving spouse each dependent child receives \$480 per year.

5. Upon death of the judge without a survivor, or upon death of the survivor before all contributions with interest have been paid in the form of annuity payments, the excess of contributions with interest over such annuity payments is refunded to the appropriate beneficiary.

The income to the fund is derived from four basic sources which are:

- (1) Government contributions through appropriations.
- (2) Withheld salary deductions from each participating judge.
- (3) Payments of deposits into the fund covering past periods of service rendered by a participating judge, and for which no withholdings from salaries or payments are made.
- (4) Interest from any moneys invested by the fund.

The law provides that any available funds, considered excess to the immediate needs of the fund, may be invested in either United States or Federal Farm Loan Bonds, with the interest therefrom to become a part of the fund. The chief judge, upon consulting other judges, directs the investment program of the fund.

Participation in and the financial condition of the fund as of February 28, 1981, was as follows:

Judges participating.....	16
Annuitants.....	6
Cash balance in treasury .....	\$3,356
Investments at par value .....	\$826,000

By law, the chief judge is required to cause periodic actuarial studies of the fund to be made. The last valuation was based on data as of September 30, 1976. It reflected an unfunded liability of \$354,771, and indicated that the government's annual contribution should equal 4.3 percent of the participating judges' payroll. This would require a contribution of \$40,000 in addition to the 3 percent withheld from each participating judges' salary.

A later valuation, based on data as of December 31, 1979, is in progress.

Mr. ROYBAL. I would like to compliment the United States Tax Court for their wisdom.

Judge FEATHERSTON. Well, as a matter of fact, one of my law clerks that just recently left was a certified public accountant and went to a law firm.

The accountants and the lawyers have worked very closely and very well together in the administration of tax laws.

Mr. ROYBAL. Judge Featherston, I would like to thank you and your colleagues for your testimony.

The committee will take it under advisement.

The committee will recess until 2 o'clock this afternoon.

[The justifications follow:]

UNITED STATES TAX COURTINTRODUCTION

The United States Tax Court is an independent judicial body, the membership of which is composed of a Chief Judge and eighteen Judges. The Tax Reform Act of 1969 changed the status of the Court from an independent agency in the Executive Branch to a court of record under Article I of the Constitution of the United States.

Decisions by the Court are reviewable by the United States Courts of Appeals and, if certiorari is granted, by the Supreme Court.

In their judicial duties the Judges are assisted by Senior Judges, who participate in the adjudication of regular cases and by Special Trial Judges, who hear small tax cases and certain regular cases assigned to them by the Chief Judge. During fiscal year 1982 five Senior Judges and thirteen Special Trial Judges will be serving on the Court.

The Court conducts trial sessions throughout the United States, including Hawaii and Alaska.

UNITED STATES TAX COURT  
STATEMENT OF PERSONNEL REQUIREMENTS

Full-time equivalents (workyears)

	1980 actual		1981 estimate		1982 estimate	
	Full-time in permanent positions	Total	Full-time in permanent positions	Total	Full-time in permanent positions	Total
Agency personnel resources.....	210	217	220	224	253	257
Supplementals.....	---	---	5	5	---	---
Overtime work.....	1	1	1	1	1	1
Personnel resources shown in budget schedules.....	211	218	226	230	254	258
Workyears subject to ceilings....	210	217	225	229	253	257

STANDARD FORM 108  
 May 1969, Bureau of the Budget  
 Circular No. A-11, 4<sup>th</sup> ed.  
 108-109

STATEMENT OF RECEIPTS— UNITED STATES TAX COURT (23)  
 (Department or agency)

Receipt symbol	Receipt Account Title	Source category	(In thousands of dollars)			Comments		
			Type	Function	1980 actual		1981 estimate	1982 estimate
23-0869	Fees for legal and judicial services, not otherwise classified		6 . . .		282	322	372	

STATEMENT OF RECEIPTS—UNITED STATES TAX COURT (23)  
 (Department or agency)

(In thousands of dollars)

Receipt symbol	Receipt Account Title	Source category	Function Type	1980 actual	1981 estimate	1982 estimate	Comments
23-8115.1	Tax Court Judges Survivors Annuity Fund						
	Deductions from employees salaries		F . . .	25	28	28	
23-8115.2	Interest and profits on investments		UI 952	59	62	66	
23-8115.3	Employing agency contributions		UI 951	40	40	40	
	TOTAL			124	130	134	

## UNITED STATES TAX COURT

## Salaries and Expenses

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, \$12,404,000: Provided, That travel expenses of the judges shall be paid upon the written certificate of the judge.

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 500-107

UNITED STATES TAX COURT  
 SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code	1980 actual	1981 estimate	1982 estimate
23-0100-0-1-752			
<u>Program by activities:</u>			
General administration (program costs, funded).....	9,538	10,913	12,453
Change in selected resources...	40	....	....
10.00 Total obligations.....	9,578	10,913	12,453
<u>Financing:</u>			
21.40 Unobligated balance avail- able, start of year.....	-89	-89	-49
24.40 Unobligated balance avail- able, end of year.....	89	49	....
25.00 Unobligated balance lapsing.....	173	....	....
39.00 <u>Budget authority</u>	9,751	10,873	12,404
<u>Budget authority:</u>			
40.00 <u>Appropriation</u> .....	9,751	10,427	12,404
44.20 <u>Supplemental for civilian pay raises</u> .....	.....	446	....
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net.....	9,578	10,913	12,453
72.40 Obligated balance, start of year.....	536	478	700
74.40 Obligated balance, end of year.....	-478	-700	-793
77.00 Adjustments in expired accounts.....	-4	....	....

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 300-101

UNITED STATES TAX COURT  
 SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 23-0100-0-1-752	1980 actual	1981 estimate	1982 estimate
90.00 Outlays, excluding pay raise supplemental.....	9,632	10,257	12,348
91.20 Outlays from civilian pay raise supplemental.....	.....	434	12

UNITED STATES TAX COURT  
NARRATIVE STATEMENT ON PROGRAM AND PERFORMANCE

The U. S. Tax Court hears and decides cases involving Federal income, estate and gift tax deficiencies and renders declaratory judgments regarding the qualification or continuing qualification (including revocations of rulings on the exemptions) of retirement plans under the provisions of Public Law 93-406, known as the Employee Retirement Income Security Act of 1974.

The Tax Court has also been given jurisdiction under Public Law 94-455 (Tax Reform Act of 1976) to render declaratory judgments with respect to (1) exempt organization status determinations pursuant to section 501(c)(3), Internal Revenue Code and (2) determinations made pursuant to section 367 (transfers of property from the United States). Under the Revenue Act of 1978, the Court was given jurisdiction to enter declaratory judgments on the tax treatment of interest on proposed government obligations. In addition, the Court has jurisdiction over actions to restrain disclosure and to obtain additional disclosure with respect to public inspection of written determinations issued by the Internal Revenue Service, and actions to compel the disclosure of the identity of third-party contacts relating to written determinations made by the Internal Revenue Service.

For 1982, the Court proposes a trial program of 394 weeks consisting of 270 weeks of regular trial sessions and 124 weeks of small tax case sessions. Trials are held in approximately 116 cities throughout the United States.

The actual and estimated work volume of the Court is presented in the following tabulation:

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Pending, beginning year	23,140	27,043	34,865	41,915
Docketed during year	17,126	22,009	26,450	32,000
Reopened during year	159	283	300	300
Disposed of during year	13,382	14,470	19,700	24,100
Pending, end of year	27,043	34,865	41,915	50,115

STANDARD FORM 300  
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300-101

UNITED STATES TAX COURT  
SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 23-0100-0-1-752	19 80 actual	19 81 estimate	19 82 estimate
<u>Personnel compensation:</u>			
11.1 Permanent positions.....	5,166	6,042	7,086
11.3 Positions other than permanent.....	123	88	88
11.5 Other personnel compensa- tion.....	20	11	11
11.9 Total personnel compensa- tion.....	5,309	6,141	7,185
<u>Personnel benefits:</u>			
12.1 Civilian.....	447	508	591
13.0 Benefits for former personnel.....	194	202	202
21.0 Travel and transportation of persons.....	287	380	478
22.0 Transportation of things....	55	67	83
23.1 Standard level user charges.....	2,073	2,199	2,355
23.2 Communications, utilities, and other rent.....	241	300	332
24.0 Printing and reproduction...	129	132	144
25.0 Other services.....	476	544	632
26.0 Supplies and materials.....	197	188	213
31.0 Equipment.....	170	252	238
99.9 Total obligations.....	9,578	10,913	12,453

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 300-101

UNITED STATES TAX COURT  
 SALARIES AND EXPENSES

Personnel Summary

Identification code: 23-0100-0-1-752	1980 actual	1981 estimate	1982 estimate
Total number of permanent positions.....	218	223	258
Total compensable workyears:			
Full-time equivalent employment.....	217	224	257
Full-time equivalent of overtime hours.....	1	1	1
Average GS grade.....	8.52	8.88	8.84
Average GS salary.....	\$19,243	\$21,983	\$21,960
Average salary of ungraded positions.....	\$16,167	\$16,167	\$16,167

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-101

UNITED STATES TAX COURT  
CONSTRUCTION

Program and financing (in thousands of dollars)

Identification code	1980 actual	1981 estimate	1982 estimate
23-0102-0-1-752			
<u>Program by activities:</u>			
10.00 Site and construction (costs-obligations) (object class 32.0).....	1	...	...
<u>Financing:</u>			
21.40 Unobligated balance available, start of year..	-585	-584	...
24.40 Unobligated balance available, end of year....	584	...	...
25.00 Unobligated balance lapsing.....	...	584	...
<u>Budget authority</u> .....	...	...	...
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net.....	1	...	...
72.40 Obligated balance, start of year.....	5	4	...
74.40 Obligated balance, end of year.....	-4	...	...
90.00 Outlays.....	2	4	...

UNITED STATES TAX COURTCONSTRUCTION

For 1972 the U. S. Tax Court received an initial appropriation in the amount of \$18,712 thousand, and for 1973 and 1975 supplemental appropriations in the amounts of \$1,916 thousand and \$2 million respectively, to provide for the construction of a court building to be located within the District of Columbia. The Tax Court is a court of national jurisdiction with headquarters in Washington, D. C. and conducts trial sessions throughout the United States.

Ground was broken on July 31, 1972, and the new quarters were occupied on January 1975. Phase II of the building project, the plaza across Interstate-95, was completed in 1978.

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-101

UNITED STATES TAX COURT  
TAX COURT JUDGES SURVIVORS ANNUITY FUND

Program and Financing (in thousands of dollars)

Identification code	1980 actual	1981 estimate	1982 estimate
23-8115-0-7-602			
<u>Program by activities:</u>			
10.00 Annuities (cost- obligations) (object class 42.0).....	69	77	77
<u>Financing:</u>			
21.40 Unobligated balance available, start of year:			
Treasury balance.....	-4	-9	-7
U.S. securities (par).....	-716	-766	-821
24.40 Unobligated balance available, end of year:			
Treasury balance.....	9	7	4
U.S. securities (par).....	766	821	881
60.00 <u>Budget authority</u> (appropriation) (permanent, indefinite)...	124	130	134
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net.....	69	77	77
90.00 Outlays.....	69	77	77

UNITED STATES TAX COURT  
TAX COURT JUDGES SURVIVORS ANNUITY FUND

This fund, established under 26, U.S.C. 7448, is used to pay survivorship benefits to eligible surviving spouses and dependent children of deceased judges of the U. S. Tax Court. Participating judges pay 3% of their salaries or retired pay into the fund to cover creditable service for which payment is required. Additional funds as are needed are provided through the annual appropriation to the U. S. Tax Court.

On September 30, 1980, fifteen judges of the Court were participating in the fund, and six eligible widows were receiving survivorship annuity payments.

UNITED STATES TAX COURT  
SUMMARY AND HIGHLIGHTS OF THE COURT PROGRAM

The pattern of extreme activity experienced in recent years continued in fiscal year 1980 and is expected to extend into fiscal years 1981 and 1982. During fiscal year 1980 records or near records were set in the major categories of the Court's operations: cases filed (22,009), cases closed (14,470), opinions written (1,397) and the pending case load (34,865).

Related workload data is presented in the following table:

	ACTUAL 1979	ACTUAL 1980	ESTIMATED 1981	ESTIMATED 1982
<u>FILED</u>	17,126	22,009	26,450	32,000
REGULAR CASES	12,757	15,125	17,450	20,600
SM. TAX CASES	4,369	6,884	9,000	11,400
RELATED ITT CASES	.....	.....	.....	.....
<u>REOPENED</u>	159	283	300	300
REGULAR CASES	137	259	275	275
SM. TAX CASES	22	24	25	25
<u>CLOSED</u>	13,382	14,470	19,700	24,100
REGULAR CASES	8,586	8,414	10,800	12,900
SM. TAX CASES	4,796	6,056	8,900	11,200
<u>TRANSFERRED</u>	.....	.....	.....	.....
REGULAR CASES	-1,659	-1,819	-2,000	-2,000
SM. TAX CASES	+1,659	+1,819	+2,000	+2,000
<u>PENDING</u>	27,043	34,865	41,915	50,115
REGULAR CASES	21,112	26,263	31,188	37,163
SM. TAX CASES	4,931	7,602	9,727	11,952
RELATED ITT CASES	1,000	1,000	1,000	1,000
<u>WRITTEN OPINIONS</u>	1,438	1,397	1,540	1,820
REGULAR CASES	734	764	800	890
SM. TAX CASES	704	633	740	930

The dynamics of the Court's activity over the past ten years have created an ever expanding case load. During that

period the Court increased its output of cases each successive year except one, yet the case load has grown at a faster rate as the rise in new filings continued to outpace closings.

The Court's budget estimates for fiscal year 1982 are based on an anticipated workload which will exceed not only actual accomplishments during fiscal year 1980 but also the volume now estimated for fiscal year 1981.

Based on an average 21% annual increase in the rate of new petitions filed over the last three years, it is estimated that during fiscal year 1982 the Court should docket 32,000 cases. This volume is more than three times the number filed ten years earlier and almost double the amount received as late as fiscal year 1979.

In past budget submissions and testimony, the Court has attributed this expansion in tax litigation to certain quantifiable factors and a number of less tangible causes. Cited as measurable factors were a constant growth in the number of tax returns filed each year and fluctuations in the I.R.S. audit rate. The more subtle and apparently more influential factors mentioned were a growing awareness of the availability and convenience of the Tax Court as a forum for settling tax disputes; a favorable disparity between prevailing interest rates and the rates charged by the I.R.S. on unpaid taxes; an increase in, and complexity of, the tax laws; the greater difficulty for taxpayers to pay during periods of "stagflation" and a general propensity on the part of the citizenry to litigate.

Moreover, the Court is beginning to feel the impact of the I.R.S.'s increased activity in challenging "abusive tax shelters." Of the cases filed during the calendar year 1980, it is estimated that 4,000 cases involve tax shelter issues. The I.R.S. has estimated that 15,000 such cases will be docketed in fiscal year 1981.

The Court closed 14,470 cases in fiscal year 1980 due to an increase in the number of settlements. Closings for 1981 are projected at 19,700 and are estimated to increase to 24,100 in 1982.

To meet the growing volume of adjudication, the Court plans a schedule in fiscal year 1982 of not less than 270 weeks of trial assignments for the judges to be supplemented by assignments for the special trial judges of not less than 124 weeks. Total sessions for 1982 of 394 compare to 309 weeks scheduled in fiscal year 1980.

The achievement of goals set for 1982 will require the full utilization of the 223 permanent positions authorized for 1981 to be augmented by 16 new positions requested in a pending supplemental plus an additional 19 positions now requested for fiscal year 1982.

Because of the growing case load, the Court last year sought legislation to raise the statutory limitation on the number of presidentially-appointed judges. Subsequently, Public Law 96-439 was enacted authorizing three additional judges for the Tax Court effective February 1, 1981.

The above statistics reflect very modest increases in employment in proportion to the growth in workload. Personnel requirements for fiscal year 1982 are shown to increase eight percent above the fiscal year 1981 level whereas workload forecasts indicate a 22 percent rise. And, the fiscal year 1982 versus fiscal year 1972 statistics reveal a more graphic comparison: work force up 45 percent, workload up above 200 percent.

The Court has taken several steps to enable itself to carry its growing case load. First, at the Court's request, the Congress in P.L. 96-439, approved October 13, 1980, authorized three additional presidentially-appointed judges effective February 1, 1981. The Court's request for the additional judges was granted after hearings before the House Ways and Means Committee on April 1, 1980. Testimony in support of the request was given by the Chairman of the Tax Section of the American Bar Association, attorneys from private practice, and the Chief Counsel of the Internal Revenue Service as well as the Chief Judge of the Court. Statements were filed by the New York Bar Association, the Assistant Attorney General in charge of the Tax Division of the Department of Justice, and a number of other individuals. The Court is hopeful that the three additional judges will be appointed by the President, confirmed by the Senate, and available for duty by June 1, 1981.

Second, the Court has continued to set for trial practically all cases as soon as the parties have indicated they are ready for trial. This procedure has precipitated settlements and increased the number of cases closed by opinion. In this manner, the Court has increased the total number of cases closed from 13,382 in fiscal year 1979 to 14,470 cases in fiscal year 1980.

Third, at the Court's request, the Congress included in the Revenue Act of 1978, a provision increasing the jurisdictional limit in small tax cases from \$1,500 in any one taxable year to \$5,000, thereby making an additional approximate 14 percent of the cases subject to the small tax case procedure. The full impact of this change can only be estimated at this point, but it should be noted that the number of cases in which the small tax case election was made rose from 4,316 in fiscal year 1978, to 6,028 in fiscal year 1979, and to 8,703 in fiscal year 1980 - an increase of more than 100 percent in two years. And the number of small tax cases closed rose from 3,823 in fiscal year 1978, to 4,796 in fiscal year 1979, and to 6,056 in fiscal year 1980. The special trial judges hear most of the small tax cases. Shifting these additional cases to the special trial judges to be handled under the informal, expeditious small tax case procedures, relieves the regular judges of a part of the load they would otherwise be required to attempt to handle.

Further, the Court has continued to schedule cases for trial by special trial judges pursuant to General Order No. 6. As a general rule these are cases which were filed pro se and are mainly cases in which the small tax case election could have been made but was not. Again, assigning these cases to special trial judges relieves the load of the regular judges.

Finally, the Court has assigned to the special trial judges certain large cases which require protracted trials. Permitting the special trial judges to handle these long trials relieves the regular judges of the necessity of handling them and thereby permits each of the regular judges to handle his share of the trial calendars.

This effort has met with a degree of success. Even though the number of pending cases is growing, the ratio of the number of new cases filed to the number of cases pending has not changed appreciably over the years, and the number of pending cases is still considerably less than the number filed in a 2-year period. Nonetheless, the number of pending cases continues to grow -- it reached 34,865 at the end of fiscal year 1980 and may exceed 50,000 by the end of fiscal year 1982. As the volume of new cases increases, it becomes more and more difficult for the Court to meet its obligation to provide a forum in which taxpayer disputes can be resolved promptly in the interest of the affected taxpayers as well as the interests of securing the proper tax revenues.

The total budget request contained in these estimates for fiscal year 1982 is \$12,404,000. This represents an increase of \$1,310,000 above the \$11,094,000 (including the pending supplementals) required in fiscal year 1981. Nineteen new positions are programmed for fiscal year 1982. Pay costs in both years, as reflected in this request, are based on the scheduled pay rates which became effective in October 1980. Details and justifications of the fiscal year 1982 estimates are contained in the following pages.

UNITED STATES TAX COURT  
SUMMARY OF FISCAL YEAR 1982 ESTIMATES

The fiscal year 1982 funding requirements to conduct the Court's activities are summarized as follows:

	<u>1981</u>	<u>1982</u>	<u>Difference</u>
Positions	239	258	+19
Man Years	230	258	+28
Personnel Compensation & Benefits	\$ 7,018,000	\$ 7,978,000	\$ +960,000
Other Costs	<u>\$ 4,076,000</u>	<u>\$ 4,426,000</u>	<u>\$ +350,000</u>
Total All Costs	\$11,094,000	\$12,404,000	\$+1,310,000

The fiscal year 1982 request represents an increase of \$1,284,000 over the fiscal year 1981 requirement (including the pay and program supplementals). Changes in the 1982 program are summarized in the following schedule:

<u>Program Changes</u>	<u>Positions</u>	<u>Amount</u>
New Requirements	19	\$ 409,000
Pay Adjustments		36,000
Other Cost Adjustments	—	<u>865,000</u>
Total Changes	19	\$1,310,000

The following is a brief description of the above listed changes:

New Requirements.....\$ 409,000

Of this increase \$365,000 is required to finance the salaries and benefit costs of 15.7 man years of employment

for 19 new positions. Nine of these positions are for three special trial judges and their staffs and 10 new positions will be assigned to the Office of the Clerk. These 19 requested positions represent an 8% overall increase in employment compared to an estimated 21% rise in the number of cases to be filed in 1982 and a 20% growth in the average number of cases pending during the year.

Another \$44,000 is needed for rent and telephone service at two field court facilities to be assigned during the year.

Pay Adjustments.....\$ 36,000

During fiscal year 1982, \$14,000 will be required to finance promotions and \$22,000 will be required for within-grade salary increases for employees who will be eligible for advancement to the next step in salary during the year.

Other Cost Adjustments.....\$ 865,000

Increases in the amount of \$927,000 are required to finance the following items which are related to continuation of the staffing levels and other activity approved in prior years:

- \$330,000 - Salaries for a 12 man year increase in employment for positions authorized in 1981;
- 123,000 - Full year cost of promotions and within-grade step increases granted in fiscal year 1981;
- 38,000 - The cost of related fringe benefits;
- 68,000 - Full year cost of October 1980 pay raise;

- 131,000 - Increases in travel, transportation, court reporting, printing, communications, procurement and contracting services required to meet the continuing cost of inflation;
- 117,000 - Increases in expenses for travel, court reporting and shipment of court records due to 61 additional trial weeks;
- 113,000 - Higher rent payments to GSA due to annualizing rent for new facilities assigned to the Court in 1981 (\$25,000) and increased rates (\$88,000); and
- 7,000 - Added costs for full year telephone service at facilities opened during 1981 and an increase in FTS rates.

Nonrecurring costs for procuring and shipping field office furniture and procuring supplies, reference books, and office equipment for the three new judgeships authorized in 1981 will result in a reduction of \$62,000 partially offsetting the above increases.

As required by Section 1311(b), of the Supplemental Appropriation Act of 1955, as amended, (31 U.S.C. 200(b)), it is hereby certified that all statements of obligations reported and furnished to the Office of Management and Budget, in connection with request of the United States Tax Court for proposed appropriations for fiscal year 1982, consist of valid obligations as defined in Section 1311 of the Act.

STANDARD FORM 306  
 July 1968, Bureau of the Budget  
 Circular No. A-11, Revised.  
 306-103

UNITED STATES TAX COURT  
 SALARIES AND EXPENSES

CONSOLIDATED SCHEDULE OF PERMANENT POSITIONS PAID  
 FROM FUNDS AVAILABLE TO THE UNITED STATES TAX COURT  
 DETAIL OF PERMANENT POSITIONS

	1980 actual	1981 estimate	1982 estimate
Judges, \$67,100	21	21	24
Positions established under Section 7456(c) IRS Code of 1954, as amended:			
Commissioners, \$59,800	10	10	13
GS-18	1	1	1
GS-17	1	1	1
GS-16	1	1	1
GS-15	1	1	1
GS-14	2	2	3
GS-13	15	22	23
GS-12	19	23	25
GS-11	16	12	18
GS-10	1	1	1
GS-9	38	36	43
GS-8	25	31	27
GS-7	16	11	20
GS-6	11	18	19
GS-5	16	17	23
GS-4	11	9	10
GS-3	8	4	3
GS-2	3	..	..
Ungraded	2	2	2
Total permanent positions	218	223	258
Unfilled positions, end of year	-2	-5	-5
Total permanent employment, end of year	216	218	253

## AGENCY BORROWING AND INVESTMENT

## UNITED STATES TAX COURT

Tax Court Judges Survivors Annuity Fund (23-8115-0-7-602)

(in thousands of dollars)

	End of Year			
	<u>1979</u> <u>actual</u>	<u>1980</u> <u>actual</u>	<u>1981</u> <u>estimate</u>	<u>1982</u> <u>estimate</u>
<u>Outstanding investments</u>				
<u>in U.S. securities (at par)</u>				
99.21 Public debt securities.....	716	766	821	881

WEDNESDAY, MARCH 18, 1981.

FEDERAL LABOR RELATIONS AUTHORITY

WITNESSES

RONALD W. HAUGHTON, CHAIRMAN  
HENRY B. FRAZIER III, MEMBER  
LEON B. APPLEWHAITE, MEMBER  
H. STEPHAN GORDON, GENERAL COUNSEL  
JAMES J. SHEPARD, EXECUTIVE DIRECTOR  
HAROLD D. KESSLER, DEPUTY EXECUTIVE DIRECTOR  
S. JESSE REUBEN, DEPUTY GENERAL COUNSEL  
GUY R. RANKIN, DIRECTOR OF ADMINISTRATION  
RICHARD D. ARNOLD II, FINANCIAL MANAGER  
GEORGE B. BAILY, JR., SPECIAL ASSISTANT TO THE GENERAL COUNSEL

Mr. ROYBAL. The committee will come to order.

The committee is in session this afternoon to hear from the Federal Labor Relations Authority with regard to their budget request for fiscal year 1982.

Mr. Haughton, will you please proceed in any way that you may desire?

Mr. HAUGHTON. Thank you very much, Chairman Roybal.

We had the privilege of appearing before this committee fairly recently with respect to our 1981 supplemental, and went into a good deal of detail about our operations.

I do have a prepared statement which I would like to be privileged to enter into the record, and then I won't have to belabor too much of the detail.

Mr. ROYBAL. Without objection, the statement will be entered into the record at this point.

[The statement of Mr. Haughton follows:]

STATEMENT OF RONALD W. HAUGHTON, CHAIRMAN, FEDERAL LABOR RELATIONS AUTHORITY, BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT, HOUSE COMMITTEE ON APPROPRIATIONS, REGARDING THE AUTHORITY'S FISCAL YEAR 1982 APPROPRIATION REQUEST.

Mr. Chairman and Members of the Committee:

It is a pleasure to be here today to discuss with you the Fiscal Year 1982 appropriation request for the Federal Labor Relations Authority.

My associates are Mr. Leon Applewhite and Mr. Henry Frazier, Members of the Authority, Mr. Stephan Gordon, General Counsel, Mr. James Shepard, the Authority's Executive Director, and Mr. Guy Rankin, Director of Administration.

Our Fiscal Year 1982 request is for \$16,812,000 in budget authority and 351 full-time permanent positions. These resources reflect the revised amounts recently submitted by the Reagan Administration.

Title VII of the Civil Service Reform Act of 1978 established the Federal Labor Relations Authority and set standards which protect the collective bargaining rights of Federal management and unions. The Authority is an independent agency in the Executive Branch. The FLRA is composed of three Members and autonomous General Counsel all nominated by the President and confirmed by the Senate.

To an independent agency which adjudicates disputes which arise between Federal management and unions, even physical location apart from the parties is essential. To this end, it is important that we be moved from the headquarters Office of Personnel Management Building and our staff consolidated in a single FLRA headquarter facility. Not only must the rights, duties, and obligations of federal agencies, unions, and employees be protected impartially, but the physical appearance of independence is essential.

The Federal Labor Relations Authority's responsibilities under the Statute are addressed through the resolution of disputes, or cases which arise as a result of labor-management activities within the various Federal government agencies and organizations.

Case activity consists of four primary types:

1. Unfair labor practices committed by agencies or unions which affect an agency's, union's or employee's rights under provisions of the Act;
2. Negotiability appeals in which an agency alleges that certain issues are not negotiable, and the union appeals that decision;
3. Exceptions to arbitration awards, where either party to an arbitration award may appeal the award to the Authority under certain limited conditions; and
4. Representation petitions dealing with such questions as certification of units, unit consolidation, etc.

The parts in the agency dealing with the cases are:

1. The Authority, which receives directly negotiability cases and exceptions to arbitration awards, plus appeals from decisions of the Administrative Law Judges on unfair labor practice cases. Representation issues are considered.

2. The Office of the General Counsel which is responsible for the initial investigation and disposition of unfair labor practice cases, which includes if necessary, prosecution of those cases before Administrative Law Judges. Additionally, the processing of representation cases, including investigations, hearings, and the holding of elections are among the General Counsel's responsibilities.
3. The Administrative Law Judges hear and render decisions on unfair labor practice cases which are prosecuted by the Office of the General Counsel.
4. The Federal Service Impasses Panel, an entity within FLRA, has authority to decide impasses which arise between agencies and unions during the course of negotiations.

The resources being requested are a minimum need. Caseloads are increasing in virtually all of our major case activity areas. For example, in Adjudication workloads to be processed will increase from 1,322 in FY 1981 to 1,721 in FY 1982 and the ALJ caseload will grow from 1,502 in FY 1981 to 1,699 in FY 1982. Our single, largest volume caseload item is unfair labor practice cases received by our General Counsel. This caseload will increase from 6,479 in 1981 to 7,815 in 1982.

In response to the caseload increase just described, the Authority and General Counsel have initiated management improvements to enhance productivity. As a result, Adjudication productivity will improve approximately 10% in 1982,

Hearings approximately 5% and Office of the General Counsel approximately 5%. These improvements include refining case processing procedures, providing formal training and cross-training to all employees, establishing time standards for production of caseload, establishing case tracking and statistical reporting systems to provide feedback on case management, and establishing financial and personnel management systems which will provide unit time and cost data. All of these systems will be implemented by 1982.

Additionally, the Authority Members and the General Counsel continually encourage informal settlements of disputes.

The figures I have just given you indicate rapid improvements which have been made and will continue to be made in the Authority's operations. However, even these actions only offset the rapid increases in caseload. In Adjudication, backlogs are expected to increase from 10.4 to 16.7 months in 1982; the increase in Hearings will be from 6.9 to 7.9 months; and, in the Office of the General Counsel from 4.5 to 7.5 months for the initial processing of unfair labor practice charges.

Any labor-management relations program must be both timely and fair in order to be credible. These backlogs we believe to be maximum tolerances in order to maintain that credibility.

Since the Authority was established, two significant programs have been added to the agency's responsibilities. They are responsibility for the labor-management relations program in the Panama Canal area and the new Foreign Service Act of 1980, which established a labor-management relations

program in the Foreign Service to be supported by resources of the Authority. Both of these programs are sensitive in that they include activities both domestic and foreign. The newest program, dealing with approximately 14,500 Foreign Service employees stationed worldwide, will not impact fully until FY 82 and is expected to take 9 additional staff years of work.

The Authority received no additional positions for either of the programs. Aside from a small amount in FY 1981 for miscellaneous support costs, no additional funds were received for these programs. The agency is absorbing both staff and funding requirements.

The Foreign Service Act established a three Member Foreign Service Labor Relations Board, which has already been constituted, and a five member Foreign Service Impasse Disputes Panel, which is being constituted this month. By Fiscal Year 1982, this program will be fully implemented and operational.

Further, it is projected that current budgetary constraints government-wide will generate a feeling of uncertainty and unrest among some Federal employees. It is anticipated that these feelings will possibly manifest themselves in an increased case load for this agency.

It is our estimate that the agency's search for space will soon be concluded, with planned relocation as early as June of this year. This is important for both operational and program reasons. The agency's third-party neutral status is essential to a credible program. Physical independence, by being located

separate from other agencies, provides both reality and appearance to that neutrality. Additionally, this central location will provide increased efficiency of internal operations, since much time and procedural activity is consumed in communication between the four locations of our National Office activities. Much staff and management time has been consumed in our dealings with the General Services Administration during the past two years in attempts to obtain this space. Our central location certainly will be a factor in productivity gains in FY 1982.

During this period, we have continued in our commitment to equal employment opportunity principles. Some 61% of all staff are minority and women, compared to 56% of the staff a year ago. Fifty percent of our professional staff are minority and women. Virtually all of this increase is in minority employment. Many key positions are filled by minorities. These include three of our nine Regional Directors, our Director of Administration, and several Administrative Law Judges, Regional Attorneys and Assistants to the Members of the Authority. We are proud to have developed this record, and plan to continue and improve upon it.

In summary, I would like to state that during this period of increasing workloads and budgetary stringencies, it is our goal to continue to develop a fair and effective program. We believe that this will contribute to the development of a better managed and more stable government.

Following comments by Mr. Gordon, our General Counsel, I will be pleased to answer any questions.

Mr. HAUGHTON. I would like to introduce my associates.

Mr. Henry Frazier on my left; Mr. Leon Applewhaite, Members of the Authority, and Mr. Stephan Gordon, who is General Counsel for the Agency, and who has a separate statement.

Our fiscal year request for 1981 is \$16,812,000 in budget authority, and 351 full-time permanent positions.

These resources reflect the revised amounts recently submitted by the Reagan Administration.

I am not going to go into detail as to the mission of the Agency other than to state that starting two years ago labor relations in the Federal sector became what we call first-class. It is based in a statute, a privilege that labor and management have had with respect to the National Labor Relations Act for the past 40 years.

Our activities break into some four areas, unfair labor practices, negotiability appeals, exceptions to arbitration awards, and representation petitions.

Fully two-thirds of our operations are in the field handling unfair labor practices at the initial stage of acceptance and prosecution of complaints.

Mr. Gordon will have a detailed statement relating to that part of our activities.

#### CASELOAD

In my prepared statement I have a few figures on caseload that are worth emphasizing, and I have a slight addition to it, to flesh out the piece in the prepared statement.

Caseloads are increasing in virtually all of the major case activity areas I mentioned. In adjudication, workloads in the Authority to be processed will increase from 1,322 in fiscal year 1981 to 1,721 in fiscal year 1982. The Administrative law judge caseload will grow from 1,502 in fiscal year 1981 to 1,699 in fiscal 1982.

The single largest volume of caseload is unfair labor practices received by the general counsel in the field. He will be giving detail on that.

The unfair labor practices load will increase from 6,479 in 1981 to 7,815 in 1982. This does not reflect the entire load in the regions, so to this must be added 835 representation cases. The total General Counsel workload for 1982 will be some 16 percent over 1981.

We feel that we simply have to keep up with this load. Both the General Counsel and our own staff are initiating new management techniques because we know we can't win the battle just by adding new people and adding more money.

This request we have made is an absolute minimum, even with this we will have increased backlogs. In Adjudication, backlogs will increase from 10.4 to 16.7 months in 1982. The hearing lapse will increase from 6.9 months to 7.9. The General Counsel will have his own figures on the initial processing of unfair labor practice charges.

Delays with the budget we expect but within that framework we both are committed to instituting continuously new management techniques. Just this morning we tracked what our five principal case processing groups have been doing in the past year and issued cash awards to everybody involved who did the best work. One group did substantially better than another. We hope this will be a target.

Mr. Gordon also has issued a group award. He has nine regional offices, he found one did substantially better during the whole of last year and gave the office staff a cash award. It is a relatively small amount of money per person, but we think it is a management incentive.

We have the whole new area of the Panama Canal where we are really getting in there heavily with an election covering the whole Isthmus coming up.

We have the Foreign Service Labor Relations Act of 1980, which will really take its first full bite in 1982. This will add an estimated 9 staff years of work to our combined operation. We are not asking for additional money for that at all.

We do have some additional support costs, for the Foreign Service work. As you may recall, Mr. Chairman, we asked for \$275,000 in the 1981 budget for support. But in terms of positions, to use the vernacular, we are going to "eat" the additional work load.

We do think that budgetary constraints governmentwide which are a matter of public record, will generate some unrest, and that will reflect itself in the increased caseload we have projected.

We report again that we are still working on our housing. We now have meaningful talks going on with GSA. It isn't quite as bad as we thought it was when we last talked to you, but we are still divided into several different areas.

In summary, I want to state that our goal is to continue to give a fair shake to labor and management. We are not going to short-change either party. We are going to continue to try to do an increasingly better job.

We think this will contribute to better and more stable labor management relations in the government. Our basic need is for the \$16,812,000 for fiscal year 1982.

Before turning to Mr. Gordon, I would like to ask my two colleagues if they have anything to add.

Mr. Frazier?

Mr. FRAZIER. I simply would like to say I fully support the position that the Chairman has set forth here today.

Mr. APPLEWHAITE. I join in the statements made by the Chairman.

Mr. HAUGHTON. We have two Democrats and one Republican on our Authority. We have issued hundreds of decisions. Every one but one has been unanimous, and just to show my independence as Chairman, I dissented against those two on one case, but the unanimity of the commitment that we have is a very exciting thing.

Mr. ROYBAL. What you are actually saying is they can be wrong once in a while.

Mr. HAUGHTON. Thank you, sir. Of course, I haven't spoken to them yet.

Mr. Gordon?

Mr. GORDON. Mr. Chairman, as a matter of fact, I can say since I lose lots of cases before the Authority, that all three of them can be wrong at times.

Mr. Chairman, I have also submitted a formal statement which, with your permission, I would like to have included in the record.

Mr. ROYBAL. Without objection, it will be the order.

[The statement of Mr. Gordon follows:]

STATEMENT BY H. STEPHAN GORDON, GENERAL COUNSEL, FEDERAL LABOR RELATIONS  
AUTHORITY, BEFORE THE SUB-COMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL  
GOVERNMENT, HOUSE COMMITTEE ON APPROPRIATIONS, REGARDING THE AUTHORITY'S FISCAL  
YEAR 1982 APPROPRIATION REQUEST.

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you as the General Counsel of the FLRA to present the budget request for the Office of the General Counsel for Fiscal Year 1982. I am happy to be here after a full year of operation for the Office of the General Counsel and to be able to report to you a year of significant achievement in sharply reducing backlogs and keeping costs to a minimum. As is standard procedure, we have already submitted to you a detailed written Fiscal Year 1982 budget justification. With your permission, I would like to touch briefly on some of the significant highlights of that justification and make a few other observations as well.

The Fiscal Year 1982 budget request for the Office of the General Counsel is for an appropriation of \$8,171,000 and 197 positions. These levels represent a reduction of \$137,000 and six positions from the total appropriation plus pay act requested for the Office of the General Counsel in FY 1981. In Fiscal Year 1982, the unfair labor practice and representation case intake combined, all of which is initially processed in one of the regional offices under the responsibility of the General Counsel, will increase to a total of at least

6,324 cases, the highest level ever, and an increase of 13.5% over the FY 1980 total intake of unfair labor practice and representation cases. Before one might imagine that our case intake projections for Fiscal Year 1982 are exceedingly high, through the first four months of Fiscal Year 1981, we have received a total of 2,002 cases, nearly equal to a proration of our caseload intake projections for the first four months of Fiscal Year 1982 and an increase of 24.7% over case intake for the same period last year. A total of 5,688 unfair labor practice charges are projected to be received in Fiscal Year 1982, an increase of nearly 15% in actual 1980 case intake. A total of 636 representation cases are projected to be received in Fiscal Year 1982, equal to the projected intake level in Fiscal Year 1981 and an increase of only 3.4% over actual 1980 case intake. As you know, the Office of the General Counsel has no real control over the size of its case intake. If anything, our budget estimates are conservative. Last year, our actual case intake exceeded estimates contained in our Congressional justification by 19.6%, by over 900 cases.

Fiscal Year 1980 was a year of significant accomplishment for the staff of the Office of the General Counsel. It is because of the very high productivity achieved by the staff last year that I am confident we will be able to successfully meet the demands of the difficult years ahead. I would like to take just a minute to emphasize to you the four factors which I consider most important in the overall accomplishments of the Office of the General Counsel during Fiscal Year 1980 —

- 1) the extremely high percentage of meritorious unfair labor practice cases in which voluntary settlement was obtained, thereby avoiding the expense

and the disruption of labor management relations which litigation involves;

2) the very high level of productivity sustained in the Office of the General Counsel, enabling us to sharply reduce the large volume of cases backlogged at the beginning of the fiscal year;

3) the successful implementation of a comprehensive and sophisticated system of statistical reporting, productivity measurement, and performance evaluation;

4) the ability of the Office of the General Counsel to reduce its costs to a level below \$1,500 per case action.

Each of these accomplishments will be sustained and improved upon in Fiscal Year 1982.

With respect to the unfair labor practice caseload, two concepts are important to stress -- merit factor and the voluntary settlement rate. First, in Fiscal Year 1980, 40.5% of all unfair labor practice cases were determined to have merit after full investigation. This factor has remained relatively stable throughout the twenty months of my tenure as General Counsel. In analyzing the workload of the Office of the General Counsel, the number of unfair labor practice cases found to have merit is important -- the higher the factor, generally the more litigation is required. Of course, whether a case has merit or not is dependent upon the factors in the case and is beyond our control. When the regional offices determine that charges alleging unfair labor practices have merit, attempts at voluntary settlement are stressed. Settlement efforts were

successful to a significant degree in Fiscal Year 1980, when voluntary settlement was obtained in 86% of all merit cases. As a result, only 5.8% of all unfair labor practice cases filed needed to be brought before the Authority for decision. This very high settlement rate has been sustained through Fiscal Year 1981 and is projected to be sustained through Fiscal Year 1982. The peaceful resolution of labor disputes through the voluntary settlement processes of the regional offices is the most highly desirable alternative of dispute resolution. For this reason, we believe that we can see some direct and substantial benefits to the efficient operation of the Federal Government when we have done our work with reasonable expedition.

The concept of "reasonable expedition" leads me to the second significant accomplishment of the Office of the General Counsel in Fiscal Year 1980 — the attainment of a very high level of productivity by the staff. Estimated productivity per position increased significantly in Fiscal Year 1980 over initial estimates contained in last year's budget justification. Depending on the type of activity, productivity estimates for Fiscal Year 1982 range from 66 cases per position to 89 cases per position, and increase from between four and eight cases per position over current levels of productivity. Despite the loss of six positions in Fiscal Year 1982, the Office of the General Counsel will actually increase its number of dispositive actions taken over the total taken in Fiscal Year 1981, because of these productivity increases. The high levels of productivity enabled the Office of the General Counsel to reduce its backlog of cases pending with no dispositive action by 33% from a total of 1,574 cases at the end of Fiscal Year 1979 to a total of 1,051 cases at the end of Fiscal Year 1980. Despite the sharp growth in case intake mentioned earlier, backlogs were reduced in Fiscal Year 1980 from an equivalent of 24 weeks at the end of

Fiscal Year 1979 to approximately nine weeks at the end of Fiscal Year 1980. While it is doubtful that we will be able to sustain this level of timeliness in the disposition of our caseload, because of the increases in case intake and our decreased allocation of staff, the continued high productivity of the staff of the Office of the General Counsel will enable us to keep our increased level of backlogs to within manageable limits. Further enhancing our ability to process our caseload in a timely manner, the headquarters staff of the Office of the General Counsel has been kept to an absolute minimum. Available positions are reallocated to direct case handling activities whenever possible, as pointed out by Mr. H.L. Kreiger, the Director of the Federal Personnel and Compensation Division of the United States General Accounting Office, in testimony before the U.S. House of Representatives. In order to keep backlogs to within manageable limits, 50% of all supervisory time is projected to be dedicated to direct case handling activity. The slight loss in quality resulting from the loss of total supervision is projected to be offset by the benefits derived from the more timely processing of cases.

The combination of high productivity, a minimal number of positions allocated to management activities, in addition to their supervisory activities, has enabled the Office of the General Counsel to keep its costs to a minimum and to reduce its costs in Fiscal Year 1982 at the same time that the number of cases being processed is projected to increase. In Fiscal Year 1981, the average cost per action taken by the Office of the General Counsel equalled \$1,220. In Fiscal Year 1982 the average cost per case action is projected to drop by slightly more than one percent to a total of \$1,206 for each of the 6,774 distinctive case actions taken by the staff of the Office of the General Counsel. This decrease results from the increased productivity of the staff of the Office of the

General Counsel and absorbs increases required for within-grade and career ladder promotion costs, and for the increased cost of per diem and other travel-related items. These cost factors include all costs for equipment, supplies, library subscriptions, office supplies, desk-top supplies, photo-copy costs, court reporting services, staff training, word-processing rental costs, etc. I am very pleased that, in this period of inflation and increased cost, we have actually been able, not only to hold the costs of a case action stable, but to reduce the cost of an individual case action. In each caseload category, for the Office of the General Counsel, the actual case action cost will be decreased in Fiscal Year 1982. In addition to absorbing a cut of \$137,000 from Fiscal Year 1981 to 1982, this budget request includes a further savings of \$93,000. These cost factors include all executive, managerial, supervisory, administrative, docketing, library and clerical costs for the Office of the General Counsel. For further details on these cost factors, please refer to tables 6 and 7 in the detailed budget justification for the Office of the General Counsel.

The fourth factor which I consider significant in the overall accomplishments of the Office of the General Counsel is the design and successful implementation of a standardized statistical reporting system for the Office of the General Counsel. This system is used for the purpose of tracking, projecting and managing the caseload of the Office of the General Counsel; and is the basis of a monthly performance analysis of each region, which is provided to regional staff for their use and benefit.

Briefly, I would like to state for you the responsibilities of the Office of the General Counsel, and to conclude with a preview of what you can expect to see

from the Office of the General Counsel in the next two years. The Office of the General Counsel is responsible for investigating all unfair labor practice charges filed under the Federal Services Labor-Management Relations Statute. As required, the Office of the General Counsel exercises final authority over the issuance and prosecution of complaints arising under the statute, including the review of all appeals of refusal to issue complaints. The Office of the General Counsel is responsible for the investigation and initial disposition of all representation petitions; for supervising or conducting elections concerning the exclusive recognition of labor organizations; for certifying the results of these elections to the parties; and for conducting hearings in representation cases to resolve disputed issues.

I fully subscribe to the intent of Congress set forth in the Statute that collective bargaining in the Federal sector is in the public interest and contributes to the effective conduct of the Government. I have a firm belief in the collective bargaining process and a belief that proper implementation of this Statute will indeed result in the increased efficiency of Government operations. The long-range goal of the Office of the General Counsel is to provide a fair balance between the Federal Government's need to maintain the efficiency of its operations and the rights of employees to participate in the collective bargaining process. The Office of the General Counsel encourages all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters both prior to and subsequent to the filing of unfair labor practice charges. The Office of the General Counsel strives to protect the rights of individual employees in their relations with labor organizations and to safeguard employees rights by investigating, resolving and prosecuting (when necessary) charges

alleging violations of employee protections under the Statute. The Office of the General Counsel defines the extent to which employee representatives may participate in decisions affecting employment conditions, and provides orderly and peaceful procedures for preventing proscribed interference by either labor or management with the legitimate rights of the other.

The General Counsel is directly responsible for exercising general supervision over all employees in the Regional Offices and for ensuring the effective and efficient operation and administration of the Agency's nine regional offices. The General Counsel and his executive staff provide advice, assistance and review of all phases of field office performance to ensure adherence to case handling standards. The detailed functions of the Office of the General Counsel and the structure of the Office are described in the budget justification materials for the Office of the General Counsel.

In conclusion, I would like to take a look ahead at the two principal challenges immediately facing the Office of the General Counsel —

- 1) to sustain our high rate of voluntary settlements; and
- 2) to cope with our greatly expanded case intake.

With regard to the first challenge, it has always been one of the principal objectives of the Office of the General Counsel to maintain the highest possible level of voluntary settlements. Sustaining a high voluntary settlement rate is essential to our continued ability to cope with our expanded caseload. The earlier a settlement resolution of a dispute is achieved, the more time our

agents can devote to other cases. Success in sustaining a high rate of settlement significantly reduces the impact of disputes between the Federal Government and its employees. Based on the stage at which voluntary settlement is obtained, each 1% change in the rate of voluntary settlements eventually affects total costs for the Office of the General Counsel by approximately \$110,000. The timely processing of cases is essential to obtaining a high voluntary settlement rate. Timely processing, in turn, is dependent upon the provision of adequate funds and case processing staff. For example, with the sharp reduction in backlogs, our total settlement rate has increased, to the point where it slightly exceeded a level of 88% at the end of January. With the build-up of backlogs by the end of Fiscal Year 1981 and the increase of backlogs in Fiscal Year 1982, the total settlement rate is projected to drop slightly below this 88% level.

Coping with the build-up of backlogs, resulting from our expanded case intake, is the second great challenge that we face. For the ten-month period from January through October, 1980, dispositive actions taken by the staff of the Office of the General Counsel significantly exceeded case intake. In two of the last three months, ending in January, 1981, case intake significantly exceeded dispositive actions taken. Only in December, when case intake dropped markedly, did dispositive actions exceed case intake. Dispositive actions taken in the first four months of Fiscal Year 1981 fell slightly below the number of new cases received. With the impact of the Presidential limitation on hiring and our reduced employment levels, this trend of increasing backlogs is projected to continue — slowly, yet steadily. Because we are already sustaining a very high level of productivity, our ability to reduce our backlogs is dependent upon a drop-off in new case filings or upon staff increases, neither of which is

likely and neither of which is projected in the Fiscal Year 1982 budget submission. As a result, in Fiscal Year 1982, backlogs are projected to increase just as median processing time frames are projected to increase. At the end of Fiscal Year 1980, a total of 1,136 cases were backlogged in the Office of the General Counsel at various stages of case processing. At the same time, backlogs ranged from roughly one to three months. Once backlogs begin to develop, they compound themselves and become very difficult to eliminate. Thus, at the end of Fiscal Year 1981, as many as 2,401 cases could be backlogged at various case processing stages in the Office of the General Counsel, with the backlog time frames ranging from 45 days to five months. Despite increases in productivity in Fiscal Year 1982 and an increase in dispositions made, and as a result of increased case intake and of an decrease in authorized positions, the total number of cases backlogged in the Office of the General Counsel could climb to 3,856 cases, an increase of 1,455 cases, slightly more than 60%, over Fiscal Year 1981 backlog levels. Backlogs will range from levels of 105 days to 225 days in Fiscal Year 1982. At this rate, backlogs will be unmanageable in Fiscal Year 1983. Backlogs will increase in all case handling areas in the Office of the General Counsel, despite increases in productivity and resultant increases in the number of dispositive actions taken. For more specifics on the build-up in our backlogs, please refer to the workload summaries at the end of the budget justification for the Office of the General Counsel.

The caseload intake estimates for Fiscal Years 1981 and 1982 have not been adjusted to reflect the impact on the Office of the General Counsel of Chapter 10 of the Foreign Service Act of 1980, which became effective on February 15, 1981. In addition to absorbing this programmatic extension within its reduced level of positions and resources, the extension of the Federal Service

Labor-Management Relations Act to the Panama Canal was never funded for the Office of the General Counsel, which has the principal responsibility for implementing the operational aspects of both programs. Both programs will require a heavy commitment of travel funds, out of proportion to the relative size of the caseload.

I do wish to stress at this time the critical role that the availability of adequate travel funds play in the effective implementation of the Act to all segments of the Federal community. The resolution of almost every charge and petition filed with the Office of the General Counsel involves a mandatory expenditure of travel funds. No viable alternative exists to a face to face investigation in the conduct of a complete inquiry regarding a case. Reduced travel funds will negatively affect the voluntary settlement of cases, with an adverse impact on the parties, on the effective operation of the Federal Government and on our own ability to process additional cases.

Finally, there are two areas I would like to touch on briefly. I echo the remarks of the Chairman in our continued commitment to the principals of equal employment opportunity. We are proud of our success in recruiting and retaining female and minority employees. We are proud of our record and I pledge that it will be sustained. Presently, one third of the Regional Directors represent minority groups. Second, staff training is an essential component of our success in significantly reducing our backlogs. We attribute much of our success in productivity achievements, in addition to good management and technical system support, to our commitment to the training programs developed for and provided to our employees in the past 18 months. These programs are being curtailed slightly as a part of the overall reduction in funds within the

Office of the General Counsel. However, our commitment to training remains and we shall train our staff to the maximum degree possible with the funds which are available.

I have attempted in this statement, in conjunction with the detailed budget justification previously submitted to present the program of the Office of the General Counsel — our accomplishments, which are many and of which I am proud; our present situation; and the challenges which we face in the next few years. In closing, I would like to sincerely thank this Committee for its help in the past, for its understanding and for its attention. I will be happy to answer any questions which you have. Thank you.

## CASE ACTIVITY

Mr. GORDON. As the Chairman has already pointed out, the caseload is still increasing greatly, and over the next fiscal year we estimate another 16 percent increase to a total of 9,591 case actions, as the Chairman has already explained to you.

But even this figure, Mr. Chairman, does not include the secondary workload levels that we must consider in this, such as representation elections, representation hearings, objection hearings and challenges, nor does it include post-complaint unfair labor practice activities, such as voluntary settlement activities, litigation, writing of briefs, and the advice on case law, and so on.

I would like to stress with you that the figures are extremely conservative which we have given in the budget.

As our experience shows, last year our case intake exceeded our budget estimates which we had submitted to the Congress by over 900 cases or 19.6 percent.

The same trend seems to be holding true. For example, in February we took in 517 cases, which meant that during the first five months of this fiscal year we reached a caseload of 2,519 cases in the Office of the General Counsel, which puts us right on target, not only for the fiscal year 1981 estimates but for the 1982 estimates as well.

Now, we have built in productivity increases, of course, to take care of this rising caseload. We have added up to 8 cases per man year for the fiscal year 1982 budget. This is an increase of 5 percent in productivity.

Now, I may say this, that a 5 percent increase in productivity does not sound terribly dramatic. However, this projected increase of 5 percent is in addition to productivity increases of 36.5 percent over fiscal years 1980 and 1981.

In fact, it was a rather dramatic increase in productivity during 1980 and 1981, which enabled the Office of General Counsel to eliminate most of the backlogs and to reduce sharply the case processing costs to well below \$1,500 per case action, which is the lowest cost in the Agency.

## CASE PROCESSING TIME

Now, those very high levels of productivity not only reduced costs and backlog but they also enabled us in the Office of General Counsel to sharply reduce the case processing time.

At the beginning of the fiscal year, the case processing time was 120 days. By the end of the fiscal year we had reduced this to 60 days. This to me, frankly, is of the utmost importance, because in our business time is of the essence.

The case processing time for unfair labor practices is not only a statistic but it vitally affects the management of the government in the activity which is involved, and so we have reduced this processing time and we are operating on a time target of 60 days from the filing of a case to disposition in the Office of General Counsel.

At the present time, this time target of 60 days is being met in 91 percent of the cases in the Office of General Counsel, and in all candor, I hope it never goes above that, because I would not like to see 100 percent adherence to a time target. At that point the time

target would become so mechanistic that the statistic would become more important than the case, and that we do not want.

There are cases that need to take more than 60 days and should. There are lots of cases that should take less than 60 days and do take less than 60 days.

#### MANAGEMENT IMPROVEMENTS

If I may, I would like to point out to the committee some of the management improvements that we have made and implemented during the past year, and which were, I think, mainly responsible for some of these achievements.

One is, and to me the most important one, the concept of voluntarism used not only within the office and within the regional offices, but also with the Bar that we deal with, the clientele that we deal with, the concept of voluntarism in the volatile field of labor relations. Those cases should be settled by the parties without litigation.

I am really proud to say our present settlement rate is running in excess of 88 percent of all meritorious cases, and by that I mean all the unfair labor practice cases that have been filed and investigated and have been found to have merit, which constitutes about 40 percent of all the cases filed.

Of those cases over 88 percent are being settled by the parties on a voluntary basis without the need of litigation.

This results, of course, in the salutary effect, I think, that only 6 percent of the total unfair labor practice caseload needs to reach the Authority for Authority decision.

Secondly, as I have already alluded to, the high settlement rate allowed us to come to where we are in the establishment of the time targets that I have already mentioned. And this permits us to process all cases in a timely fashion, and I consider that of the utmost importance.

We are meeting these targets in 91 percent of our present pending caseload.

The third thing that we did, which has proven to be absolutely invaluable, is the establishment of a statistical reporting system, which enables us to monitor effectively and to manage in conjunction with the Regional Offices and the Regional Directors, the pending caseload. This system has been in my estimation probably the most important management tool that we have had at our disposal to keep abreast of this caseload.

The fourth part I would like to mention is training, of course. I do not, at this stage of our development, mean just training of our own people; we need to do a great deal of missionary work in convincing people and explaining to people what this Statute is all about, what it can do and, above all, what it cannot do, because there are still grave misconceptions on the outside.

It took this kind of training to reduce the caseload and to explain to people, that we are not in the business of handling grievances, because a lot of this stuff came to us because people did not understand the mission of the Agency and the limitations of our adjudicatory powers.

The fifth one was flexibility; the flexible use of staff. That has worked indeed very well. We have kept the headquarters staff to

an absolute minimum. As a matter of fact, the last time I was here the GAO very favorably commented on that. We have used the staff in a flexible way by creating a task force where we see backlogs building up where we can afford to take somebody out from another region to assign people to a 30 or 60-day detail into other regions.

We have aligned regional offices on the basis of caseload and created a new office, a small office but a new office in Hawaii, which not only gives people much better service in Hawaii which has a very large complement of Federal employees, but also eliminated much of the costs of travel concerned.

We are proud of those accomplishments, and they are due not to my ingenuity but to an extremely dedicated staff that has worked beyond anything that I had a right to anticipate or expect, and has worked under really horrible physical conditions. But, as we look to the future, I must express some concern whether the level of achievement can really be maintained.

#### ADDITIONAL WORKLOAD

As Chairman Haughton has already pointed out, the budget as submitted is not adjusted to reflect the impact on the Office of General Counsel, as it is not adjusted to impact on the Authority side for the additional workload, which we anticipate due to the Foreign Service Act of 1980, which has not been funded, or for the additional workloads associated with the extension of our Statute to the Panama Canal area.

What that may mean to us, I am not sure since we already have a very heavy workload there. The Chairman already alluded to an election that is coming up. It will be the first election involving all the unions and a complement of employees in excess of 8,000 people, who have never voted in an industrial election. We are right now working on the details of how to set this election up.

It will require the agency sending between 35 and 40 people to Panama to handle that one election over a two-day period. The polls will be open for a 48-hour period throughout the Canal Zone, and we will have to send between 35 and 40 of our own people down there, which is extremely expensive, and will also cut into productivity.

Moreover, the accumulation of serious backlogs, if they are to develop, could and probably would in my estimation have an extremely adverse impact on voluntary settlements.

The longer cases last and the older they get, the less there is that incentive to settle the case. This would, of course increase secondary workloads, such as litigation. Backlogs would increase these workloads significantly and cause additional delays in costs, particularly with respect to costs.

For example, as I mentioned to you before that we now have a settlement rate in excess of 88 percent. A 1 percentage drop of that settlement rate if it were to go from 88 to 87 percent, costs \$110,000. These cases would also require additional man hours at the expense of processing other caseloads, and thus inevitably build up additional backlogs.

An example is seen in our detailed budget submission where on page 30 you will notice a drop in the number of dispositive actions

taken in unfair labor practice cases in the Office of General Counsel and you will immediately see on pages 31 and 32 a corresponding increase in the number of dispositions made at the secondary unfair labor practice case level, such as litigation and appeals.

I would like to make one more point, Mr. Chairman, with your permission.

The 1982 fiscal year budget for the Office of General Counsel represents actually a reduction. We are not asking for any increase. It constitutes a reduction of \$137,000 and 6 positions below the requested level for fiscal year 1981. I am speaking only for the Office of General Counsel.

Despite these decreases, we have projected increases in the number of actions to be taken by the Office and, moreover, we have also projected that our costs per case action will continue to decrease.

I gave you a figure of below \$1,500 before. In view of the productivity increase that is built in, we project that our cost per case action in fiscal year 1982 will fall to a level of \$1,206 per case action.

If the committee desires a more detailed analysis of costs I respectfully refer the committee to pages 41 and 42 of the detailed budget submission.

Mr. Chairman, I have attempted in my full statement and in my summary to present to you the program of the Office of General Counsel, our accomplishments, which indeed I think are many, and of which I am very proud.

I have tried to show you our present situation and the challenges we face.

In closing, I would sincerely thank this committee for its help in the past and for your very considerate understanding and your attention.

I will be very happy to answer any questions you may have.

Mr. ROYBAL. Thank you, Mr. Gordon.

The President of the United States has proposed a decrease in the overall budget.

Do you anticipate a large increase in the workload due to those reductions?

Mr. HAUGHTON. Yes; we did allude to that, and I am happy to respond to it in more detail.

I think it simply takes a reading on a layman's part, a reading of the newspapers to see there is unrest, and when the word RIF gets mentioned, my own experience in the private sector is in times of unrest, grievances and complaints rise geometrically.

It is a way for people to express the concerns they have. They have no control over the total, but over a particular item which might not be raised under normal circumstances, bang, a complaint comes in.

Mr. Gordon and my two Authority colleagues have discussed this in some detail. We feel those vibes already, sir.

I do think that it is worth underlining this whole productivity program of Mr. Gordon's, which has achieved tremendous results, reached its apex in your whole area of Los Angeles with the regional director out there, Ed Washington, and he should be given great credit.

## PER CASE COST

Mr. ROYBAL. I would like to review this entire matter of the per case cost.

Mr. Haughton has said that the reductions proposed by the President will result in more cases.

You, Mr. Gordon, told the committee that the per case cost is around \$1,500, and that you anticipate in 1982 it will decrease to \$1,206.

Mr. GORDON. Yes, sir; I am only speaking about costs in the General Counsel side.

Mr. ROYBAL. I understand, but I am trying to get the rationale between the increase in cases and your decrease in the cost per case.

Mr. GORDON. The decrease in cost per case would come about through increased productivity, Mr. Chairman.

Mr. ROYBAL. Not due to volume?

Mr. GORDON. No, sir. It is not due to volume, because every case must be investigated. Whether the case has merit or does not, it still has to be investigated. We still need to send out an investigator who needs to take statements. As the volume goes up, the man hours to process cases will go up. We can only reduce it through increased productivity.

Mr. ROYBAL. But 88 percent of your cases are settled or adjusted.

Mr. GORDON. Yes, Mr. Chairman; but they are settled and adjusted only after full investigation.

Mr. ROYBAL. I see.

Mr. GORDON. I would like to clarify that for the committee.

Every case that is filed must be investigated. Now, there are exceptions. For example, where a case comes in, but that is very rare, where on the face of the charge you could see, my God, we don't even have jurisdiction, then we would go to the charging party and say, please withdraw your charge; you are in the wrong pew.

That is a very rare situation, but every case that is filed must be investigated. It is only after such investigation that we can determine whether the case has merit or not. After the investigation, taking of affidavits, seeing witnesses, the whole thing, the case coming to an agenda in the regional office, the determination is made whether the case does or does not have merit.

If the case does not have merit, the charging party will be asked to withdraw the case, and it will be explained to the charging party why we are asking for this withdrawal. If he refuses to withdraw, then we issue a dismissal and dismiss the case with a full-blown letter which spells out in great detail why the case is being dismissed, why it does not have merit.

That is when these appeals cases come in that I mentioned, because since these cases are handled by nine regional directors throughout the country, we put into the system a safety valve.

It is not a statutory appeal, by the way. We do it exactly like the National Labor Relations Board. For example, dismissals by the Regional Director on cases which he determines do not have merit can be appealed to the General Counsel in Washington, where the case gets a de novo review, not only as to the basis of the legal questions involved, but whether the investigation was adequate, et

cetera, and then we will either uphold the regional director or remand the case or send the case back for trial.

Mr. ROYBAL. All cases then, regardless of where they originate, have a full investigation. A determination with regard to its validity is then made?

Mr. GORDON. That is correct, sir.

Mr. ROYBAL. And 88 percent of those cases are settled and you said if that went down to 87 percent—

Mr. GORDON. May I correct you?

Mr. ROYBAL. Please; I want to be sure I understand this process correctly.

Mr. GORDON. As I say, we are now at the process where every case is being investigated.

Mr. ROYBAL. No; you finished the investigation.

Mr. GORDON. Right; after the investigation, 60 percent of those cases, 60 percent of that caseload will be dismissed or withdrawn as not having merit. That leaves us with 40 percent of that caseload. When we refer to the 88 percent settlement rate, we refer to that 40 percent, not the total, the 40 percent that have merit.

Mr. ROYBAL. I am glad to get that clarification, sir.

Of that 40 percent that remains, 88 percent are settled?

Mr. GORDON. Settled.

Mr. ROYBAL. You stated that if that went down to 87 percent that it would cost in the neighborhood of \$100,000?

Mr. GORDON. Yes; \$110,000.

Mr. ROYBAL. If it went up to 89, would you save \$110,000?

Mr. GORDON. Yes, sir.

#### MAJOR CAUSES OF UNFAIR LABOR PRACTICE CHARGES

Mr. ROYBAL. Now, to go back to you, Mr. Haughton, for just a moment; what are the major causes of unfair labor practice charges, and are most of them justified?

I ask that question primarily because of the fact that the first 60 percent of those cases even investigated are dismissed. Now, in view of that, tell us about the major cases of unfair labor practices and whether or not most of those cases are justified.

Mr. HAUGHTON. I think, giving you the bottom line first, the major cases are probably failure of communication. Every red-blooded manager and professional person, including myself, can give a terrific lecture on communicating with the employees, and I failed to do well on a particular item this morning.

I do not think we have a J. P. Stephens or a Koehler Company situation in the government. I have been in and out of government all my life. To me the highest achievement of my life is to be in public service and it is people like that who staff this government. They can be reviled and all the rest, but the people I meet in the government are committed to good government.

But then some are posed in a management position and some in labor, and you got to have a rule of law and a rule of men, and the law says you got to communicate with your people.

You have to discuss. Even when you can have a right to do something, there are certain things where you have got to, under the law, discuss impact and implement. Well, an aggressive manager forgets that, bang, unfair labor practice. If the people are

uneasy they will file them, and if they are getting along pretty well they probably won't.

A study is going to be projected in the government as to why some government agencies don't seem to have any and some have lots. They all have the same problem, so failure to communicate is the overriding thing, derogation by a first line supervisor of a steward saying, or to the people, "It doesn't do any good to join the union." It is understandable why he does it but it is against the law, so bang, an unfair labor practice gets filed.

Anything that management does that can be interpreted under the very precise language of our statute to undermine the union which government now says people have a right to join and to have it supported or discriminates against someone, and we have assignment cases where maybe a pretty enthusiastic steward gets sent to Siberia or something, bang, an unfair labor practice.

It is anything that ends up in discrimination against the union as an institution or against an employee who is an officer or that negatively affects an employee who is just an employee and who is told, for example, you don't need a union; it is a waste of time, and we are actually going to send you out to the car barns if you join.

Well, that would be almost an unfair labor practice, and would issue, after going through, Steve Gordon would issue a complaint, and the whole thing is based on due process. Everybody gets a fair shake.

The administrative law judge holds a hearing and he makes recommendations, exceptions are filed, and if we find that there really was a violation of those unfair labor practices which are listed, I mean, some of them are real rough.

For example, there is about as total a proscription against strikes as the mind of man can write included in this Act. The fact is the major unions representing Federal employees don't espouse the right to strike, so the thing does not get challenged but it is an unfair labor practice to strike, lead a strike, condone a strike, be involved.

I can't overstate how strong that is. We have not had any of that kind of unfair labor practice. It is an unfair labor practice to interfere with the administration of our statute. We have had none like that. It is an unfair labor practice not to go along with an arbitration award. I don't think we have any like that.

It is an unfair labor practice not to conform to the procedures and awards of the Federal Impasses Panel which is compulsory arbitration of new contract disputes.

We may have had one of those; I doubt it.

Is that the National Guard case?

Mr. APPLEWHAITE. The statute outlines about 14, 10 to 14 different areas in which you have unfair labor practices. The ones that Chairman Haughton has pointed out are the major areas, like refusal to abide by the Impasse Panel or refusal to obey an arbitrator's award.

Coming back to your question about why or what types of cases would come before us as unfair labor practice cases, based on my past experience in the private sector as well as the state and local public sectors, I find people in the Federal sector are not utilizing the arbitration process as much as it is used in the other sectors.

When they have a grievance in the other sectors, they try to settle their disputes through arbitration. It is quick, rapid and final. Federal Sector People are using the unfair labor practice route provided in our statute in order to avoid the costs. This is my personal opinion. They are utilizing it much more than they would if they were forced to use the arbitration route.

The Statute Provides for about ten specific unfair labor practice areas, but they are large areas and are not detailed. I find the parties avoid the use of arbitration in these large areas.

Mr. ROYBAL. Why is that? Why do they avoid arbitration?

Mr. APPLEWHAITE. Costs.

Mr. ROYBAL. Does it cost them directly?

Mr. APPLEWHAITE. An arbitration cost is charged directly to the parties. In this the unfair labor practice procedure under our statute, the Office of the General Counsel conduct's the investigation, acts as the adversary, and if it is deemed necessary, they prosecute.

The parties do not have to pay the cost. They do not have to pay the administrative law judge who is an employee of the Federal Labor Relations Authority, and there is cost for the transcript. All of these costs, therefore, are borne by the Federal Government through the Federal Labor Relations Authority.

Mr. ROYBAL. It is a good reason.

Mr. HAUGHTON. If there is a termination or a discharge in a plant where it is possible for the union to latch onto a legitimate contention that there was some anti-union bias, it is a costly item to the union to process it, as Mr. Applewhaite said, through this procedure.

If the private sector, they are more apt probably to go to arbitration on that and get a final and binding and quick decision, but to explain the situation in a little more detail, in the private sector they have the full right that unions do to negotiate union shops and collect dues.

Federal unions, generally speaking, are broke, so when they cry poor mouth, they are telling the truth. Their balance sheets are laid out, and we get plenty of cries from local unions when we meet with them for this kind of a dialogue.

They will say we have 7 or 8 cases where we feel management is wrong under our contract; but as a practical matter we can afford only one of those. We have only 40 people in our local union, and it costs about \$1,000, so we have to discard four or five of them.

So you can see the pressure they have to see if they can't shift one into the unfair labor practices.

Mr. ROYBAL. How many times do you find for labor, how many times for management, under the unfair labor practices?

Mr. HAUGHTON. Let me think for a minute.

Mr. ROYBAL. As a general rule.

Mr. HAUGHTON. It is pretty hard.

Mr. APPLEWHAITE. Mr. Tony Ingrassia of the OPM has been citing the figure roughly it is about 55, 45 percent. It is pretty close. They cannot distinguish any pro-labor or pro-bias.

Mr. GORDON. I would find this question very difficult to answer for this reason:

The proportion of the charges filed are totally disproportionate. Correct me, George, if I am wrong, but I think about 96 percent of

all charges filed, of those unfair labor practices filed, are filed by union against management and only 4 percent, an infinitesimal part of that caseload, is filed by management against unions.

You would even find because of the greater sophistication that some of the management charges against unions would probably have more merit, because you are dealing with an entity, a very small entity, and with great sophistication on the part of management.

If I may add to that, Mr. Chairman, because you seem to be concerned, if I may say so, about the 60 percent of the cases that are dismissed for lack of merit, why are they being filed? I don't know, but the interesting part is that this 40/60 percent ratio of 60 percent non-merit cases and 40 percent merit cases follows very closely the experience of the National Labor Relations Board in the private sector.

I spoke to their General Counsel just recently, and I think their present merit factor, this 40 percent that has merit after investigation, is now running 36, 37 percent. Ours is running slightly higher, not surprisingly, because the Labor Board has 40 years of experience and precedent behind it, and we are a very new organization where people are still coming in and are testing a lot of things.

To me it was rather astonishing how parallel the two are running in the private sector.

Mr. HAUGHTON. I have had a chance to think a little bit more about your question.

Mr. ROYBAL. All right; go ahead.

Mr. HAUGHTON. Take the unfair labor practice, which is the 5,000 caseload, compared to, say, 300 negotiability cases which are very difficult cases we get. The Authority prosecutor is like the prosecutor with a murder case in the county at home. If he has a bum case he will not push it because he can't win, so Steve's people, generally when they issue a complaint, they then become prosecutors, and they are out to win. So they come up with what they consider pretty good cases, and it is for that reason that you get this figure that is very close on losses and wins up at the top.

It has no relationship to the vast volume at the bottom because the poor ones are weeded out. Now, in the arbitration, where Leon Applewhaite and I really earned a living for a long time, management wins about on the average of, through the United States at least, 65 percent of the arbitration awards. Unions, and they each pay half, unions win a third and it is recognized that the union is the aggressor. They have some pressures perhaps on a case that they have to take up anyway, or that they have to try. They have an obligation.

In fact, they will be sued for failure to represent if they don't take up a borderline case, so their management wins about 65 percent.

In our negotiability cases, you get closer to that kind of a situation. We have a whole other area that we deal with directly at the Authority level, where unions and management in the some 3,000 contractual arrangements throughout the United States in the Federal system with about 600 or 700 of them coming up per year, they meet, and management has a right to say it is not negotiable.

They want a yacht for the union president or something like that. It is the negotiable. We want some money or a rift by seniority. Management isn't supposed to give away anything. They are supposed to be management.

Then the union has a complete right to appeal that and bring it up to us. Management, in my opinion, and we have not counted them, wins most of those cases; they are more comparable.

There we are.

Mr. ROYBAL. Well, the truth of the matter is, regardless of the procedure that is followed, the cost per case seems to remain constant; is that correct?

Mr. GORDON. Yes sir; it will. As I say, it will increase or decrease on the basis of productivity. In the General Counsel's office it will remain constant because, as I explained, the elements that go into the processing of a case are the same for every case.

What will raise the costs, Mr. Chairman, what would raise the cost would be if our settlement rate drops, for example, which would mean that the case ending here, the case now has to go to the secondary stage, such as litigation.

That raises the cost tremendously, because that involves travel and sending out the administrative law judge and involves litigation itself, writing of briefs, et cetera, et cetera.

That is what raises the cost. As long as we can take dispositive action of the bulk of the caseload up to the end of the 60-day period, what we call an action, the action would consist of dismissal, settlement, withdrawal, or the issuance of a complaint, and as long as they can keep the caseload in that category, the cost will remain very much the same.

Mr. ROYBAL. But still next year your projected cost is \$1,206 per case, which means you will be more productive?

Mr. GORDON. Exactly. I intend to raise productivity, put out more cases with fewer people, which will reduce the cost per case.

Mr. ROYBAL. Thank you.

Mr. Akaka?

#### BACKLOGS

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

May I follow on that? After the 60 days, if you find that you cannot voluntarily make the settlement it becomes an expanded case intake for you.

You have said in your testimony that it sometimes takes from three and a half to seven or eight months in some of those cases. Also, you say here at this rate backlog would be unmanageable in fiscal year 1983.

My question is what do you intend to do at that time to be able to handle the case load?

Mr. GORDON. Congressman, I don't know. It is not idle talk on my part when I say I am not sure that I can maintain the intensity with which the staff has been working in the field in the future.

Right now we are fortunate really. My special assistant and I were just talking about this because we were going over the February figures before I came up here. We are still going through the periods of, let's say, buildups in backlogs. In November we did not have a very good month. All the indices started falling in November.

By December everything had jumped back into place. We were still at the stage where the staff, when a little backlog develops, jumps in and you cure it the following month. If these backlogs develop, disillusionment may set in in the regional office when we reach a point where we got 20 overage cases, we will have 30 overage cases, and I have no answer for you. I don't know how I am going to cope with that.

I perceive this as a great danger from a managerial point of view. As long as this locomotive keeps going, I can keep it going. When that comes down and comes to a standstill, this whole thing can collapse. It worries me, and I have no answer for you definitively, I am afraid.

#### CASE TRENDS

Mr. AKAKA. One of my earlier questions was going to be whether there have been any trends of cases in dispute between management and union, whether there is a trend of union not pressing as many cases.

Mr. GORDON. No, sir; I cannot say that I have discerned such a trend of unions not pressing cases.

The only trend I can discern, in the very beginning our caseload involved a lot of cases which should not have been there because there was no jurisdiction. People thought we were in the business of handling grievances, and we are not.

Those kinds of cases have fallen off, but unions deciding not to press cases, no, sir, I would say it would be the other way around, and for this reason:

In the old days, under the Executive Order days, I hesitate to say, I don't want to be critical of an entity that I was not particularly involved in, I was then the Chief Administrative Law Judge for the Department of Labor, but apparently it took a very long time to process these cases, and of course that caused some disillusion.

As we have eliminated backlogs and as we can process cases in a timely fashion, I think that has been almost an incentive for people to file cases because they know they are going to get quick action.

If you file a case and you are not going to get an answer for three years, that discourages people from filing cases. That would be one hell of a way to reduce case filings.

In my estimate, I could not give you any statistics, but the current operation will encourage filings. Opening an office in Hawaii has encouraged filings. By its very presence, it cannot be avoided. Of course, one could easily say if you are really staggering under this kind of a backlog and having these increases, why open an office in Hawaii, but the caseload was there.

The caseload and the need was there. It would be very easy to say, well, we will abolish our regional offices and thereby reduce the caseload and, of course, thereby we will also undo the will of Congress.

Mr. AKAKA. I thank you very much, Mr. Chairman.

Mr. ROYBAL. Thank you.

Mr. Houghton, I would like to have some clarification with regard to a statement that you made that you had two Democrats and one Republican, but I didn't understand where they were. Are they Members of the Authority?

Mr. HAUGHTON. Oh, yes; Members of the Authority under the Act, but no more than two people can be from the same party, but we were all appointed, we think, on the basis of expertise. We have each had about twenty-odd years. I am about 20 years older than these two men, so I have had 45 more years. No, that is all I meant.

Mr. GORDON. The general counsel can be anything.

Mr. HAUGHTON. I meant that in fact there have been times when there have been no-pitch battles at the National Labor Relations Board. I am not talking this year or last year, but over its history we have had not only no-pitch battles but unanimity in action.

Mr. ROYBAL. How many Members are there?

Mr. HAUGHTON. Three.

Mr. ROYBAL. It should not be too difficult to get together when it is only three.

I have seen situations where you get two or three people in the same profession completely disagreeing and never coming to terms.

Mr. HAUGHTON. It can happen.

Mr. ROYBAL. That could be the situation with you three gentlemen.

Mr. HAUGHTON. It could happen but it has been a very exciting experience that we really draw from the same background.

As Steve has mentioned, we emphasize joint action. We encourage joint settlements. We have used our good offices to bring them together to talk about quality of work life matters which are not even in our system, and going way back when we looked swamped, we should give credit to one of the largest unions.

He said to us, "My goodness, if this is where you are, shouldn't we go out into our regions and clean some of those cases up?"

So we have, at least we think we have very good lines of communication with our labor and management clients, and they know almost as much about our work as we do and we find them very cooperative.

#### EQUAL EMPLOYMENT OPPORTUNITY

Mr. ROYBAL. Your total personnel is 351?

Mr. HAUGHTON. Yes; the total right now is probably 338.

Mr. SHEPARD. Between 345 and 350 right now, sir.

Mr. ROYBAL. Of the number that you had, give us the breakdown of the ethnic composition of the group also.

How many women?

Mr. HAUGHTON. We have a chart here. It is 61 percent of all staff are minority and women.

[The chart follows:]

FLRA  
TOTAL VACANCY

AS OF JANUARY 12, 1981  
Office of Personnel

Authorized On Board	382
+ 5 P-T Career	334
	<u>339</u>

87% of Ceiling Filled	
Tot Min	90 27%
Tot NonM	115 34%
Tot Women	<u>180</u> 53%

PROFESSIONALS (Percentages are Appr % of Prof)				
TOTAL	252	Total	Male	Female
Black	34	13%	16	18
Hispanic	6	2%	4	2
Pac Islander	2	1%	1 less	1 less
Nat Amer	1 less	1%	-	1 less
NonMin Wom	76*	30%	-	76*30%
	<u>119*</u>	<u>47%</u>	<u>21</u>	<u>98*39%</u>
Total Minority	43	17%		
Total NonMin Women	76	30%		
Total Women	98	39%		

CLERICALS (Percentages are Apprs \$ of Clericals)				
TOTAL	87	Total	Male	Female
Black	42*	48%	4	38*
Hispanic	3	3%	-	3
Pac Island	2*	2%	-	2*
Nat Amer	-	-	-	-
NonMin Wom	39*	45%	-	39* 45%
	<u>86*</u>	<u>98%</u>	<u>4</u>	<u>82* 94%</u>
Total Minority	47	54%		
Total NonMin Wom	39	45%		
Total Women	82	94%		

\*Includes Part Time Career

Mr. ROYBAL. What does minority mean?

Mr. HAUGHTON. It means black, American Indian and Hispanic, and I suppose there is this new category of Asian. It means all of the government categories. In our case it is primarily black, Hispanic, and other. Now, on this chart, this breakdown shows that when you analyze it, 7 percent of our professional staff are black males, 9 percent I guess are black females; 17 percent of our professional staff are black; isn't that it?

Right here, 17 percent total minority.

Mr. APPLEWHAITE. The breakdown is above.

Mr. HAUGHTON. The total is 17 percent.

Mr. ROYBAL. Mr. Haughton, are we looking at the same chart?

Mr. HAUGHTON. Right here is the 17 percent I was referring to. Here is the breakdown up here.

Mr. ROYBAL. But your percentage is next to the total number; is it not?

Mr. FRAZIER. That is right.

Mr. ROYBAL. Which means then that in the professional category, 13 percent are black, 2 percent are Hispanic, 1 percent is a Pacific Islander, and less than 1 percent, native American?

Mr. HAUGHTON. The total is 17 percent.

Mr. ROYBAL. All right; 17 percent minorities.

Mr. HAUGHTON. That is professional.

Mr. ROYBAL. I don't see a percentage with regard to women.

Mr. HAUGHTON. That is 61, it is over on the right hand side there, Women, next to Clerical, total women is 39 percent in the whole agency.

Mr. SHEPARD. Bottom of the first column; 39 percent.

Mr. ROYBAL. Oh; I see. Going back to the professional, total minority women is 17 percent?

Mr. HAUGHTON. Yes; no, that is total minority is 17 percent. That breaks down 8 percent minority male.

Mr. ROYBAL. I see.

Mr. HAUGHTON. We are proud of what we have done at the top levels, because our overall percentage of minority in the agency including clericals is tremendous.

We have nine regional directors. One of those is a black male in Los Angeles; one is a black female in Atlanta, and one is a Hispanic male in Dallas. Then we have a number of senior attorneys in the regional offices who are black, and we have a Grade 16 and a 13 attorney bilingual Hispanic in Dallas, in addition to the regional director.

Mr. APPLEWHAITE. The regional attorney in Chicago is black.

Mr. GORDON. The agent in charge of the Denver office is Hispanic.

Mr. ROYBAL. In the professional category, however, if I recollect correctly, and also in the clerical, the Hispanic representation is 2 percent.

Mr. HAUGHTON. It is very poor.

Mr. ROYBAL. It is also 3 percent for clericals, and that is very poor, but there has not been any increase in the last few years, so far as I can remember.

Mr. HAUGHTON. You have asked the question that I feared you would ask, and whatever your conclusion is, it is correct. We have not done a good enough job.

We have reached out and recruited a Hispanic regional director and some top bilingual people so that we can go down to Panama first-class.

All I can say is, based on my experience in New York where I was president of a Ford Foundation spinoff corporation dealing with street concerns and any kind of conflict in New York, Herman Badillo was on my Board, and I was committed to have some top Hispanics; they were almost impossible to find at the lower levels because everybody was trying to hire them.

That is the old saw for people who are trying to avoid affirmative action. I did find a secretary in New York. This was at a time when the average pay for a Puerto Rican family was \$4,500. I had to pay \$12,000 for a Puerto Rican secretary. We found others.

We have targeted a professional group but we certainly should do better in the clericals, and this was an international discussion we had on the Hispanic percentages before our last hearing. It shone out like a light with us and we are going to do better.

Mr. ROYBAL. It just seems to me that a group who is in the business of arbitration and looking after the proper application of Federal regulations would be one step forward and also look into the fact that a certain minority in the country is not given the opportunity.

Mr. HAUGHTON. You are right; we have to do better.

Mr. APPLEWHAITE. One of the difficulties we have, of course, is the freeze. Last year we had a freeze on and we could not hire.

Mr. ROYBAL. There hasn't always been a freeze.

Mr. HAUGHTON. Mr. Rankin, our Director of Administration, just informed me that as a result of our discussions before we came up here a week and a half ago he has directed a personnel recruitment drive in the Hispanic area. These figures are not good but we do have an affirmative action full-time qualified person.

We are committed to it, and we are going to do better. And the next time we are here that is what we will be reporting.

Mr. ROYBAL. All right, sir; I am looking forward to a very successful drive, and I hope that the percentage will change.

Mr. AKAKA. May I ask a question here?

On page 6, the middle paragraph, in relation to what we have just been talking about, the 17 percent minority, 9 percent male, 8 percent female, here it reads that 61 percent of all staff are minority and women.

Mr. HAUGHTON. That includes clerical, of course.

Mr. AKAKA. How does that compare with the figures of 17?

Mr. HAUGHTON. Oh, the 17 is professional.

Mr. AKAKA. The 17 was what?

Mr. HAUGHTON. The 61 percent is the entire staff, including women. I don't know, is that page 6?

Mr. AKAKA. Page 6 of your testimony.

Mr. GORDON. If I could try to clarify it, the 17 percent that the Chairman was referring to involved total minority professionals. The 61 percent includes women.

Mr. HAUGHTON. It is not just professional.

Mr. GORDON. We did not include the women as minorities.

Mr. HAUGHTON. Sixty-one percent of the professional staff are minority and women.

Mr. Rankin was recently hired as Director of Administration.

He is typical of what we are; he is a highly qualified minority who had a top job in the World Trade Center before coming here, and he came here at a financial sacrifice because of the interest in the work.

We are aggressively out there and there is absolutely no reason why we can't do better in the Hispanic area. In terms of the minority area, I submit with the possible exception of the Equal Opportunity Employment Commission, and I say possible exception, there is not an agency in the government that has 17 percent minority in professional jobs. We are deficient in that one area.

#### GOVERNMENT-EMPLOYEE UNION RELATIONSHIPS

Mr. ROYBAL. Two final questions, Mr. Haughton.

In view of the fact there will be a caseload increase for 1981, what in your opinion is the overall status of government-employee union relationship?

Mr. HAUGHTON. It is hard to tell at this point. The new Administration has been in for two months.

My two colleagues and I went to the Executive Board meetings of the AFL-CIO as invited guests in Miami about three weeks ago, and we mixed around. As far as we can tell, the labor people are taking a wait-and-see approach, so it is pretty hard to tell.

We think it will get worse just on the basis of budget constraints, with people worrying about rifts, and filing complaints; but in terms of the overall status of labor management relations, we had lunch with Tony Ingrassia, who is the top civil servant person in the top management area of OPM the other day, and as we do with labor counterparts on occasion, we didn't discern any difference in approach, but there is going to be a tightening up.

It will be thrashed around. With scarcity, people eat each other up.

What do you hear from the regions, Steve?

Mr. GORDON. I would have to subscribe to what the Chairman just said. It would be very difficult to discern any definitive terms. It seems like sometimes we get more cases from one entity in government. That may be due to a number of reasons, Mr. Chairman.

IRS, for example is more adventuresome in testing new case theories. That does not necessarily mean that IRS is anti-union or more anti-union than anybody else. They seem to have lawyers who are quite competent and who want to test the waters.

HEW is in that category. I think the Act itself is too young to discern those kinds of things.

When I first took this job, I was often told, you come from the private sector and this is a completely different approach. After all, the government is not a private employer, and you won't find the same kinds of attitudes.

I take issue with that on a personal basis. I think unions are unions, whether they are in the private sector or the public sector, and employers are also, and the same volatile reaction occurs.

Mr. FRAZIER. I think if we looked at the status of labor management relations in the Federal sector solely from the perspective of the Members and the General Counsel of the Authority, we would give you a distorted view because we deal with disputes that parties are unable to resolve themselves.

If you are talking about labor management relations in totality, you would need to get the viewpoint of those who settle their disputes and differences between themselves. Most of what goes on in labor relations in the government does not go on in this agency. I think our viewpoint, certainly from the perspective of our cases, would give a very distorted picture of what labor management relations in the government is all about.

Our subjective assessments in terms of what the future might bring would be something different, but they would be only our subjective conclusions.

Mr. APPLEWHAITE. I would subscribe to what Mr. Frazier says, because from my experience in New York where I handled public or private sector disputes, it was always with an adversarial sort of relationship, and I did not hear about the other situations when the parties could resolve their problems.

There was no need to call me in. The same situation prevails here. In New York State we faced the same budgetary crisis now facing the Federal Government. We dealt with situations to project cuts, reduce spending, etc. Every time I was involved, there was a problem or a serious crisis, and I think the same situation holds true here, so I cannot give you an objective view. Furthermore, I don't know what is happening when the parties get together directly without an impartial third party. They leave us out of that. They only tell us the problem areas.

Mr. HAUGHTON. Human relations, when there are rights at stake, can be rough.

I submit they can be rougher in the private sector than they are in the public sector, but I guess people have a quotient for how much roughness they can put in, so they can fight pretty hard in the Federal sector but in the private sector, there is a storming out, we are going to strike on March 21 in the coal industry, no matter what you say, that sort of thing.

In our case there is a storming out, we will go to that FLRA. It is much more of a rule of law in the Federal sector. I think it attracts a higher, I will be snobbish, I think the Federal sector from top to bottom attracts, off the record, a higher grade of people.

The selection process, there is a self-selection, and there is an examination process.

Mr. APPLEWHAITE. The unions also are waiting to find out what is going to happen, because nobody really knows what will happen at this point as far as budgets, money, jobs.

#### FIELD ACTIVITIES

Mr. ROYBAL. Well, Mr. Haughton, curiosity prompts me to ask the next question.

What are the functions that are performed in your field activities?

Mr. HAUGHTON. Out in the regions by field activities, we mean the 9 regional offices with labor relations specialists, with regional

attorneys who receive these 6,000 unfair labor practice charges per year, investigate them. If they look good from a prosecutor's standpoint, issue a complaint, research it, argue it before a judge.

These administrative law judges are judges. They hear it. They don't have to apply the rulings of evidence; but as a practical matter they are very formal sessions. It is really like an arbitration case.

Mr. ROYBAL. That actually is handled by the local office and it is not necessary for anyone to leave Washington to go to the local office to handle that particular case?

Mr. HAUGHTON. Except for the administrative law judge. We have 13 of them and, of course, we send them out because it is cheaper. I would rather have Mr. Gordon speaking. He has field supervisors who, I would assume go out from time to time.

Mr. ROYBAL. I would like to see an organization chart that shows this.

Mr. HAUGHTON. We did complete one very recently.

Mr. GORDON. It does not necessitate anybody going from Washington. It is quite true, the bulk of this whole work that we described to you here is 94 percent of the cases that are filed. All of that is done in the field; they never see Washington. Some cases come in for advice.

The bulk of this caseload is handled by these field officers. The travel that we alluded to, for example, the last time we were here, when I made the rather strong point that travel is so important to us, because if you shut down travel, if you run out of travel funds, you paralyze the agency.

That is not from Washington to the field. That is the travel that is needed by those investigations in the field office. The field office is in Chicago, but the territory that it covers is tremendously large. The field office is in Atlanta, but it covers the whole Southeastern part of the United States.

Mr. ROYBAL. That chart then will clearly indicate that?

Mr. HAUGHTON. Yes; it will cover the whole general Counsel area, and then our National Office where we get out of the pipeline, Steve Gordon's cases as they come through the administrative law judges, and we get what we consider, 300 or so, a very large volume of these, which are negotiable.

Those are sticky and negotiations between labor and management await our decision on those, and that is a whole different area and it takes a great deal of our efforts.

Mr. APPLEWHAITE. Those are filed in Washington directly with the National Office.

Mr. ROYBAL. Thank you, Mr. Haughton.

Mr. Gunnels, any questions?

Mr. GUNNELS. One, Mr. Chairman, I think should be provided for the record.

I notice your standard level user charge account, rental account, has a rather odd curve. In 1980, \$405,000; in 1981, it dropped down to \$321,000, and in 1982, you are requesting \$2,364,000.

Mr. HAUGHTON. I have a quick almost flip answer, but we will give you something more.

Mr. GUNNELS. People are looking at that rather closely.

Mr. HAUGHTON. We were tenants of the Labor Department and OPM in those first two years, and a nominal SLUC was put in. We were there at their sufferance, and to tell you the honest truth, we didn't even pay. We used it for other purposes with their knowledge. They were a little fatter than we were, and at the end of the year we simply didn't have the money to pay them.

We are going to be on our own now, and the full SLUC money is built in there.

Mr. GUNNELS. We can expect that for every year from now on?

Mr. HAUGHTON. We think so; we are going to be charged from now on.

[Questions by Mr. Campbell and their answers follow:]

MR. CAMPBELL. Prior to the enactment of title VII of the Civil Service Reform Act of 1978, could you elaborate on the procedure used in times past in disputes between Federal Management and personnel.

ANSWER. Through the 1960's and 1970's labor-management relations in the Federal service was governed by a series of Presidential Executive Orders, the most recent being Executive Order 11491. Under that Order the Assistant Secretary of Labor for Labor-Management Relations was assigned the dispute resolution functions with respect to deciding questions as to appropriate unit for the purposes of executive recognition, supervising elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative; deciding questions as to the eligibility of labor organizations for national consultation rights; deciding unfair labor practice complaints and alleged violations of the standards of conduct for labor organization; and deciding questions as to whether a grievance was subject to a negotiated grievance procedure.

Under Executive Order 11491, the Federal Labor Relations Council, which consisted of the Chairman of the Civil Service Commission, the Secretary of Labor and the Director of the Office of Management and Budget, had overall responsibility of administering and interpreting the Order and deciding major policy. The Council has an appellate role with respect to the review of all final decisions of the Assistant Secretary of Labor and the independent function of resolving disputes to what was negotiable between agency management and labor organizations and reviewing exceptions to arbitration awards. These were the awards of arbitrators resolving contracted grievance procedures that arose throughout the Federal service. Under the Civil Service Reform Act of 1978, the essential function of the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council were merged and assigned to the newly created Federal Labor Relations Authority.

Finally, Executive Order 11491 assigned to the Federal Service Impasses Panel the responsibility to resolve impasses in contract negotiations between agencies and labor organizations.

Mr. CAMPBELL. Mr. Gordon, on page 11 of your testimony, you stated that adequate travel funds are needed in the settlement of many cases. Could you please supply for the Record, a listing of all travel undertaken by the Office of the General Counsel, the persons involved, and the reasons travel was necessary, along with the type of case being looked at or solved during fiscal year 1981?

ANSWER. Mr. Campbell, I am pleased to be able to more fully explain my remarks on page 11 of my formal statement. I want to clarify at the beginning that my remarks pertain only to the Office of the General Counsel, and do not relate to the rest of the Authority. Travel is an integral part of the functioning of the Office of the General Counsel for the following reasons—

- (1) to investigate allegations of unfair labor practices involving unions, Federal agencies and employees;
- (2) to investigate questions which concern whether Federal employees will be represented by unions;
- (3) to obtain voluntary settlement in meritorious unfair labor practice cases whenever possible;
- (4) to prosecute before an Administrative Law Judge cases involving meritorious unfair labor practice charges where voluntary settlement cannot be obtained because of a refusal to settle by the charged party;
- (5) to conduct hearings where necessary to determine the facts surrounding questions concerning representation issues; and

(6) to conduct elections where appropriate to resolve questions concerning the union representation of Federal employees.

Further, a minimal amount of travel is performed by national office staff of the Office of the General Counsel for the purpose of conducting quality reviews of Regional Office operations; to provide technical assistance as required; for the training of staff and to participate in training programs involving the clientele; and to increase communications between the Office of the General Counsel and the clientele.

For these reasons, the functioning of the Office of the General Counsel requires travel to the worksite to resolve the issue, to investigate or prosecute the case, to conduct the hearing or to hold the election. While the Office of the General Counsel has nine regional offices located throughout the country, the existence of these regional offices serves only to reduce the cost of travel, not to eliminate it. The caseload of the Office of the General Counsel is spread throughout the country, not just in the Regional Office cities. We have located our Regional Offices to minimize the amount of travel required for us to process our caseload. Travel to the worksite must still be performed, and our caseload is worldwide in jurisdiction. No substitute exists for the face-to-face contact in conducting a complete inquiry regarding a case. Were our agents not able to travel to the worksite, witnesses and many detailed records would have to be brought to the Regional Offices—at a cost many times greater to the Federal Government than the cost of our travel, approximately \$121.00 per case action. Experience has shown that the loss of this face-to-face contact has an adverse effect on our ability to obtain voluntary settlements. This failure to obtain voluntary settlement ultimately results in increases to the costs of case processing. Failure to obtain voluntary settlement prior to the hearing substantially increases the cost of case processing. Failure to adequately explain the reasons for dismissal ultimately results in the appeal of the dismissal in some cases adding to the cost of processing the case.

All professional employees of the Regional Offices perform travel in connection with the six activities described above. Currently, a total of 127 employees in the Office of the General Counsel are professionals in the Regional Offices with requirement to travel. Additionally, nine members of the immediate Office of the General Counsel travel in connection with their responsibilities for providing evaluation of Regional Office activities, technical assistance and training.

The cost of travel to the Office of the General Counsel totalled approximately \$236,000 through the first five months of fiscal year 1981. During this period, the Office of the General Counsel took a total of 2,507 dispositive actions. This total is split between 2,256 dispositive actions taken on unfair labor practice cases and 251 dispositive actions taken on representation cases. In addition to the initial investigations and dispositive actions taken by the staff of the Office of the General Counsel, post-complaint settlements were obtained in 310 cases and a total of 117 complaints were prosecuted. Finally, with respect to the secondary representation workload, elections were held, hearings were conducted or settlements were obtained in a total of 150 cases.

The total of \$236,600 does not include the cost of GSA car rentals. We are working very hard to adequately track our GSA car usage. For the first time, in February the Agency accounting reports began to identify the costs associated with our GSA usage. According to our internal estimates, our GSA car usage will closely approximate a total of \$54,000 in fiscal year 1981.

Looking ahead to the remainder of fiscal year 1981, our travel costs are projected to increase somewhat over our current rate of expenditures. These travel costs are projected to increase somewhat for three reasons. First, the months of November, December, January and February are the lowest "travel months" of the year for us. November and February have the fewest workdays of any month, while travel in December and in January is somewhat curtailed because of the end-of-the-year holidays.

Second, our travel costs are expected to increase slightly through the end of the fiscal year because the Presidential limitation on hiring was lifted last week for the Office of the General Counsel. With the few additional positions we will be able to fill, we will be moving immediately to reduce our accumulated backlog of cases.

Finally, and most significantly, our travel costs will increase as we attempt to process our expanding caseload in Europe and in the Panama Canal Area. In the spring we will conduct an election in the Panama Canal Area, which will require approximately 40 agents from our staff and cost an estimated \$40,000. Our caseload in Europe is expanding rapidly, growing from a total of 39 cases received in fiscal year 1980 to a total of 77 cases received already through the first five months of fiscal year 1981. We are just beginning to investigate these cases. Currently, we are

sending one agent monthly to Europe for a four-week period in an attempt to process this caseload in a reasonably timely manner.

In fiscal year 1981, the Office of the General Counsel estimates its total travel costs will equal \$851,000, equal to slightly more than 72 percent of the total travel budget requested for the Agency. A total of \$327,000 in travel is allocated to other components of the Agency. Based on the projected workload to be processed by the Office of General Counsel, travel costs are projected to equal \$121 per case action in fiscal year 1981, including the cost of the travel required to process the caseloads in Europe and the Panama Canal Area. We have been able to achieve these efficiencies in travel costs by consolidating cases by location to the maximum degree possible. We are continuously trying to achieve the most effective balance in minimizing our case processing costs and maximizing the timeliness of our case processing activities.

I recognize that I have not been totally responsive to your request for a detailed break-out of travel costs by agent and cases being investigated. The very rough system of records which we currently maintain does not permit us to identify the travel costs of individuals by case number and investigator. As already stated, our record systems do allow us to very accurately track our total costs and to calculate the total cost per case action. We are further able to determine that 96.5 percent of all travel is directly associated with direct case processing activities.

To supply the data in the form requested, i.e. a breakdown by agent and case number, would require an extensive analysis, region by region, which would be very expensive, extremely time-consuming, and extremely burdensome on the already over-taxed resources of this Office. It would require a detailed analysis of case files and travel voucher in over 3,000 cases processed in the first five months of fiscal year 1981. The Office of General Counsel does not have at the present time the computer capability to track this data. All of our record-keeping in tracking our travel related expenses is done manually. The Agency has been unable to incorporate the travel voucher numbering system uniquely assigned to each Agent in its computerized accounting system. We are hopeful that we will be able to supply you with this information at this time next year, because we are hoping to enhance our computer capability by that time. However, if you find that this information is absolutely essential at this time, we shall of course make every effort to compile this data within a reasonable period of time.

Mr. CAMPBELL. Cited in the testimony of the Authority was the term "unfair labor practice". Yet nowhere is a specific case mentioned to illustrate what this term entails. Could you please supply a list of the types of problems that occur between Federal Management and personnel, giving examples of the different kinds of problems and the activity the Authority undertakes for each one.

ANSWER. The term "unfair labor practice" refers to those matters listed in section 7116 of Title VII as proscription on agencies and labor organizations (copy attached). Our unfair labor practice cases come about when it is alleged by a labor organization, agency or Federal employees that some set of circumstances have occurred that constitute a violation of one or more of the proscriptions in 7116(a) and (b).

One of the most common type unfair labor practice cases is where it is alleged that agency management has refused to negotiate in good faith with a labor organization holding exclusive recognition by making a unilateral change in employees conditions of employment without affording the union notice of the intended change and an opportunity to negotiate on any appropriate matters.

Another common unfair labor practice issue is where it is alleged that an agency official has done something which interferes with the right of employees to engage in union activity, e.g., threatening an employee with retaliation for being a union steward or promising some benefit for refraining from supporting the union.

When unfair labor practice charges are filed in a Regional Office, field personnel conduct a thorough investigation, giving the charged party a full opportunity to respond to all allegations.

If it is determined that a prima facie case exists, field personnel strenuously endeavor to obtain a settlement that will remedy the unfair labor practice. If settlement cannot be obtained General Counsel personnel prosecute the allegation before an Administrative Law Judge, who issues a report and recommended disposition to the Authority. If the Authority determines that an unfair labor practice has been committed, it orders the appropriate remedial action. Such remedies ordinarily consist of an order to cease and desist from the unlawful conduct. Where appropriate, revocation of unilateral changes may be ordered. The terms of the remedy are required to be posted for all affected employees to read.

5 USC 7116.

**“§ 7116. Unfair labor practices**

**“(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—**

**“(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;**

**“(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;**

**“(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;**

**“(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;**

**“(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter:**

**“(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;**

**“(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or**

**“(8) to otherwise fail or refuse to comply with any provision of this chapter.**

**“(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—**

**“(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;**

**“(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter:**

**“(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee:**

**“(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;**

**“(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;**

**“(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;**

**“(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or**

**“(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or**

**“(8) to otherwise fail or refuse to comply with any provision of this chapter.**

*Ante*, p. 1114.

Mr. CAMPBELL. Several times in your testimony and during questioning, the future need of the Authority's service in the canal zone and the foreign service was brought up, citing Congress as the reason for the establishment of service in these areas.

Could you please elaborate any reasons *you* feel the personnel located in these locations are in need for your services, beyond the general needs of any Government employee?

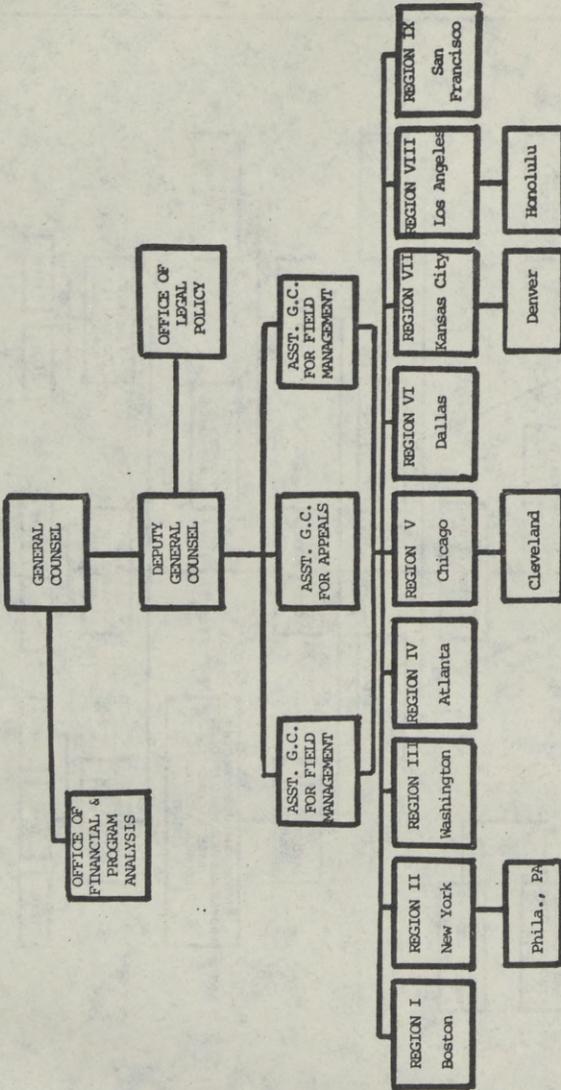
I am concerned, in these days of belt-tightening, that too many Federal agencies will continue growing unnecessarily as in the past.

ANSWER. The Federal Labor Relations Authority is required by Statute to:

- a. determine the appropriateness for units of labor organization representation
- b. supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of the Statute relating to the according of exclusive recognition to labor organizations
- c. prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations
- d. resolve issues relating to the duty to bargain in good faith
- e. prescribe criteria relating to the granting of consultation rights with respect to conditions of employment
- f. conduct hearings and resolve complaints of unfair labor practices
- g. resolve exceptions to arbitrator's awards
- h. take such actions as are necessary and appropriate to effectively administer the provisions of the Statute.

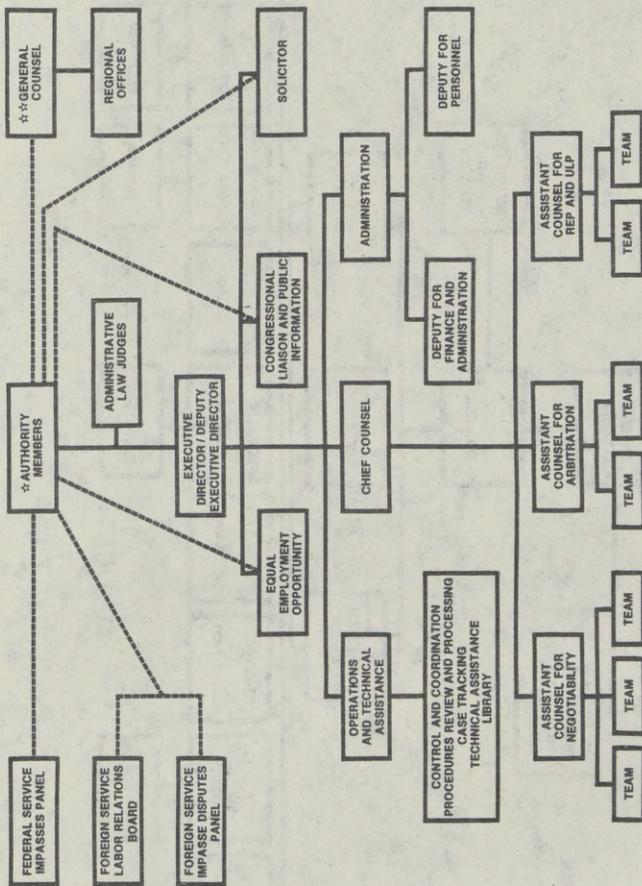
These services are required for the Foreign Service as well as employees of the Panama Canal Commission and other federal employees in Panama. The responsibilities are not discretionary to the Authority.

OFFICE OF THE GENERAL COUNSEL



INSERT 1D-2

FEDERAL LABOR RELATIONS AUTHORITY



☆: CHAIRMAN FLRA SERVES AS EX OFFICIO CHAIRMAN OF FOREIGN SERVICE LABOR RELATIONS BOARD.  
 ☆:☆ GENERAL COUNSEL FLRA SERVES AS EX OFFICIO GENERAL COUNSEL OF FOREIGN SERVICE LABOR RELATIONS BOARD.

Mr. ROYBAL. I would like to thank you and your colleagues for your presentation.

The committee will take it under advisement.

Mr. HAUGHTON. Thank you very much. It has been a great experience for us to meet with this great committee.

It is a very receptive one.

[The justifications follow:]

FEDERAL LABOR RELATIONS AUTHORITY  
BUDGET HIGHLIGHTS

The Federal Labor Relations Authority requests \$16,812,000 in budget authority and 351 full-time equivalent positions in Fiscal Year 1982. The request has been developed in accordance with the requirements of the Federal Service Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978).

These resources are required to provide a viable, effective and efficient labor-management relations program capable of meeting the statutory requirements of the Federal Service Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978). Effective February 15, 1981, the FLRA was required to provide full field and central office staff service, and make a budget allocation to pay the fees and expenses of two Foreign Service Board Members and of at least two Foreign Service Impasse Disputes Panel Members in connection with the full implementation of Chapter 10, Labor Management Relations of the recently enacted Foreign Service Act of 1980.

The Authority was established basically to administer Title VII of the Civil Service Reform Act of 1978, and to serve as a neutral in the settlement of disputes arising among unions, employees and Federal agencies on matters outlined in the Statute. The effective resolution of these labor-management relations disputes can have an important impact on the operation of the Government. These disputes arise within nearly all agencies of the Executive branch including, for example, the Departments of Defense and State and the Federal Aviation Administration, both throughout

the U.S. and overseas. Further, the FLRA is charged with resolution of labor-management relations disputes among all employees; both U.S. citizens and foreign nationals in the Panama Canal area, including employees of the Panama Canal Commission. The Authority's effectiveness is directly associated with its ability to deal with disputes in a timely and decisive manner.

During fiscal years 1980 and 1981, the Authority will have instituted several productivity enhancing and resource management techniques which will prove of benefit to program clientele as well as to this agency, both now and in the future. Fiscal year 1982 will be the first full year in which all of these improvements will have an effect. These improvements include, but are not limited to:

- Establishing time standards for the production of caseload throughout the agency;
- Establishing a case-tracking system for all types of cases processed by the various component organizations of this agency;
- Training Case Handling personnel working in the Adjudication activity to be generalists in their case processing activities, allowing greater and more varied use of the staff;
- Establishing statistical reporting systems to provide feedback on case management;
- Establishing financial and personnel management systems within the agency which will provide unit cost and unit time data; and,
- On-going review of case processing procedures to increase effectiveness and timeliness.

Fiscal year 1982 also will be the first full year of the Authority's fiscal and staff responsibility for the implementation of chapter 10 of the Foreign Service Act of 1980.

Both the Authority Members and the General Counsel, who is responsible for the agency's field operations, as well as the Federal Service Impasses Panel, continually encourage the informal settlement of disputes. This alleviates the burden of the more expensive and time-consuming processes encountered as a case passes beyond its initial stage.

All of these actions offset the effect of the constantly increasing receipt of new cases. Backlogs cannot be allowed to reach unacceptable levels, or the very purpose of the Labor-Management Relations Statute will have been defeated. The Authority therefore requests resources which will permit it to achieve and maintain acceptable levels of case disposition, and continue to provide staff support and the required fiscal support to the work of the Foreign Service Labor Relations Board and Foreign Service Impasse Disputes Panel.

The significant program issues which impact on both fiscal years 1981 and 1982 are the continued high level of case activity which has developed throughout the program areas and the additional work and fiscal outlay required by passage of the Foreign Service Act of 1980.

Disputes arising from Federal Service labor-management relations activities increased dramatically upon passage of the Federal Service Labor-Management Relations Statute. For example, unfair labor practice charges filed in 1979, the first year under the Statute, were 2,348. In 1982 they will be 5,688. Similarly, negotiability cases were 172 in 1979; in 1982 they will be 240. Exceptions to arbitration awards were 44 in 1979; in 1980 they will be 360. Significant increases in productivity have offset some of this increase. Unfortunately, some of this is also becoming back logged.

As noted above, the Foreign Service Labor Relations Program is a new program assigned to the Authority by Statute, commencing in fiscal year 1981. Staff and resources of the Authority will support the Foreign Service Labor Relations Board and, through the Federal Service Impasses Panel, the Foreign Service Impasse Disputes Panel, in the resolution of disputes arising from Foreign Service employees and management worldwide. The Authority must fund directly the fees and expenses of two Members of the Foreign Service Labor Relations Board, and two Members of the Foreign Service Impasse Disputes Panel, together with the fees of the other four Members.

An outline of the budget activities' operating programs for fiscal year 1982 and their basic responsibilities follows:\*

Activity 01 - Adjudication

The Authority is requesting \$4,509,000 in operating costs and 107 full-time equivalent positions for the Adjudication activity. In this area, the agency decides all matters brought before it under Section 7105 of the Statute, primarily: cases involving the appropriateness of bargaining units, issues relating to the granting of national consultation rights, issues relating to compelling need for agency regulations, issues relating to the duty to bargain in good faith, complaints of unfair labor practices, and exceptions to arbitration awards. Exceptions to

\* The direct cost of maintaining the Office of the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel and the cost of the required field and central office staff support for the work of the Board and Panel is subsumed under all categories of this outline.

arbitration awards and negotiability cases considered by the Members are appealed directly to the Authority, without the involvement of either the General Counsel or Administrative Law Judges. Timely and effective investigations, prosecutions, and settlement efforts reduce the number of unfair labor practice cases, initially processed by the Office of the General Counsel and Administrative Law Judges, requiring Authority adjudication. Also included in this area is the resolution of negotiation impasses brought before the Federal Service Impasses Panel under Section 7119 of the Statute. The Adjudication caseload cannot be controlled at the Adjudication level.

#### Activity 02 - Hearings

The Authority is requesting \$774,000 in operating costs and 16 full-time equivalent positions for the Hearing activity which involves the agency's Administrative Law Judges. This activity's caseload is totally uncontrollable in that the Judges must act upon every instance in which the FLRA's General Counsel issues a complaint.

Virtually all cases moving from the regional offices to the Adjudication activity must initially be disposed of by the Judges. Inadequate resources at this vital juncture in case processing will create a serious bottleneck in the unfair labor practice dispute resolution procedure.

#### Activity 03 - Office of the General Counsel

The Authority is requesting \$8,171,000 in operating costs and 197 full-time equivalent positions for the Office of the General Counsel activity. It is in this activity that the bulk of the agency's caseload is either disposed

of, or the process is begun which eventually culminates in a decision by the Authority Members. The Office of the General Counsel directs the employees of the nine regional offices of the Authority, where all unfair labor practice and representation cases are initially filed. The effectiveness and timeliness of the General Counsel activities, both in the field and at the National Office levels, are crucial to the overall viability of the program, and contribute toward reducing resource requirements in the other activity areas. Caseloads are uncontrollable in that agencies, employees, and unions have statutory rights to file cases with the General Counsel, who is also statutorily required to accept and resolve the issues.

#### Activity 04 - Administrative Activities

The Authority is requesting \$3,558,000 in operating costs and 31 full-time equivalent positions for Administrative Activities. Of this amount, \$2,624,000 represents the cost of centrally funded items, including SLUC, FTS and official mail. In addition to the increasing levels of activity in payroll, accounting and office services functions characteristic of an expanding agency, the Office of Administration also provides professional staff which reviews, reports, recommends and, finally, administers systems required by OMB, GSA, OPM and GAO. These include management, financial, work measurement and reporting systems.

**THE FEDERAL LABOR RELATIONS AUTHORITY**  
**SUMMARY OF BUDGET ESTIMATES BY BUDGET ACTIVITY**  
 (All Dollar Amounts in Thousands)

	1980 ACTUAL		1981 PROGRAM <sup>1/</sup>		1982 ESTIMATE	
	Full-Time Permanent Positions	Amount	Full-Time Permanent Positions	Amount	Full-Time Equivalent Positions	Amount
<b>OPERATING COST BY ACTIVITY</b>						
1. Adjudication	113	4,188	111	4,892	107	4,509
2. Hearings	14	674	16	769	16	774
3. Office of the General Counsel	181	6,673	203	8,308	197	8,171
4. Administrative Activities	22	2,089	33	3,054	31	3,558
<b>TOTAL OPERATING COST OF ALL ACTIVITIES</b> <sup>2/</sup>	330	13,624	363	17,023	351	17,012
Change in Selected Resources	-	-1,011	-	- 600	-	-200
<b>TOTAL OBLIGATIONS</b>	330	12,613	363	16,423	351	16,812
<b>OBLIGATIONS BY FUND SOURCES</b>						
Salaries and Expenses	330	12,613	363	16,423	351	16,812
Reimbursements to S & E	-	-	-	-	-	-

<sup>1/</sup> Includes \$622,000 for October 1, 1980 Pay Comparability adjustment, plus \$1,801,000 other supplemental.  
<sup>2/</sup> The direct cost of maintaining the Office of the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, as required by the new Foreign Service Act, and the cost of the required field and central office staff support for the work of the Board and Panel is subsumed under the appropriate activities.

PERM Form 7 (Rev. 1/81)

ACTIVITY 1 - Adjudication

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Full-Time Permanent (Equivalent) Positions	113	111	107
Total Operating Cost	\$4,188,000	\$4,892,000	\$4,509,000

The Adjudication function is the decision-making activity of the Federal Labor Relations Authority and Federal Service Impasses Panel. The Authority decides all matters brought before it under section 7105 of the Federal Service Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978). These matters consist of unfair labor practice and representation cases filed by the parties and processed initially in field offices and negotiability appeals and exceptions to arbitration awards filed by the parties directly with the Authority. It is in this activity that the Authority provides a resolution of Federal labor-management relations issues under the Statute.

The Offices of the Members and of the Executive Director provide management and policy direction for the overall activities of the Agency.

The decision-making activities of the Authority are accomplished through the Office of Case Handling and the Office of Operations and Technical Assistance. Also included in the Case Handling unit is the issuance of timely statements of policy on guidance matters that are not appropriately resolved in case-by-case adjudication.

The Operations and Technical Assistance unit provides docket service, case control, technical assistance to agencies, unions and individuals, statistical services and preparation of technical publications of the Authority.

Included in the Adjudication function is the Litigation unit. Under the direction of the Solicitor, this function includes the representation of the Authority in all appeals for review or enforcement of Authority orders, filed in the United States Courts of Appeals under section 7123(a) or (c) of the Statute, and in all cases involving the Authority filed in the United States District Courts (except injunction cases filed by the Authority under section 7123(d) of the Statute); advising the Authority and the Panel on legal questions presented by major case decisions or policy statements under the Statute, and on legal problems resulting from the impact of other Statutes, Executive Orders, or Regulations, on the operations of the Authority and the Panel; and determining the propriety of requests for records, documents or other information of the Authority submitted to the Authority by the public, under the Freedom of Information Act.

The Federal Service Impasses Panel, an entity within the Authority under Section 7119 of the Statute, resolves impasses which arise in contract negotiations between agencies and labor organizations representing Federal employees.

It is the statutory substitute for the right to strike and lockout. In the absence of the timely resolution of impasses, the parties are deprived of the fruits of a collective bargaining system. It has no control over caseload because requests for assistance are filed by unions and employees, and must be accepted. Disputes that

remain unresolved following staff activities, are presented to the Panel Members for final and binding decision. The Panel Members are seven Presidential appointees who meet on an as-needed basis. The professional staff provides assistance to the Panel Members by drafting recommendations and decisions.

The Authority's caseload is not directly controllable at the Adjudication level. Arbitration and negotiability cases are appealed by the parties directly to the Authority. Negotiability appeals constitute the largest portion of the unit's caseload. Unfair labor practice cases originate when filed by the parties in the field and they move up through the Office of the General Counsel and the Administrative Law Judges. Similarly, representation cases are initiated when parties file petitions in the field. In each instance, caseloads are not controllable because all cases filed with the Authority are filed by outside parties and must be processed pursuant to the requirements of the Statute.

In Fiscal Year 1982, it is projected that the Authority will receive 360 new arbitration appeals cases. These new cases together with a projected carry-over of 107 cases from Fiscal Year 1981 will result in a total caseload of 467 cases in Fiscal Year 1982. It is projected that 176 cases will be processed leaving 291 cases pending at the end of the fiscal year. New negotiability appeals and policy statement cases received in 1982 are projected to be 240 together with a projected carry-over of 279 cases from 1981 resulting in a total caseload of 519. It is estimated that 195 of these cases will be processed leaving 324 cases pending at the end of the fiscal year. With respect to representation and request for review cases, the Case Handling unit projects it will receive 182 new cases together with a projected carry-over from Fiscal Year 1981 of 171 cases for a total caseload of 353. It is projected that

dispositive action will be taken on 137 cases leaving 216 cases pending at the end of the fiscal year. Regarding unfair labor practice cases, it is projected that 225 new cases will be received and that there will be a carry-over of 157 cases from Fiscal Year 1981 resulting in a total caseload of 382. It is projected that 143 unfair labor practice cases will be processed leaving 239 pending at the end of the fiscal year. A total of 1070 cases will be pending at the end of Fiscal Year 1982 resulting in an overall backlog of 16.7 months.

Productivity increases of 9.2% in fiscal year 1981, and of 10.5% in fiscal year 1982 will occur as a result of management improvements instituted in fiscal years 1980 and 1981, as well as the developing skills of the staff. An on-going review of case processing procedures has identified more efficient methods to process caseloads, and case-tracking and statistical measures identify problem areas early so that appropriate action can be taken. These actions and others, in conjunction with the developing staff, have enabled the Authority to partially offset rapid increases in caseloads of 22.9% a year. Even with these management improvements, backlogs will grow to 16.7 months by the end of fiscal year 1982.

The Office of Operations and Technical Assistance is responsible for a number of direct adjudication and adjudication support functions.

-- Control and coordination of all cases on the Authority's docket at the National Office level, including administration of the Authority's case tracking system. 1007 new cases will be added to the Authority's docket in Fiscal Year 1982--an increase of 188 cases from the 819 cases filed in Fiscal Year 1981--requiring necessary control and coordination actions by the Office.

- Review of all submissions in all cases to ensure compliance with the procedural requirements of the Statute and the Authority's rules and regulations and precedent decisions. Submissions filed in cases in Fiscal Year 1982 are expected to increase from the approximately 4,100 submissions in Fiscal Year 1981 to a total of 5,000. A corresponding increase in the need for preparation and issuance of deficiency notices, dismissal orders, withdrawal permission letters and interlocutory correspondence can, therefore, also be expected in Fiscal Year 1982, as follows: deficiency notices - from 115 to 140; dismissal orders and withdrawal permission letters from 60 to 75; and interlocutory correspondence from 85 to 105.
- Provide current and accurate case-related statistical data and reports, program analysis, and status reports for caseload management, productivity measurement and improvement, and budgetary and staffing purposes. The demand for such information and reports is expected to remain constant in Fiscal Year 1982 at about 180, including both scheduled and unscheduled reports.
- Issue and publish decisions and orders of the Authority and related compliance notices, and resolve compliance issues which cannot be disposed of at the regional level. Decisions and orders to be issued can be expected to increase from 575 in Fiscal Year 1981 to 650 in Fiscal Year 1982. Compliance notices and problems are expected to remain constant at about 90 in both fiscal periods.
- Prepare case research and information materials for publication for the staff and the Federal labor-management relations community. Such materials include digests, subject matter indexes,

citators, bound volumes, and reports of case decisions. Approximately 110 such publications will have to be prepared in Fiscal Year 1982, an increase of 10 percent from the 100 publications prepared in Fiscal Year 1981.

-- Provide library resources and services to the staff of the Authority and the public interested in the subject of labor-management relations in the Federal service.

-- Provide technical advice and assistance to Federal agencies, unions, private practitioners, educators, students, and other interested individuals. Inquiries and requests are expected to increase from 1,180 in Fiscal Year 1981 to 1,300 in Fiscal Year 1982.

The Litigation unit will have a total caseload of 92 court cases in FY 1982, compared to 83 in FY 1981, for an increase of 11%. Of these court cases, 68 will be resolved, compared to 55 in FY 1981. This is an increase of 24%. This anticipated growth in the number of court cases includes increases expected as a result of the judicial review provisions of the Foreign Service Act of 1980. Additionally, Freedom of Information Act (FOIA) requests will increase by 9%, from 55 to 60 requests. Both court cases and FOIA requests require the meeting of rigid time deadlines established by the Statute or by the courts.

Total caseload of the Federal Service Impasses Panel will increase by 30% over 1981 as a result of increased negotiability determinations and other precedential decisions rendered by the Federal Labor Relations Authority

determining the scope of bargaining, coupled with requests for assistance arising from the Panama Canal Treaty, the Foreign Service Act of 1980, and supplemental negotiations. The Panel will be able to dispose of 96 cases out of a total caseload of 264 leaving a projected backlog of 124 cases. Whereas we are now operating with a 1-month backlog which is acceptable for an agency serving as a substitute for the strike and lockout for Federal sector collective bargaining, this backlog will strain our credibility as an effective dispute resolution vehicle.

Fiscal Year 1982 will be the first full year that all organizational units will be together in a headquarters office. This will enable the full benefit of centralized location, plus management improvements such as improving case processing procedures and cross-training attorneys for different types of cases, to have an impact. The result will be improved productivity and a more effective and efficient Federal Service Labor-Management Relations Program.

Adjudication  
Office of Case Handling Unit  
Statistical Summaries

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
<u>Employment:</u>			
Full-time Equivalent Employment	50	59	56
Professional Staff Required	29	35	32
Professional Staff Available	29	32	31
<u>Output/Workload Measures:</u>			
Total Caseload	1008	1322	1721
Carryover 10/1	342	503	714
Arbitration Appeals	50	75	107
Negotiability Appeals/Policy Statements	149	195	279
Representation/Request for Review Cases	101	122	171
Unfair Labor Practice Cases	42	111	157
New Cases Received	666	819	1007
Arbitration Appeals	102	180	360
Negotiability Appeals/Policy Statements	217	240	240
Representation/Request for Review Cases	178	193	182
Unfair Labor Practice Cases	169	206	225
Production	505	608	651
Arbitration Appeals	77	115	176
Negotiability Appeals/Policy Statements	171	201	195
Representation/Request for Review Cases	157	146	137
Unfair Labor Practice Cases	100	146	143
Total Cases Pending 9/30	503	714	1070
Work-In-Progress	126	152	163
Backlog Cases	377	562	907
Productivity Per Professional	17.4	19	21
Backlog (Months)	7.4	10.4	16.7

ACTIVITY 2 - HEARINGS

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Full-Time Permanent (Equivalent) Positions	14	16	16
Total Operating Cost	\$674,000	\$769,000	\$774,000

The hearing function of the Federal Labor Relations Authority is provided by the Office of Administrative Law Judges. The Administrative Law Judges hear and render decisions under Administrative Procedures Act procedures, on unfair labor practice complaints issued by the General Counsel. The Judges issue reports and recommended disposition of cases to the Authority.

The hearings caseload reflects the higher level of unfair labor practice charges being filed with and processed by the Regional Offices of the Office of the General Counsel. Hearings caseload is uncontrollable since all complaints issued by the General Counsel must be scheduled for hearing. Dispositive actions will increase from 632 to 871 cases, or a 4.7% increase. At this level, backlogs will increase from 6.9 to 7.9 months.

Backlogs in the Office of Administrative Law Judges cause the disposition of unfair labor practices to be "bottle-necked" between the Office of the General Counsel and the decision-making level of the Authority.

ACTIVITY 2 - HEARINGS  
Statistical Summary

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
New Cases	1093	1001	1029
Carryover (10/1)	<u>90</u>	<u>501</u>	<u>670</u>
Total Caseload	1183	1502	1699
Cases Completed	682	832	871
Pending Cases	501	670	828
Work-in-Progress	125	171	227
Backlog - Cases	376	499	601
Backlog - Months	5.7	6.9	7.9
Productivity of ALJs	64	64	67 <sup>1/2</sup>

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<sup>1/</sup> Projected 5% increase in productivity.

## Activity 3—Office of the General Counsel

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Full-Time Permanent (Equivalent) Positions	181	203	197
Total Operating Cost	\$6,673,000	\$8,308,000	\$8,171,000

The Office of the General Counsel is responsible for investigating all unfair labor practice charges filed under the Federal Service Labor-Management Relations Statute. As required, the Office of the General Counsel exercises final authority over the issuance and prosecution of complaints arising under the statute, including the review of all appeals of refusal to issue complaints. The Office of the General Counsel is responsible for the investigation and initial disposition of all representation petitions; for supervising or conducting elections concerning the exclusive recognition of labor organizations; for certifying the results of the election to the parties; and for conducting hearings in representation cases to resolve disputed issues.

The long-range goal of the Office of the General Counsel is to provide a fair balance between the Federal Government's need to maintain the efficiency of its operations and the rights of employees to participate

in the collective bargaining process. The Office of the General Counsel encourages all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters both prior and subsequent to the filing of unfair labor practice charges. The Office of the General Counsel strives to protect the rights of individual employees in their relations with labor organizations and to safeguard employees' rights by investigating, resolving and prosecuting (when necessary) charges alleging violations of employee protections under the Statute. The Office of the General Counsel defines the extent to which employee representatives may participate in decisions affecting employment conditions, and provides orderly and peaceful procedures for preventing proscribed interference by either labor or management with the legitimate rights of the other.

The General Counsel is directly responsible for exercising general supervision over all employees in the Regional Offices and for ensuring the effective and efficient operation and administration of the Authority's nine regional offices. The General Counsel and his executive staff provide advice, assistance, and review of all phases of field office performance to ensure adherence to case handling standards. The General Counsel and his executive staff are responsible for developing systematic methods for all aspects of case processing activities in the operational units in Washington, D.C., and in the field offices for the implementation of General Counsel and Authority policies, including time and quality standards for all stages of case processing. In addition to the executive staff of the Office of the General Counsel and employees in the Regional Offices, the Office of the General Counsel includes an Office of Appeals and an Advice Unit. The Office of Appeals is responsible for reviewing appeals to the General Counsel from the

refusal of Regional Directors to issue complaints on unfair labor practice charges, with a performance of research and analysis sufficient to ensure that factual and legal standards of the General Counsel are being applied uniformly by the Regions and that charges which are meritorious under those standards are litigated before the Agency. The Advice Unit has a dual purpose — first, to ensure that complex cases are dealt with on a uniform basis throughout the country and in conformity with the General Counsel's policies, and that the decisions in these cases are made intelligently and rendered expeditiously; and second, to ensure the consistency of decisions of the Regional Offices. Finally, the Immediate Office of the General Counsel effectively and efficiently monitors the processing of all cases filed in Regional Offices to quickly identify potential or actual case backlogs and to remedy the backlogs before they become serious, and measures performance and productivity for the staff of the Office of the General Counsel. All cases are tracked through all stages of processing, including: dispositive action, hearing, compliance, request for advice, trial, and election, as appropriate. To ensure the most effective and efficient use of its resources, the Immediate Office of the General Counsel allocates, monitors and controls all funds made available for its use, with responsibility for budget formulation and budget execution for the Office of the General Counsel, and for all financial assessment, control and review of Regional Office operations. The Immediate Office of the General Counsel is also responsible for all monthly statistical analyses and reports, and for all technical evaluation and quantitative program analysis.

In FY 1982, the Office of the General Counsel consists of five components — the Immediate Office of the

General Counsel, nine positions (4.5%); the Assistant General Counsels for Field Operations, six positions (3.0%); the Advice Unit, five positions (2.5%); the Office of Appeals, 13 positions (6.5%); and the Regional Offices, 164 positions (83.5%).

Current methods of operation are outlined briefly below. Federal sector unfair labor practice cases are investigated after unfair labor practice charges are filed with a Regional Office by labor organizations, agencies or individuals. Thereafter, investigations are conducted by regional office personnel through the interviewing of witnesses and the obtaining of documentary evidence. Upon completion of an unfair labor practice investigation, the Regional Director involved decides whether the charge should be dismissed, absent withdrawal, or whether the issuance of complaint is warranted, absent settlement. If, after an investigation, the Regional Director decides that the unfair labor practice charge is meritorious, a complaint is issued unless otherwise settled. The complaint is then prosecuted by a staff attorney assigned to the Regional Office, acting on behalf of the General Counsel, before an FLRA Administrative Law Judge. If the Regional Director refuses to issue complaint, a dismissal is issued, absent withdrawal. The dismissal of the alleged unfair labor practice charge can be appealed directly to the General Counsel.

Federal sector representation cases are investigated after petitions are filed with a Regional Office by labor organizations, agencies or individuals. Thereafter, investigations are conducted by Regional Office personnel through the interviewing of witnesses, obtaining documentary evidence or conducting formal representation hearings, where there is disagreement among the parties, concerning the issues involved.

The Regional Directors can administratively decide certain representation issues (subject to a right of review with the Authority), approve a consent election agreement, or issue a notice of hearing. After a representation hearing is held by Regional Office staff, the case is automatically transferred to the Authority for decision. The Regional Directors can decide post-election challenges and objections to elections (subject to a right of review with the Authority), or issue a notice of hearing on the challenges or objections. These hearings are held before FLRA Administrative Law Judges. All technical, clerical and docketing functions associated with administration of the Office of the General Counsel are performed by staff assigned to the Office of the General Counsel. All inquiries made on the status of caseload pending within the Office of the General Counsel, including a sizable number of requests made under the Freedom of Information Act, are handled by staff assigned to the Office of the General Counsel. The actual litigation of the Freedom of Information Act cases is handled by the Office of the Solicitor.

The over-riding goals of the Office of the General Counsel are to promote the effective enforcement of the Federal Labor-Management Relations Statute, the Foreign Service Labor-Management Relations Statute and the efficient and fair administration of FLRA and FSURB policies and practices. The major objectives of the General Counsel in reaching these goals are two-fold --

1. To place continued emphasis on obtaining voluntary informal settlement and consent election agreements, resolving cases as quickly as possible, before they reach the complaint and hearing stage.
2. To eliminate all unnecessary time delays in the processing of cases without any diminution of quality.

In FY 1982, a total of 197 positions are requested, six positions below the level of positions made available in FY 1981. This level of 197 positions represents a decrease of 2 positions below the total of 199 positions allocated to the Office of the General Counsel in FY 1980. Because of delays in filling these positions and in replacing vacancies resulting from the Presidential limitation on hiring, productivity levels in 1981 are projected to fall slightly below productivity levels reached in FY 1980, despite increased productivity levels per position available in FY 1981. Keeping in mind the fact that the Office of the General Counsel does not control its own caseload, the impact of this level is analyzed below for each of the five major workload categories.

— Unfair Labor Practice Charges — Initial Case Handling —

In FY 1982, a total of 5,688 unfair labor practice (ULP) charges are projected to be received. This total reflects an increase of 135 cases, or 2.5%, over the total of 5,553 cases projected to be received in FY 1981. Coupled with a carry-over of 2,127 cases pending with no dispositive action at the end of FY 1981, the total ULP caseload for FY 1982 is projected to reach 7,815 cases, an increase of 1,336 cases over the FY 1981 total caseload. Based on productivity estimates of nearly six cases per available position per month, a total of 4,473 cases are projected to have dispositive action taken in FY 1982, an increase of 121 cases over the number of dispositive actions taken in FY 1981. Productivity per position in FY 1982 is projected to increase by six cases per year over current performance levels, to a level of 71 cases annually. A total of 3,342 cases will be pending with no dispositive action at the end of FY 1982, an

increase of 1,215 cases over the total pending at the end of FY 1981. Of this total of 3,342 pending cases processing will have begun in 389 cases, leaving a total of 2,953 cases in actual backlog status, an increase of 1,199 cases over the total of cases backlogged at the end of FY 1981. This total of 2,953 cases backlogged equals a 7.5 month backlog, an increase of 90 days over the level of backlogs at the end of FY 1981. Total processing time from date of filing to dispositive action will approximate 225 days, an increase of 180 days over the comparable level at the end of FY 1980.

In FY 1981, a total of 5,553 unfair labor practice (ULP) charges are projected to be received -- an increase of 598 cases, or 12%, over the actual FY 1980 intake level of 4,955 cases. This projection is based on an annualization of actual FY 1980 case intake at the end of FY 1980. Coupled with a carry-over of 926 cases pending with no dispositive action the end of FY 1980, the total ULP caseload for FY 1981 is projected to reach 6,479 cases. A total of 4,352 dispositive actions are projected to be taken in FY 1981, based on productivity estimates of over 5.5 dispositive actions taken per month per position. A total of 2,127 cases are projected to be pending with no dispositive action, of which a total of 373 cases will be in process. This total of 2,127 cases represents a build-up of 1,201 cases from the beginning of FY 1981. A total of 1,754 cases will be in actual backlog status at the end of FY 1981, which equals a 135 day backlog. Total processing time from the date of filing to dispositive action approximates 165 days, double the level of 90 days attained a end of FY 1980.

Based on experience in FY 1980, approximately 40% of all unfair labor practice charges are found to have merit after investigation. Of these "merit" cases, 50% settle prior to the issuance of complaint. An additional 33% settle prior to the close of the hearing, resulting in a total settlement factor of 83%. In FY 1982, a total of 895 complaints are projected to be issued. Coupled with a total of 536 complaints carried over from FY 1981, the complaint caseload for FY 1982 will total 1,431 cases, an increase of 85 complaints over the FY 1981 caseload. Based on productivity estimates of nearly four complaints processed per available position per month, a total of 846 complaints will have disposition taken in FY 1982. Of this total, 558 complaints, 66%, are projected to settle prior to the close of hearing. Only slightly more than 6.5% of all ULP charges result in issuance of complaint and hearing held, requiring a decision by the Administrative Law Judge and review by the Authority. Thus, the remaining 288 cases are projected to be litigated. Of the total caseload of 1,431 cases, 585 complaints are projected to be pending with no disposition at the end of FY 1982. Of this total, 112 complaints are projected to be awaiting hearing and 74 complaints are projected to be in process. A total of 399 complaints are in a actual backlog status, slightly greater than the total of 356 complaints in a actual backlog status at the end of FY 1981. These backlogs of complaints equate to a 165-day backlog, roughly equal to the backlog level at the end of FY 1980. With the current allocation of staff, meritorious cases necessitating the issuance of complaint will require a total of 450 days from date of filing to disposition of the complaint, an increase 240 days over the level at the end of FY 1980.

In FY 1981, a total of 870 complaints are projected to be issued. Coupled with a carry-over of 476 complaints unresolved from FY 1980, the total complaint caseload for 1981 will reach 1,346 cases. A total of 810 complaints are projected to have disposition made in FY 1981, based on an annual productivity rate of 45 cases per available position. Of this total, 535 complaint, 66%, are projected to settle prior to the close of hearing. The remaining 275 cases are projected to be litigated. Of the total caseload of 1,346 cases, 536 complaints are projected to be pending with no disposition at the end of FY 1981. Of this total, 109 complaints are projected to be awaiting hearing and 71 complaints are projected to be in process. A total of 356 complaints are left in an actual backlog status at the end of FY 1981, approximating a backlog of 150 days, and roughly equal to the backlog level of FY 1980. With the current allocation of staff, meritorious cases necessitating the issuance of complaint will require a total of 375 days from the date of filing to the disposition of the complaint, increase of 135 days over the level at the end of FY 1980.

— Unfair Labor Practice Charges — Appeals —

Based on experience in FY 1980, approximately 55% of all non-meritorious cases result in dismissal. The remaining non-merit cases are projected to be withdrawn for a variety of reasons. Of this total of dismissals, 50% are appealed directly to the General Counsel, the equivalent of one UIP dispositive action out of every six taken. In FY 1982, a total of 738 dismissals are projected to be appealed directly to the General Counsel. Coupled with a carry-over of 185 cases from FY 1981, the total appeals caseload for FY 1982 is projected to equal 923 cases, a decrease of 112 cases over the appeals caseload in FY 1981.

Based on productivity estimates of over seven cases per position per month, a total of 623 appeals will have disposition taken in FY 1982. Productivity per position is projected to increase by eight cases per year over current performance levels to a level of 89 cases a year in FY 1982. Of the total caseload of 923 cases, 300 appeals will be pending with no disposition at the end of FY 1982, an increase of 115 cases over the total pending at the end of FY 1981. Of this total of 300 appeals, 62 appeals will be held in abeyance pending receipt of the file and 54 will be in process, leaving a total of 184 cases backlogged at the end of FY 1982. This backlog of appeals represents a 105-day backlog level, an increase of 60 days over the level of 45 days at the end of FY 1981. With the current allocation of staff, non-meritorious cases resulting in the dismissal of the charge which are appealed will require 420 days from the date of filing to the resolution of appeal, double the current time-frame.

In FY 1981, a total of 718 dismissals are projected to be appealed directly to the General Counsel. Coupled with a carry-over of 317 cases from FY 1980, an increase of 260 appeals from the total carried over from FY 1979, the total appeals caseload for FY 1981 is projected to equal 1,035 cases. Based on productivity estimates of slightly over seven cases per position per month, a total of 850 appeals will have disposition taken in FY 1981. Of the total caseload of 1,035 cases, 185 cases will be pending with no disposition at the end of FY 1981, a sharp decrease of 132 cases from the level of cases pending at the end of FY 1980. Of this total of 185 cases, 60 cases will be held in abeyance pending receipt of the file, and 52 cases will be in process, leaving a total of only 73 cases in actual backlog status at the end of FY 1981, a decrease of 118 appeals from the total number backlogged at the end of FY 1980. This backlog of appeals represents a backlog of 45 days, a significant drop from the level of 105 days at the end of FY 1980. With the current allocation of staff, non-meritorious cases resulting in the dismissal of the charge which are appealed will require 240 days from the date of filing to the resolution of the appeal, equal to

the current time frame. With the reduction in backlogs in this caseload area FY 1981, staff allocations in this area will be reduced in FY 1982.

-- Representation Cases -- Initial Case Handling --

In FY 1982, a total of 636 representation petitions are projected to be received, equal to the projected intake level for FY 1981 and approximately 3.5% greater than the FY 1980 actual case intake. Coupled with a carry-over of 217 cases from FY 1981, the total representation caseload for FY 1982 will equal 853 cases. Based on productivity estimates of nearly six cases per position per month, a total of 568 cases are projected to have dispositive action taken in FY 1982, leaving 285 cases pending with no dispositive action at the end of the year. Productivity per position in FY 1982 is projected to increase by six cases per year over current performance levels to a level of 71 cases annually. Of the total of 285 cases pending with no dispositive action at the end of FY 1982, 49 cases will be in process, leaving 236 cases in an actual backlog status. This total of 236 cases equals a backlog level of 150 days, 105 days greater than the current level. Total processing time for representation cases from the date of filing to dispositive action will approximate 180 days, slightly more than double the current processing time.

In FY 1981, a total of 636 representation petitions are projected to be received, equal to the projected intake level for FY 1982 and approximately 3.5% greater than the FY 1980 actual case intake. Coupled with a carry-over of 125 cases from FY 1980, the total representation caseload for FY 1981 will equal 761 cases. Based on productivity estimates of more than 5.5 dispositive actions taken per position per month, a total of 544 cases will be pending with no dispositive action at the end of the fiscal year. Of this total, 47 cases will be in process, leaving 170 cases in actual backlog status. This total of 170 cases equals a backlog level of 105 days, slightly more than double the level of 45 days at the end of FY 1980.

Total processing time for representation cases will approximate 35 days, approximately two months greater than the processing time frames at the end of FY 1980.

-- Representation Cases -- Elections & Hearings --

Based on experience in FY 1980, approximately 25% of all dispositive actions taken on representation cases will result in the approval of a consent election agreement. Further, 28% of all dispositive actions taken on representation cases will result in the issuance of a notice of hearing. In FY 1982, consent election agreements are projected to be approved and notice of hearing issued in a combined total of 302 cases. Together with 92 cases carried over from FY 1981, a total of 394 cases will require hearing or election in FY 1982. Productivity per position is projected to increase by six cases per year over current performance levels to a level of 66 cases annually in FY 1982. These increases are projected despite the increasing complexity of many representation cases which result in hearings to clarify the eligibility of employees for the purposes of merit pay determination. Under the Statute, merit determinations must be made by October, 1981. These hearings frequently are lengthy and disruptive of other regional office activity. Should the frequency of these cases increase in the future, this level of productivity for this caseload category cannot be sustained. Based on productivity estimates of over five cases per position per month, a total of 264 cases are projected to have action taken in FY 1982, leaving 130 cases pending without action at the end of the fiscal year. Of this total of 76 cases, 46 cases are projected to be in process at the end of the year, leaving an actual backlog of 84 cases. This backlog represents a 105-day backlog, in an area where no backlog currently exists. Total processing time for these representation cases from the date of filing to hearing or election will approximate 345 days, seven months greater than the current processing time frame.

In FY 1981, consent election agreements are projected to be approved and notice of hearing issued in a combined total of 289 cases. Together with 55 cases carried over from FY 1981, a total of 344 cases will require hearing or election in FY 1981. Based on productivity estimates of over five cases per position per month, a total of 252 cases are projected to have action taken in FY 1981, leaving 92 cases pending with no dispositive action at the end of fiscal year. Of the total of 92 cases, 44 cases are projected to be in process the end of the year, leaving an actual backlog of 48 cases. This backlog represents a 60-day backlog, where no backlog exists currently. Total processing time for these representation cases from the date of filing to hearing or election will approximate 285 days, approximately 120 days higher than the current backlog level.

In summary, in FY 1982, a total of 6,324 new cases are projected to be received in FY 1982, an increase 2% over the projected FY 1981 intake level of 6,189 cases. A total of 1,935 cases are projected to require some form of secondary action following the initial disposition of the case. This secondary action consists of post-complaint activity, of appeal of a ULP dismissal, of supervising or conducting an election, or of holding a hearing in a representation case. In FY 1982, a total of 5,041 cases will have dispositive action taken. A negative differential of 1,283 cases between dispositive actions and new cases received will result in an increase in the number of cases pending with no dispositive action at the end of the fiscal year to a total of 3,627 cases. At the end of the fiscal year, a total of 3,856 cases will be backlogged at various stages of case processing.

In FY 1981, a total of 6,189 cases are projected to be received in FY 1981. A total of 1,879 cases are projected to require some form of secondary action following the initial disposition of the case. This secondary action consists of post-complaint activity, appeal of a ULP dismissal, supervising or conducting an election, or holding a hearing in a representation case. In FY 1981, a total of 4,896 cases will have dispositive action taken. A negative differential of 1,293 cases between dispositive actions taken and new cases received will result in an increase in the number of cases pending with no dispositive action at the end of the fiscal year to a total of 2,344 cases, more than double the total of 1,057 cases pending at the end of FY 1980. At the end of the fiscal year, 2,401 cases will be backlogged at various stages of case processing.

The caseload intake estimates for FY 1981 and FY 1982 have not been adjusted to reflect the impact on the Office of the General Counsel of Chapter 10 of the Foreign Service Act of 1980 which becomes effective February 15, 1981. Under Chapter 10, the General Counsel will, for the first time, be responsible for investigating alleged unfair labor practices and for prosecuting complaints involving Foreign Service personnel. Because this new program is world-wide, with 60% of the 14,500 covered employees located outside of the United States, the investigation and prosecution of unfair labor practices, in addition to the investigation of any representation issues, could result in the expenditure of substantial resources, involving significant time and travel requirements and of increased staff resource requirements. The new statutory program bears only a similarity to the prior executive order program. The critical difference is that the statutory program provides for third-party investigation and prosecution of unfair

labor practices. Based on current trends seen in other programs, the inclusion of the Foreign Service employees of the Department of State, the International Communication Agency, the U.S. Development Cooperation Agency and the Departments of Agriculture and Commerce could result in a total of 175 alleged unfair labor practices being filed on an annual basis. Further, although the statutory bargaining unit is world-wide, eligibility questions exist over the status of numerous individuals who may or may not be in the unit. It is expected that these issues will be resolved through representation cases involving petitions for the clarification of bargaining units. As many as 50 representation cases seeking clarification of these issues could be received in the first year of the program.

Finally, many significant management improvements have been implemented which have enhanced the ability of the Office of the General Counsel to more effectively and efficiently process its caseload. Six of the more significant improvements are listed below.

First, continuing emphasis is placed on voluntary informal settlements, resolving cases as quickly as possible, before they reach the complaint and hearing stage.

Second, the position of Assistant General Counsel for Field Operations was created to continuously review and guide field office activity.

Third, 60-day time targets were issued for processing cases, and monthly regional reports are required on cases where the time target was not met at the end of the month.

Fourth, a standardized statistical reporting system was designed and implemented for the purpose of tracking, projecting and managing the caseload of the Office of the General Counsel. Monthly performance

analyses are prepared for each component of the Office of the General Counsel, based on an analysis of the statistical information gathered.

Fifth, formalized training is provided for the staff, including a clear enunciation of the goals and policies of the Office of the General Counsel.

Sixth, staff, positions and other resources are utilized in as flexible a basis as possible. Of the numerous examples of the flexibility, several are listed below —

- a) The General Counsel has kept the size of his headquarters staff to a minimum, reallocating positions whenever possible to direct case handling activities, as pointed out in the testimony of the General Accounting Office in oversight hearings before the Congress. In addition, by hiring competent, experienced regional directors, regional attorneys and staff for the nine regional offices, the General Counsel has made the most of his initial resources.
- b) The General Counsel created a task force of field agents and attorneys from other regions to assist the New York Region in eliminating its backlog of cases and in reducing its caseload on hand to manageable level. With its own limited resources, the New York Region was unable to reduce its backlog, because it could barely cope with its new caseload intake.
- c) The General Counsel directed the transfer of cases from one region to another to ensure their most effective and efficient processing.

d) The General Counsel shifted jurisdictions between regions in order to handle incoming caseloads more efficiently. Two shifts of significant impact were made — first, the shifting of jurisdiction for the Panama Canal Area from the New York Region to the Dallas Region; and second, the shifting of jurisdiction for Pennsylvania and Delaware from the Washington, D.C., Region to the New York Region. The first shift was made to reduce the cost and loss of time associated with travel to the Panama Canal Area. The second shift was made in order to more evenly divide workload between the regions.

Office of the General Counsel  
Statistical Summaries

Table 1.—Unfair Labor Practice Charges - Initial Case Handling

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
New Cases Received	4,955	5,553	5,688
Carry-over (10/1)	1,397	926	2,127
Total Caseload	6,352	6,479	7,815
Dispositive Actions Taken	5,426	4,352	4,473
Total Pending Cases (9/30)	926	2,127	3,342
Work-in-Progress	368	373	389
Backlog-cases	558	1,754	2,953
Backlog-months	1.5	4.5	7.5
Productivity Per Position	-	68	71
Professional Staff Years Available	-	64	63
Professional Staff Years Required	-	67	66

Table 2.--Prosecutions &amp; Settlements - ULP Cases

	FY 1980	FY 1981	FY 1982
Complaints Issued	940	870	895
Carry-over (10/1)	82	476	536
Total Caseload	1,022	1,346	1,431
Cases Litigated	187	275	288
Cases Settled	359	535	558
Dispositions	546	810	846
Pending Complaints	476	536	585
Non-Processable Workload <sup>1/</sup>	117	109	112
Work-in-progress	75	71	74
Backlog-cases	284	356	399
Backlog-months	3.5	5.0	5.5
Productivity Per Position	-	45	47
Professional Staff Years Available	-	18	18
Professional Staff Years Required	-	19	19

40% Merit Factor

50% Pre-Complaint Settlement Rate

66% Post-Complaint Settlement Rate

83% Total Settlement Rate

<sup>1/</sup> Time awaiting hearing and beyond Regional Office control

Table 3.—Unfair Labor Practice Charges - Appeals

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
New Cases Received	828	718	738
Carry-over (10/1)	57	317	185
Total Caseload	885	1,035	923
Dispositions	568	850	623
Total Pending Cases (9/30)	317	185	300
Non-Processable Cases <sup>1/</sup>	69	60	62
Work-in-progress	57	52	54
Backlog-cases	191	73	184
Backlog-months	3.5	1.5	3.5
Productivity Per Position	-	85	89
Professional Staff Years Available	-	10	7
Professional Staff Years Required	-	10	7
40% Merit			
55% Dismissal of Non-Merit			
50% Appeal			

<sup>1/</sup> File not yet received in Office of Appeals

Table 4.—Representation Cases — Initial Case Handling

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
New Cases Received	615	636	636
Carry-over (10/1)	177	125	217
Total Caseload	792	761	853
Disposition Actions Taken	667	544	568
Pending Cases (9/30)	125	217	285
Work-in-progress	51	47	49
Backlog-cases	74	170	236
Backlog-months	1.5	3.5	5.0
Productivity Per Position	-	68	71
Professional Staff Years Available	-	8	8
Professional Staff Years Required	-	8	8

Table 5. --Representation Cases - Elections - Hearings

	FY 1980	FY 1981	FY 1982
New Cases	355	289	302
Carry-over (10/1)	-	55	92
Total Caseload	355	344	394
Cases Processed	300	252	264
Pending Cases (9/30)	55	92	130
Non-Processable Workload <sup>1/</sup>	26	22	23
Work-in-progress	26	22	23
Backlog-cases	3	48	84
Backlog-months	-	2.0	3.5
Productivity	-	63	66
Professional Staff Years Available	-	4	4
Professional Staff Years Required	-	4	4

<sup>1/</sup> Time awaiting hearing and elections beyond Regional Office Control

Table 6.—Personnel & Travel Cost Per Case Action For the Office of the General Counsel  
(Cost in Actual Dollars)

FY 1981 & FY 1982 Comparison

	FY 1981	FY 1982	Diff. <sup>2/</sup>	FY 1981	FY 1982	Diff. <sup>3/</sup>
	Personnel Cost Per Case (Includes Benefits) <sup>1/</sup>			Travel Cost Per Case		
Representation Caseload —						
Initial Investigation	862	812	- 50	123	165	+42
Hearing or Election	929	860	- 69	135	178	+43
Unfair Labor Practice Caseload —						
Initial Investigation	895	849	- 46	129	174	+45
Prosecutions & Settlements	1,414	1,294	-120	196	265	+69
Appeals	693	644	- 49	-	-	-
Average Cost Per Case Action	930	883	- 47	121	169	+48
Total Funds Requested (\$000)	\$6,333K	\$5,983K	\$-350K	\$851K	\$1,144K	\$+323K
Average Cost Per Case Action x Number of Case Actions						

<sup>1/</sup> Includes all executive, managerial, supervisory, administrative, docketing, library and clerical costs for the Office of the General Counsel.

<sup>2/</sup> Decreases result from increased productivity.

<sup>3/</sup> Increases result solely from increased cost of travel — air fare and per diem.

Table 7.--Total Costs & Other Direct Costs for the Office of the General Counsel 1/ Per Case Action  
(Cost Per Actual Dollars)

	ALL Other Direct Cost Per Case <u>2/</u>		Diff.	Total Cost Per Case	
	FY 1981	FY 1982		FY 1981	FY 1982
Representation Caseload --					
Initial Investigation	109	92	-17	1,094	1,069
Hearing or Election	119	102	-17	1,183	1,140
Unfair Labor Practice Caseload --					
Initial Investigation	113	98	-15	1,137	1,121
Prosecutions & Settlements	617	573	-44 <u>4/</u>	2,227	2,132
Appeals	87	73	-14	780	717
Average Cost Per Case Action	169	154	-15 <u>4/</u>	1,220	1,206
Total Funds Requested (\$000)	\$1,154K	\$1,044K	\$-110K	\$8,308K	\$8,171K
(Average Cost Per Case Action x Number of Case Actions)					\$-137K

1/ Includes all executive, managerial, supervisory, administrative, docketing, library and clerical costs for the Office of the General Counsel.

2/ Includes all costs controlled by the Office of the General Counsel -- equipment purchases, library subscriptions, office supplies, desk-top supplies, photo copy costs, court reporting services costs, staff training, printing, word-processing rental costs, and telephone costs (non-FTS). Excludes costs associated with GSA space, Federal Telephone Services, and Mail.

3/ Increased productivity offset the increased cost of travel, and resulted in an additional savings of slightly more than \$93,000.

4/ Includes all court reporting services costs associated with representation and unfair labor practice caseload for the Office of the General Counsel, the Office of Administrative Law Judges and the Authority.

Table 8.--Summary of Backlogs

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
<b>Backlog-Cases</b>			
ULP-Initial Case Handling	558	1,754	2,953
ULP-Prosecution & Settlements	284	356	399
ULP-Appeals	191	73	184
REP-Initial Case Handling	74	170	236
REP-Elections & Hearings	29	48	84
<u>Total</u>	<u>1,136</u>	<u>2,401</u>	<u>3,856</u>
<b>Backlog-Days</b>			
ULP-Initial Case Handling	45	135	225
ULP-Prosecutions & Settlements	105	150	165
ULP-Appeals	105	45	105
REP-Initial Case Handling	45	105	150
REP-Election & Hearings	30	60	105

ACTIVITY 4--Administrative Activities

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Full-Time Permanent (Equivalent) Positions	22	33	31
Total Operating Cost	\$2,089,000	\$3,054,000	\$3,558,000

The Office of Administration supplies centralized administrative, management and support services to the headquarters and field offices. Space management, contracting, purchasing, inventory, printing and reproduction services, and records, mail and property management are supplied through the Office Services Division. Staffing, classification, training, and other employee and management services are provided through the Personnel Management Division. Payroll, accounting and budget services are provided through the Financial Management Division. The Office of the Director of Administration provides overall direction for the Administrative Activities, word processing services, and the Agency's security program.

Standard Level User Charges (SLUC), \$2,364,000, Federal Telecommunications System (FTS), \$125,000, and official mail, \$135,000, are centrally funded in this Activity.

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

FEDERAL LABOR RELATIONS AUTHORITY  
Salaries and Expenses

PROGRAM AND FINANCING (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
54-0100-0-1-805			
<u>Program by activities:</u>			
1. Adjudication.....	4,339	5,023	5,541
2. Hearings.....	887	1,066	1,236
3. Office of the General Counsel.....	8,398	9,133	10,235
Total program costs, funded.	13,624	15,222	17,012
Change in selected resources (undelivered order).....	-1,011	-600	-200
10.00 Total obligations.....	12,613	14,622	16,812
<u>Financing:</u>			
25.00 Unobligated balance lapsing..	19	-	-
39.00 Budget authority.....	12,632	14,622	16,812
<u>Budget authority:</u>			
40.00 Appropriation.....	12,632	14,000	16,812
44.20 Supplemental for civilian pay raises.....	-	622	-
<u>Relations of obligations to out- lays:</u>			
71.00 Obligations incurred, net...	12,613	14,622	16,812
72.40 Obligated balance, start of year.....	3,301	1,757	766
74.40 Obligated balance, end of year.....	-1,757	-766	- 687
77.00 Adjustments in expired accounts.....	28	-	
90.00 Outlays, excluding payraise supplemental.....	14,185	15,000	16,882
91.20 Outlays, from civilian pay raise supplemental...		613	9

STANDARD FORM 300  
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 Circular No. A-11, Revised.  
 300-101

FEDERAL LABOR RELATIONS AUTHORITY  
 SALARIES AND EXPENSES

PROGRAM AND FINANCING (in thousands of dollars)

Identification code 54-0100-0-805	1980 actual	1981 estimate	1981 estimate
		<u>Supplemental requested</u>	
<u>Program by activities:</u>			
1. Adjudication.....		788	
2. Hearings.....		74	
3. Office of the General Counsel..		939	
10.00 Total obligations.....		1,801	
<u>Financing:</u>			
40.00 Budget authority (appropriation)		1,801	
<u>Relations of obligation to outlays:</u>			
71.00 Obligations incurred, net.....		1,801	
90.00 Outlays.....		1,801	

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

FEDERAL LABOR RELATIONS AUTHORITY  
Salaries and Expenses

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
54-0100-0-1-805			
Personnel compensation:			
11.1 Full-time permanent positions..	8,542	9,862	9,259
11.3 Positions other than full-time permanent.....	222	300	300
11.5 Other personnel compensation...	129	150	220
Total personnel compensation.	8,893	10,312	9,779
Personnel Benefits:			
12.1 Civilian.....	849	924	851
21.0 Travel and transportation of persons.....	770	1,178	1,620
22.0 Transportation of things.....	31	200	200
23.1 Standard level user charges....	405	321	2,364
23.2 Communications, utilities, and other rent.....	451	371	560
24.0 Printing and reproduction	100	150	157
25.0 Other services.....	1,097	1,046	920
26.0 Supplies and materials.....	535	470	327
31.0 Equipment.....	493	250	234
93.9 Total costs, funded.....	13,624	15,222	17,012
94.0 Change in selected resources..	-1,011	-600	-200
99.0 Total obligations.....	12,613	14,622	16,812

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 300-101

## FEDERAL LABOR RELATIONS AUTHORITY

## Salaries and Expenses

## PERSONNEL SUMMARY

Identification code 54-0100-0-1-805	19 80 actual	1981 estimate	1982 estimate
Total number of full-time permanent positions.....	352	363	351
Total Compensable workyears:			
Full-time equivalent employment..	322	350	368
Full-time equivalent of overtime and holiday hours.....	17	17	17
Average ES salary.....	\$49,463	\$50,528	\$50,667
Average GS grade.....	10.74	10.56	10.57
Average GS salary.....	\$24,596	\$27,530	\$26,922

STANDARD FORM 306  
 July 1962, Bureau of the Budget  
 Circular No. A-11, Revised.  
 505-103

FEDERAL LABOR RELATIONS AUTHORITY  
 Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

	1980 actual	1981 estimate	1982 estimate
Executive level IV.....	1	1	1
Executive level V.....	3	3	3
Subtotal.....	<u>4</u>	<u>4</u>	<u>4</u>
ES-6.....	3	1	1
ES-5.....	1	2	2
ES-4.....	1	7	7
ES-1.....	5	1	1
Subtotal.....	<u>10</u>	<u>11</u>	<u>11</u>
GS-17.....	1	1	1
GS-16.....	10	12	12
GS-15.....	38	31	31
GS-14.....	29	34	34
GS-13.....	56	56	51
GS-12.....	46	51	49
GS-11.....	36	24	24
GS-10.....	2	3	3
GS-9.....	31	34	32
GS-8.....	6	6	6
GS-7.....	18	24	23
GS-6.....	17	22	22
GS-5.....	32	32	30
GS-4.....	12	13	13
GS-3.....	3	4	4
Subtotal.....	<u>337</u>	<u>347</u>	<u>335</u>
Ungraded.....	1	1	1
Total permanent positions.....	<u>352</u>	<u>363</u>	<u>351</u>
Unfilled positions, end of year.....	-22	-	-
Total permanent employment, end of year..	<u>330</u>	<u>363</u>	<u>351</u>

DEPARTMENT OF AGRICULTURE  
 BUREAU OF PLANT INDUSTRY  
 PHOTODUPLICATION SERVICE  
 WASHINGTON, D. C. 20250

Year	Value	Percentage	Description
1950	100	100	Total production of all crops
1951	105	105	Total production of all crops
1952	110	110	Total production of all crops
1953	115	115	Total production of all crops
1954	120	120	Total production of all crops
1955	125	125	Total production of all crops
1956	130	130	Total production of all crops
1957	135	135	Total production of all crops
1958	140	140	Total production of all crops
1959	145	145	Total production of all crops
1960	150	150	Total production of all crops
1961	155	155	Total production of all crops
1962	160	160	Total production of all crops
1963	165	165	Total production of all crops
1964	170	170	Total production of all crops
1965	175	175	Total production of all crops
1966	180	180	Total production of all crops
1967	185	185	Total production of all crops
1968	190	190	Total production of all crops
1969	195	195	Total production of all crops
1970	200	200	Total production of all crops
1971	205	205	Total production of all crops
1972	210	210	Total production of all crops
1973	215	215	Total production of all crops
1974	220	220	Total production of all crops
1975	225	225	Total production of all crops
1976	230	230	Total production of all crops
1977	235	235	Total production of all crops
1978	240	240	Total production of all crops
1979	245	245	Total production of all crops
1980	250	250	Total production of all crops
1981	255	255	Total production of all crops
1982	260	260	Total production of all crops
1983	265	265	Total production of all crops
1984	270	270	Total production of all crops
1985	275	275	Total production of all crops
1986	280	280	Total production of all crops
1987	285	285	Total production of all crops
1988	290	290	Total production of all crops
1989	295	295	Total production of all crops
1990	300	300	Total production of all crops
1991	305	305	Total production of all crops
1992	310	310	Total production of all crops
1993	315	315	Total production of all crops
1994	320	320	Total production of all crops
1995	325	325	Total production of all crops
1996	330	330	Total production of all crops
1997	335	335	Total production of all crops
1998	340	340	Total production of all crops
1999	345	345	Total production of all crops
2000	350	350	Total production of all crops
2001	355	355	Total production of all crops
2002	360	360	Total production of all crops
2003	365	365	Total production of all crops
2004	370	370	Total production of all crops
2005	375	375	Total production of all crops
2006	380	380	Total production of all crops
2007	385	385	Total production of all crops
2008	390	390	Total production of all crops
2009	395	395	Total production of all crops
2010	400	400	Total production of all crops
2011	405	405	Total production of all crops
2012	410	410	Total production of all crops
2013	415	415	Total production of all crops
2014	420	420	Total production of all crops
2015	425	425	Total production of all crops
2016	430	430	Total production of all crops
2017	435	435	Total production of all crops
2018	440	440	Total production of all crops
2019	445	445	Total production of all crops
2020	450	450	Total production of all crops
2021	455	455	Total production of all crops
2022	460	460	Total production of all crops
2023	465	465	Total production of all crops
2024	470	470	Total production of all crops
2025	475	475	Total production of all crops

WEDNESDAY, MARCH 18, 1981

## MERIT SYSTEMS PROTECTION BOARD

OFFICE OF THE SPECIAL COUNSEL

## WITNESSES

MARY EASTWOOD, ACTING SPECIAL COUNSEL

SHIGEKI J. SUGIYAMA, ASSISTANT SPECIAL COUNSEL FOR INVESTIGATION

FRED HOLLINGSWORTH, DIRECTOR OF ADMINISTRATION

Mr. ROYBAL. The committee will now hear from the Office of Special Counsel with regard to their budget request, fiscal year 1982.

Please proceed in any manner that you may desire.

## STATEMENT OF MARY EASTWOOD, ACTING SPECIAL COUNSEL, MERIT SYSTEMS PROTECTION BOARD

Ms. EASTWOOD. I would like to introduce Jim Sugiyama, the Assistant Special Counsel for Investigation, on my left, and Fred Hollingsworth, the Director of the Administrative Management Office, on my right.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to review with you our request for fiscal year 1982.

As you are aware, the Office of the Special Counsel was established in January 1979 under the President's Reorganization Plan No. 2 of 1978 and now is beginning its third year of operation under the Civil Service Reform Act of 1978.

The Office began its operations in January 1979 with an initial budget of \$427,000 and 19 positions transferred from the former Civil Service Commission. Subsequently, the Congress appropriated \$4.5 million and authorized 140 positions for fiscal year 1980.

This funding and personnel ceiling level was intended to enable the Office to establish its basic organizational structure to consist of the headquarters in Washington, D.C., five small field offices at Atlanta, Chicago, Dallas, New York, and San Francisco, and six small branch offices, in effect, investigator duty stations, at Boston, Denver, Los Angeles, Philadelphia, Seattle, and St. Louis.

This distribution of staff would have established minimal presence of the Office in all Federal regions and provided Federal employees and members of the public some degree of local access to the Office, as well as reduced response time and travel costs in dealing with allegations received by the Office from employees nationwide.

However, because of delays in assignment of adequate office space, progress in completing the field structure originally planned

for completion by December 1979 was delayed into 1980. We had to give up on establishing an office in New York City and instead expanded the Philadelphia office and assigned it responsibility for the entire Northeastern area with a small out-station in Boston.

By late spring of 1980, we had partially established field offices at Atlanta, Dallas, and San Francisco and branch offices at Los Angeles and Seattle, in addition to the Philadelphia and Boston offices already mentioned, and were in the process of hiring staff for the planned Chicago, Denver, and St. Louis offices.

#### RESCISSION OF 1980

Then, in July, we had to cease all activities related to completing our organization when our 1980 appropriation was unexpectedly reduced by \$2 million, or 46 percent, under the Supplemental Appropriations and Rescission Act of 1980 enacted in July. We had been expecting a possible rescission of \$1 million and had planned our expenditures accordingly.

But the \$2 million rescission caught us completely by surprise and drastic measures were required to avoid a deficiency. We ceased all hiring, cancelled all other obligations which could still be stopped, and ceased all travel including investigative travel. During the last five weeks of fiscal year 1980, in agreement with the Merit Systems Protection Board, 58 of our 98 employees were detailed to perform work for the Board so that we could be reimbursed the final approximately \$135,000 needed to avoid a deficiency.

During that period, action was continued only on those cases we had pending before the Board or were otherwise of the most urgent nature. As a result, over 250 new cases on which no action could be taken accumulated. This was in addition to some 800 other cases then pending.

Although the employees detailed to the Board were returned on October 1, the situation was not significantly eased until December when we were permitted to begin operating under the current continuing resolution based on the House approved fiscal year 1981 appropriation of \$4.25 million.

The initial continuing resolution had held our spending at the reduced fiscal year 1980 level of \$2.5 million. We have not been able to hire any additional staff because of the hiring restrictions placed on us by the Office of Management and Budget. We presently have 94 permanent staff on board, down four employees from last October.

Notwithstanding the many difficulties we have faced since my last appearance before this subcommittee just a year ago, we have been able to make the Office of the Special Counsel a more viable and effective governmental unit. We are committed to carrying out our statutory responsibilities to the fullest.

In this regard, I am pleased to report that since last March we have:

Received 2100 new complaints and completed action on 1650 cases. Counting the cases already on-hand, we had 2800 cases pending during the period and completed action on about 60 percent of the total workload. We now have approximately 1200 cases pending nationwide;

Filed 13 petitions for stays of personnel actions with the Board, of which 10 were approved;

Filed 4 disciplinary action complaints and 5 corrective action complaints, which are now pending before the Board, and 6 Hatch Act disciplinary action complaints;

Intervened in 10 matters pending before the Board;

Completed the installation of our computerized Case Information System and the linkage of the established field offices to the system, and are now in the process of debugging the system and improving the accuracy and completeness of the information placed into the system initially on a crash basis;

Centralized action on "whistleblower" allegations to improve control, timeliness, follow-up, and quality of action on allegations of waste, fraud, and abuse referable to the appropriate agency for necessary action;

Completed the training of our present field office staff, which we had to defer as a result of our budgetary problems last year;

Developed a workload measurement system which will shortly begin to provide a more accurate and precise measure of time and costs related to the actions taken on the various types of cases dealt with.

A diagram of the inputs and outputs to be measured and costed is attached to the testimony.

Having brought you up to date on the operational status of the Office, I now turn to our fiscal year 1981 budget and budget request for fiscal year 1982.

As previously mentioned, the House, in acting on H.R. 7583, approved a budget of \$4.25 million and a personnel ceiling of 162 positions for the Office for fiscal year 1981. The previous Administration, while holding the personnel ceiling of the Office to 130 positions, recommended a supplemental appropriation of \$214,000 to cover the fiscal year 1982 pay increase, raising the fiscal year 1981 budget total to \$4.46 million.

The present Administration has recommended a budget of \$4.39 million and a personnel ceiling of 124 positions.

In view of the fact that we are already well into fiscal year 1981 and the normal delays that would occur in filling vacant positions, we concur with the revised budget and personnel ceiling recommended by the Administration.

While that budget of \$4.39 million will not permit staffing the Office as originally planned, it will permit:

Establishment of the planned Chicago Field Office and the Denver Branch Office with minimal essential staff. We would not be able to establish the offices originally planned for New York and St. Louis;

Filling certain key position vacancies such as the heads of two of the four existing field offices, as well as a permanent Deputy Special Counsel position when a permanent Special Counsel is appointed;

Completion of action on up to 350 additional cases, depending on how soon the additional staff can be hired.

With regard to our fiscal year 1982 budget request, the previous Administration recommended \$4.664 million and 130 positions. The

current Administration recommendation is \$4.373 million and 120 permanent positions, a reduction of 4 positions from the fiscal year 1981 level now set by OMB, 10 positions below the level recommended by the previous Administration, and 22 positions below what we believe is necessary for carrying out the statutory responsibilities of the Office.

We believe that our Office needs \$5.228 million and 142 permanent positions to be able to carry out our statutory responsibilities timely, properly, and adequately.

With a budget of \$5.228 million and 142 positions, we would be able to:

Make our nationwide organizational structure complete by establishing small branch offices at New York and St. Louis;

Provide the field and branch offices the additional professional and support staff needed to make them more self-sustaining and efficient; and

Have the staffing flexibility needed to be able to deal more efficiently and effectively with the total caseload.

We believe that with a staffing level of 142 positions, we will be able to complete action on 3700 or 90 percent of the 4100 cases projected for fiscal year 1982. Of the 4100 cases, 1100 would be cases carried over from this fiscal year. For this fiscal year we project a total workload of 3600 cases and completed action on 2500 of these.

We are currently averaging about 225 new cases a month. This intake will increase when our Chicago and Denver offices are opened and the outreach program urged by the General Accounting Office, which we are implementing, takes effect.

Additionally, the impact of reorganizations and reductions in staff in agencies in the next few years will certainly generate complaints which we will have to deal with in one way or another. We are, however, hopeful that the intake will peak and level off at about 3,600 new cases a year by the end of fiscal year 1982.

Thus, we are hopeful that, with a staffing level of 142 positions, we will be able to achieve a point of equilibrium between intake and output. At a staffing level of 120, as recommended by OMB for fiscal year 1982, we would begin the year with 1,100 cases pending and end the year with the same number of cases or more pending, with further accumulation of cases thereafter, even without the further reductions in staff recommended by OMB.

We note here that last year we asked for a budget for 162 positions. That was intended to provide for establishment of a "Hot Line" system and additional staff to undertake pre-emptive investigations and investigations of systematic problems.

We now have rejected the concept of establishing a "Hot Line" system, but have not rejected the concept of pre-emptive and systemwide investigations. However, rather than asking for additional resources to conduct systemwide investigations, we believe it would be more economical and practical to concentrate on getting on top of the current workload, and increasing the efficiency of our operations so that resources can be freed to address systemic problems as they emerge.

This concludes my formal statement, and I would be pleased to

answer any questions that you or other members of the subcommittee may have at this time.

[The biographical sketches and attachments to Ms. Eastwood's statement follow:]

#### MARY EASTWOOD

Mary Eastwood, Associate Special Counsel for Investigation, was designated by the President on January 11, 1980, to serve as the Acting Special Counsel pending the appointment of a new Special Counsel.

Prior to her appointment in the Office of the Special Counsel in March 1979, she was an attorney advisor in the Office of Legal Counsel of the U.S. Department of Justice for 18 years (1960-1979). In addition to writing opinions on major and complex legal questions arising in the Executive Branch, she reviewed most of the Executive orders as to form and legality prior to their issuance by the President between 1966 and 1979.

From 1970 to 1979, she also served as the Equal Employment Opportunity Officer for the Justice Department's Offices, Divisions and boards, supervised investigations, negotiated resolutions, and made proposed findings on allegations of discrimination, including allegations of reprisal and major class complaints filed on the basis of race (Black deputy U.S. marshals), sex (female attorneys), and national origin (Hispanic drug enforcement agents).

She was awarded Justice Department Special Commendations for Outstanding Service to the Office of Legal Counsel (1976) and to the Equal Employment Opportunity Program (1972).

She was born in Wisconsin, graduated from the University of Wisconsin Law School (1955), and is a member of the Wisconsin Bar. She is the author of several legal articles on discrimination against women and has been active in the women's movement since the mid-1960's. From 1955 to 1960, she served as an attorney for the Highway Research Board, National Academy of Sciences.

#### LYNN R. COLLINS

Lynn Collins is the Associate Special Counsel for Prosecution of the Office of the Special Counsel, Merit Systems Protection Board. He has also been designated as the Acting Deputy Special Counsel.

Mr. Collin's Federal career has included service as a Trial Attorney, Supervisory Trial Attorney for Enforcement and Litigation, and Deputy Assistant General Counsel of the former U.S. Civil Service Commission with nationwide responsibility for the administration and enforcement of the Hatch Act. He served as legal counsel to the Merit Staffing Review Team which investigated merit system abuses within the Civil Service Commission. Mr. Collins was previously involved in the initial implementation of the 1965 Voting Rights Act, and served under the direction of the Attorney General of the United States registering minority voters and observing elections in several Southern States.

He has authored articles on the Hatch Act, has appeared as a guest lecturer at numerous seminars for Federal, State, and local government officials. Because of his substantial participation in the drafting of the Civil Service Reform Act of 1978, Mr. Collins has been deeply involved in explaining the Reform Act and the duties and responsibilities of the Office of the Special Counsel to Federal agencies and employees, and other interested groups.

Mr. Collins received his Juris Doctor degree "With Honors" from the George Washington University National Law Center. He is an active member of the District of Columbia Bar, and is admitted to practice before the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit, and the United States Supreme Court.

#### SHIGEKI JAMES (JIM) SUGIYAMA

Jim Sugiyama, Assistant Special Counsel for Investigation, came to the Office of the Special Counsel from the former U.S. Civil Service Commission on January 1, 1979, concurrently with the establishment of the new Office.

Since joining the Federal Government as a civilian employee in 1967, Mr. Sugiyama worked entirely for the former Civil Service Commission until his transfer to the Office of the Special Counsel. He served in progressively responsible positions

in the Commission's San Francisco Regional Office, Bureau of Policies and Standards, and the Bureau of Personnel Management Evaluation. From 1975 to 1977, he was Special Assistant to the Director of the Bureau of Personnel Management Evaluation and as Chief of the Compliance Branch of the Bureau in which positions he supervised the merit system investigations activities of the Bureau.

Detailed to the Federal Personnel Management Project in June 1977, he also continued as a coordinator in the Commission's Secretariat. In this latter position, Mr. Sugiyama was the lead coordinator of the staff work related to the civil service reform and reorganization legislative effort and the planning for the establishment of the Merit Systems Protection Board and the Office of the Special Counsel.

A retired U.S. Army Intelligence Officer, Mr. Sugiyama received a Bachelor of Arts degree in Political Science from the University of California, Berkeley, and a Master of Public Administration from California State University, Hayward. Mr. Sugiyama is a native of California.

He is a member of the Northern Virginia Chapter of the International Personnel Management Association and the American Society of Public Administration, and past National President of the Japanese American Citizens League (JACL). He was awarded the Bronze Star Medal three times, the Air Medal, and the Army Commendation Medal for his army service in Korea and Vietnam. He received the U.S. Civil Service Commission's Award for Distinguished Service twice.

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#### FRED HOLLINGSWORTH

Fred Hollingsworth, Director of Administrative Management, is responsible for budget and finance, personnel management, administrative services, data processing, and certain program development and evaluation functions for the Office of the Special Counsel.

Mr. Hollingsworth's Federal career during the past 15 years has included various managerial and staff positions in the personnel management field. He has formerly served as Chief of Agency Liaison in the U.S. Office of Personnel Management; Chief of Employment in both the U.S. Small Business Administration and the U.S. Department of Justice; and as Chief of Personnel Policy and Evaluation in ACTION.

Mr. Hollingsworth, a native of North Carolina, graduated from the University of North Carolina. His first Federal appointment was with the Department of the Army in Atlanta, Georgia.

Identical letter sent to: Hon. Jack Brooks, Chairman, Committee on Government Operations, U.S. House of Representatives

## Office of the Special Counsel

1717 H Street, N.W.  
Washington, D.C. 20419

MAR 2 1981

Honorable William V. Roth, Jr.  
Chairman  
Committee on Government Affairs  
U.S. Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This letter reports on actions of the Office of the Special Counsel on recommendations made to the Special Counsel by the General Accounting Office, as required by 31 U.S.C. 1176. The GAO report, entitled "The Office of the Special Counsel Can Improve its Management of Whistleblower Cases," dated December 30, 1980, makes four recommendations for improving operations of the Special Counsel:

First, GAO recommended that the Special Counsel establish a system to insure timely processing of whistleblower complaints. It should be noted that the GAO report does not distinguish between "whistleblower" allegations and cases alleging prohibited personnel practices or other violations of civil service law which are within the direct investigative jurisdiction of the Special Counsel. In addition, the GAO report is based on a review of cases closed during the first three months of 1980.

We have taken the following actions to improve timeliness of processing all of our cases, including whistleblower allegations. We now have a computerized case tracking system in place covering all cases received and acted upon. All cases received during FY 1981 are now entered in the system and we are in the process of improving the accuracy of the information concerning the pre-1981 cases also entered into the system. The conversion of manual records to computer records had been a slow, tedious process, hampered by insufficient funds and staff. In addition, since October 1, 1980, action on whistleblower cases has been centralized in the new Case Review and Control Branch within the Investigation Division of the Office. This is providing us closer control and oversight over actions on whistleblower allegations and, once the new Branch is permanently staffed, will enable us to develop greater expertise in identifying and taking action on whistleblower allegations. The Case Review and Control Branch functions as a case screening unit as well, and first priority is being given to separating out whistleblower allegations for faster processing.

Because of the accumulation of pending cases during the period the Office was operating with a skeletal staff last summer due to the rescission of our appropriation, we are not yet current in the processing of whistleblower cases. However, we project that we will be up-to-date in all such cases by the end of June, provided we are able to permanently staff the Branch and there is no further reduction in the Office's budget.

Second, GAO recommended that the Special Counsel improve communications with whistleblowers.

Lack of adequate follow-up with complainants has been a shortcoming related to all our cases, not just whistleblowers, which in turn has resulted from insufficient staff to take timely action on all cases. However, the situation is being corrected by new procedures for acknowledging receipt of all cases within five workdays. Further, with regard to whistleblower allegations, specifically, the new procedures for separate processing of whistleblower cases in the Case Review and Control Branch, and centralizing action on such cases, will result in more timely completed action. Also, with whistleblower cases being handled centrally, staff assigned such cases will develop greater expertise in sorting out the factual issues, communicating with the original complainant to obtain or receive additional clarifying or supporting information and in drafting more meaningful and precise transmittals of issues to the agency involved for investigation or report. Improving the quality of the transmittals of allegations will be more helpful to the agencies and should result in improved agency action and reports.

Third, GAO recommended that the Special Counsel institute follow up procedures to insure that agency reports responding to whistleblower allegations are accurate and that agencies take prompt corrective action. New procedures have been established for more systematically reviewing agency reports. This includes reenphasis of previous policy that original complainants be asked to comment on agency reports. The complainant's comments are taken into consideration in reviewing agency reports before the case is closed. Again, centralization in the Case Review and Control Branch and development of greater staff expertise in acting on whistleblower cases will improve this aspect of action on whistleblower allegations.

Fourth, GAO recommends that the Special Counsel place greater emphasis on encouraging Federal employees to disclose wrongful activities by more clearly informing agencies and employees of its role in receiving whistleblower complaints.

Since the GAO review early last year, the Office has hired one professional employee charged with public information and outreach responsibilities. We have distributed approximately 45,000 copies of the pamphlet "For Merit and Honesty in Government" referred to in the GAO report. The pamphlet is presently being

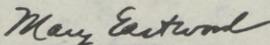
revised and a printing rider will enable agencies to order bulk quantities directly through the Government Printing Office. A Spanish translation of the pamphlet is also currently underway.

Printing of the pamphlet has been held up because we are anticipating a new address and telephone numbers. For the same reason, printing of posters describing functions of the Office has been deferred until our new address is known.

The OSC Information Office also publishes a weekly CASELOG on cases the Office has brought before the Merit Systems Protection Board. The CASELOG is distributed to employee groups and unions, public interest groups, agencies, and interested members of the media, the bar, and the Congress. In addition, the Bureau of National Affairs reprints the CASELOG in full in its national Government Employee Relations Reporter (GERR).

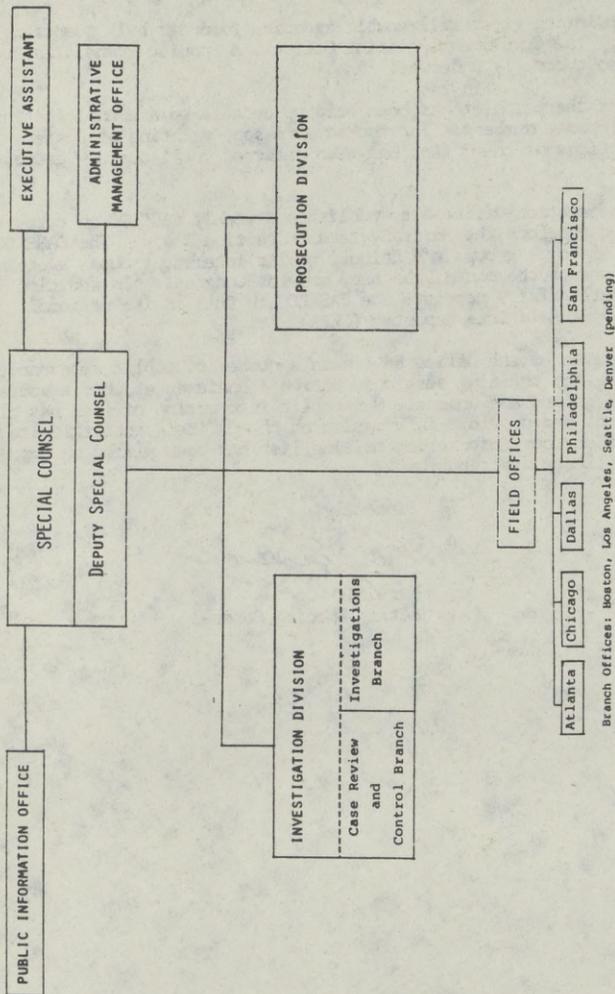
Representatives of the Office have made a number of public appearances before Federal agency training sessions, national conferences, bar associations, Federal employee groups and unions. Our public information officer has also maintained contact and provided information on the Office's activities to the media. In addition, our information mailing list has been placed on our computer to facilitate distribution.

Sincerely,



Mary Eastwood  
Acting Special Counsel

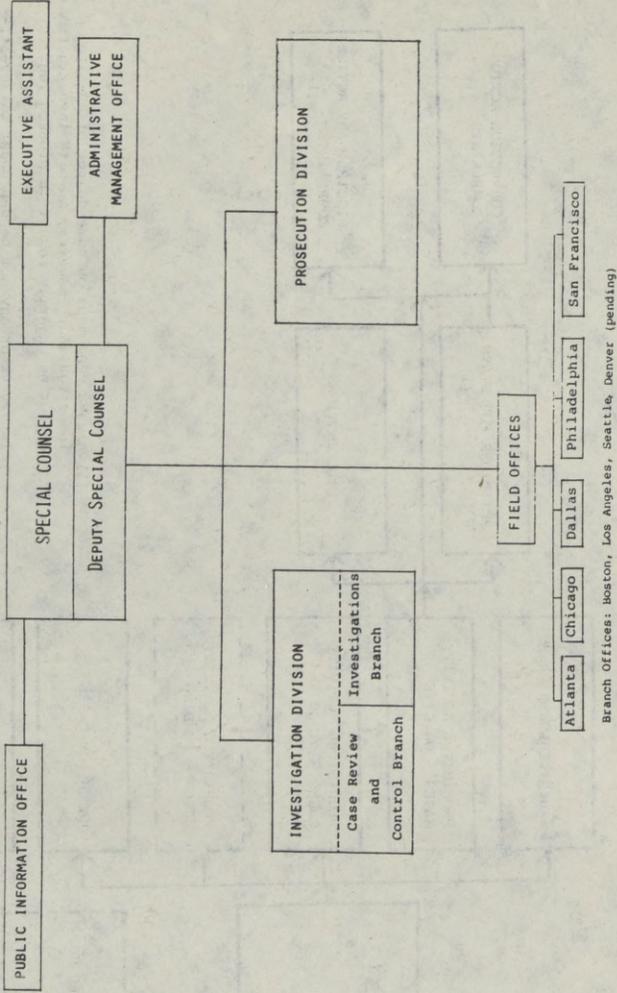
ORGANIZATION CHART  
OFFICE OF THE SPECIAL COUNSEL



Approved: *Mary Eastford*  
*March 2, 1981*

ORGANIZATION CHART

OFFICE OF THE SPECIAL COUNSEL



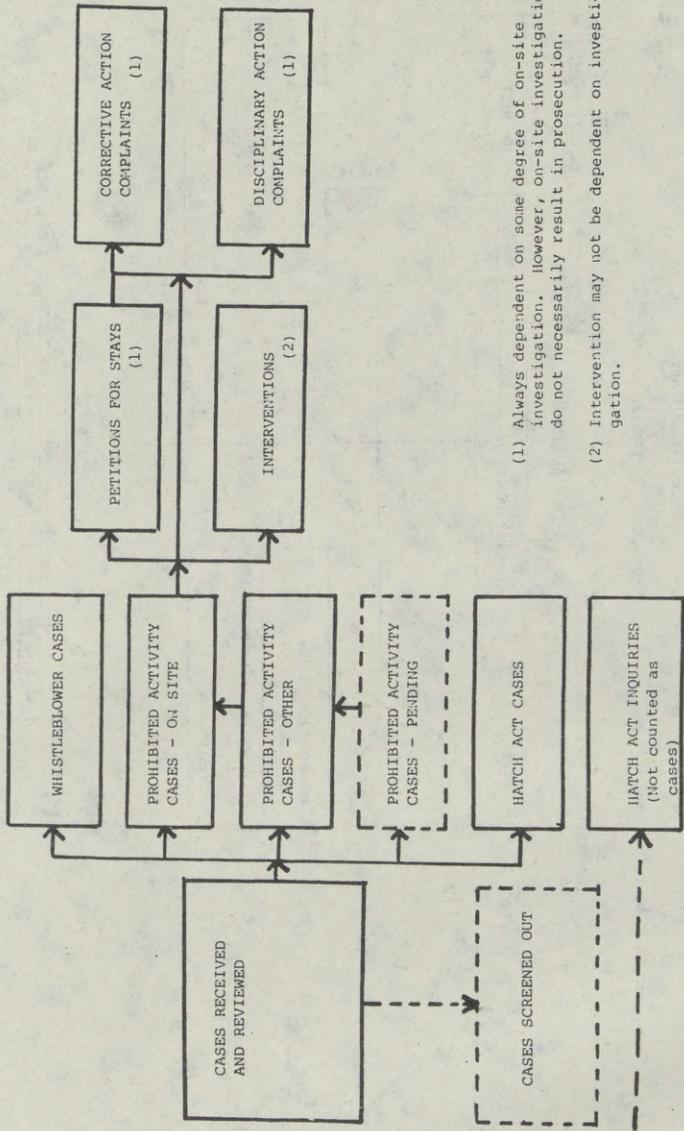
Approved: *Mary Eastwood*  
*March 2, 1951*

OSC WORKLOAD MEASUREMENT SYSTEM

Workload Input - Output Flow Diagram

Attachment 2

INPUT (Uncontrollable)      BASIC OUTPUTS      INCREMENTAL ADDITIONAL OUTPUTS (Resource Dependent)



(1) Always dependent on some degree of on-site investigation. However, on-site investigations do not necessarily result in prosecution.

(2) Intervention may not be dependent on investigation.

## OSC EMPLOYEES AS OF MARCH 17, 1981

Total Employees - 9757 White40 Min.T Male = 45Min. Male = 12T Female = 52Min. Female = 28Black Male 8Hispanic Male 1Black Female 22Hispanic Female 3T Black 30T Hispanic 4Asian Male 3White Male 33Asian Female 2White Female 24T Asian 5T White 57American Indian Male 0American Indian Female 1T Indian 1Total employees GS-14 and above = 15

(10 White)

( 5 Min.)

T Male = 12Min. Male = 4T Female = 3Min. Female = 1Black Male 2Hispanic Male 1Black Female 1Hispanic Female 0T Black 3T Hispanic 1Asian Male 1White Male 8Asian Female 0White Female 2T Asians 1T White 10

GS-11 THROUGH GS-13

	<u>NO.</u>	<u>% of Group</u>
Black	10	19
Hispanic	3	6
American Indian	1	2
Alaskan Native	0	
Asian Pacific	3	6
Other	<u>35</u>	67
Total	52	
Male	30	58
Female	<u>22</u>	42
Total	52	
Minorities	17	33
Other	<u>35</u>	67
Total	52	

MAR 13 1981

GS-8 AND BELOW

	<u>NO.</u>	<u>% of Group</u>
Black	17	57
Hispanic	0	
American Indian	0	
Alaskan Native	0	
Asian Pacific	1	3
Other	<u>12</u>	<u>40</u>
Total	30	
Male	3	10
Female	<u>27</u>	90
Total	30	
Minorities	18	60
Other	<u>12</u>	40
Total	30	

## STATUTORY RESPONSIBILITY

Mr. ROYBAL. First, we'd like to have you submit for the record, what is the statutory responsibility of the Office and, second, why you think that the funding level made available to you is not sufficient to carry on the statutory responsibilities with which you are charged.

Maybe you want to respond.

Ms. EASTWOOD. Basically, our statutory responsibilities are to investigate and to prosecute violations of the Civil Service law, particularly prohibited personnel practices as defined in the statute. There are 11 different types of those.

We also have Hatch Act responsibility for investigating and prosecuting those. We can file complaints for disciplinary action against officials who have been found to have discriminated in an agency. We can also file for disciplinary action against officials for engaging in other prohibited personnel practices or Civil Service violations.

We also have a second function for which we do not have direct investigative authority, but we receive allegations of violations of law, rule or regulation, mismanagement, abuse of authority, gross waste of funds, and a substantial and specific danger to the public health or safety.

Those are "whistleblower" allegations. We review those allegations and determine whether or not to require an agency investigation.

If we do not require an agency investigation, we still refer the matter to the agency for a report. If we do require an investigation, the agency must conduct a full investigation of the allegations and submit a report to us and to the Congress and to the President on their findings; and we then review those to determine whether the findings are reasonable.

Basically, we have our direct investigative and prosecuting authority and our authority to refer and to monitor agency investigations of whistleblowing allegations.

As to your second question, why do we think we need more funds in order to carry out our responsibility?

## EFFECT OF RESCISSION ON OPERATIONS

Basically, we have not yet completely established the Office. We do not have any staff in Chicago or St. Louis or New York or Denver, and so employees in those areas do not have the same kind of access to us as employees in Los Angeles or San Francisco area, or where we do have offices.

The legislative history of the Civil Service Reform Act indicated that the Special Counsel is expected to establish a field structure and that is what we have been trying to do, but we cannot hire people and we don't have sufficient funds to establish all of those offices.

Mr. ROYBAL. When you were expecting a rescission of only \$1 million and you got a \$2 million rescission, to what extent did that cripple your operation?

Ms. EASTWOOD. It brought us to a screeching halt.

Mr. ROYBAL. The present level of funding seems to be such that, at least in your opinion, you cannot fulfill your full responsibilities unless that amount is increased?

Ms. EASTWOOD. That is correct.

#### LAWSUIT OF MERIT SYSTEMS PROTECTION BOARD

Mr. ROYBAL. You were recently sued by the Merit System Protection Board. Now, to the extent that you can, can you please give us the background and the current status of that suit?

Ms. EASTWOOD. Yes; by way of background, it was a difference in view as to the authority of the Board with respect to the Special Counsel, particularly the authority to control personnel, to set hiring practices, to fire employees, this kind of thing.

The statute, the Civil Service Reform Act, authorizes the Special Counsel to appoint employees necessary to carry out its statutory functions, and it was my view of the intent of the Civil Service Reform Act, and the legislative history so indicates, that the Special Counsel should not be subject to the control and supervision of the Board.

There was a difference in view on the part of the Board members, and it culminated in the Board filing a lawsuit to have the court declare the proper interpretation of the law.

Prior to that time I had requested a legal opinion on those issues from the Department of Justice, but when the lawsuit was filed, that stopped the process of getting an opinion from Justice. The current status of the lawsuit, we filed a motion to dismiss, and the judge ordered the Department of Justice to file a brief *amicus curiae*.

The Department of Justice then filed a brief which also supported the motion to dismiss, and we are now waiting for the court to decide on that motion.

Mr. ROYBAL. How long does it usually take the court to decide on a matter like that?

Ms. EASTWOOD. You can't predict how long it will take, but we are expecting it just about every week.

Mr. ROYBAL. It could be that it will take the rest of the year, couldn't it?

Ms. EASTWOOD. It could; yes.

#### EFFECT OF 1980 RESCISSION

Mr. ROYBAL. Now, last year you were in danger of over-obligating funds for fiscal year 1981.

Why did this occur and what action are you taking now to see to it that it does not occur again?

Ms. EASTWOOD. It occurred because of the rescission of \$2 million, and that is the only reason that it occurred.

We are, as we always have been, very careful not to go into any kind of deficiency. What we did last summer was to, with the agreement of the board, detail some of our staff to the Board on a reimbursable basis, so we would not run into a deficiency.

Mr. ROYBAL. The action was taken, the over-obligating of funds was due to the unexpected rescission amount?

Ms. EASTWOOD. That is correct.

Mr. ROYBAL. Because if you are expecting only \$1 million reduction and you get hit with twice that amount—

Ms. EASTWOOD. Especially when you only have three more months left in the year to make it up.

#### WORKLOAD STATUS

Mr. ROYBAL. What is the current status of your workload and do you anticipate increases because of the hiring freeze, personnel restrictions and others?

Ms. EASTWOOD. We counted it right before we came down here, and we had 1300 nationwide cases pending. I think the testimony says 1200. We do expect an increase, if there will be reductions in force in some of the agencies, and matters concerning employees in the SES who may be reassigned when the new people take over.

We have already had a couple of cases involving SES employees. Merit pay will probably create more cases for us, and when the agencies get their performance appraisal systems in place we may get more cases on that.

We do expect an increase.

Mr. ROYBAL. It is going to be more difficult for you to fulfill the statutory responsibilities of your office; is that correct?

Ms. EASTWOOD. That is correct; and in order to avoid a backlog if we do not get sufficient staff to process those cases, we will have to screen them more heavily, and there will be a lot more disappointed employees when we tell them we can't take their case.

#### WHISTLEBLOWER PROGRAM

Mr. ROYBAL. What is the whistleblower program? Please explain that. I think we discussed it last year, but will you refresh my memory?

Ms. EASTWOOD. Well, employees who want to blow the whistle on wrongdoing in agencies can submit that information to us. For example, an employee might say there is gross waste of funds, abuse of travel funds, for example.

If the employee then submits sufficient information so we can find a substantial likelihood that it will be found to be true, we can require the agency head to conduct a full investigation and transmit the information to the agency head and with a copy to the Inspector General's office.

Usually the Inspector General has the function of investigating those allegations.

Mr. ROYBAL. Is there an opportunity given to confront the accuser?

Ms. EASTWOOD. Well, frequently, more often than not, the employee will consent to revealing their identity so we can tell the agency who disclosed the information to us and logically the Inspector General, the investigator, would contact the employee to get further information.

Mr. ROYBAL. But at the time that this matter is being worked out, is there an opportunity for both sides to be meeting, the whistleblower and let's say his employer or head of the department?

Does anything like that go on?

Ms. EASTWOOD. You mean to settle the matter?

Mr. ROYBAL. Not to settle the matter but when the decision was made, when that accusation was made, for which action was taken

against you, if I was the whistleblower, would I be present at the time your case was being processed?

Ms. EASTWOOD. If it is a whistleblower allegation, then that is up to the Inspector General's office normally to decide how to investigate the case. He would probably take testimony from both parties. If it is an allegation for reprisal, that is within our direct investigative jurisdiction.

Mr. ROYBAL. That was the next phase of the whistleblower situation that I was trying to get some clarification on.

Go back again for just a moment.

A whistleblower makes a complaint about any particular thing going on in one of the bureaus and an investigation is started. At any point, does the whistleblower face the person that he is accusing?

Ms. EASTWOOD. He may or he may not. Now, the employee who wants to blow the whistle can ask us not to reveal his identity.

Mr. ROYBAL. He may say to you, as people say many times, "I will hold your coat while you do the fighting, but don't mention my name."

Do you still investigate it and still take it as gospel truth that whatever he says about that particular employer is valid?

Ms. EASTWOOD. We wouldn't take it as the gospel truth, but we would refer it to the agency for the agency to look into it.

Mr. ROYBAL. Sure, but the agency would investigate it; it could be just gossip, couldn't it?

Ms. EASTWOOD. It could be, but in order to be a whistleblower, he has to disclose information that evidences some kind of official wrongdoing. If it is just a rumor or just a vague general complaint, that isn't really whistleblowing.

Mr. ROYBAL. He has what he considers to be concrete evidence that certain irregularities are going on. The presentation is made to whom?

Ms. EASTWOOD. The employee can make it to our office or also take it up through the chain of command or sometimes they write to a Congressman.

Mr. ROYBAL. Supposing he took it directly to you; what happens?

Ms. EASTWOOD. We review it and if we decide it is a bona fide whistleblower allegation, some evidence of wrongdoing, then we make a second determination as to whether or not there is a substantial likelihood that it is the truth. If so, we send it to the agency head and ask the agency head to conduct an investigation and report back to us within 60 days, send a copy of the report to the Congress and to the President.

If we do not, cannot make a determination that there is a substantial likelihood that it is true, we still are required to send it to the agency; but we do not require an investigation. It is up to the agency to decide whether or not they want to look at it. They simply have to report back what action they took on the allegation.

If they said we looked at it and it is completely without merit, and it is clear if that is the case—

Mr. ROYBAL. Sure, but if a whistleblower is not satisfied with your decision, he can go to a Congressman, most anyplace else to try to get some satisfaction?

Ms. EASTWOOD. Yes.

Mr. ROYBAL. That could be a very long process and a waste of time for a lot of people.

Ms. EASTWOOD. Well, there is no way we can prevent people from going to their Congressman, though.

Mr. ROYBAL. That I understand. I am just trying to get an idea as to how you determine whether this whistleblowing is legitimate and how much evidence does he or she have to have before action is taken.

Ms. EASTWOOD. You don't have to have a lot of evidence to refer it to the agency, but to require an investigation, it has to be pretty concrete.

Mr. ROYBAL. You know, with just heresy evidence, it would probably not be sufficient, or do you give some credence to heresy evidence?

Ms. EASTWOOD. Yes; and it depends to some extent, the position of the employee in the agency, the extent to which they would have knowledge of these facts.

Mr. SUGIYAMA. It is a very judgmental process.

Mr. ROYBAL. Yes; I don't particularly like that process. However, go down to the next point, the point that the whistleblower is successful.

Does he go back to the agency that he informed on?

Ms. EASTWOOD. Is successful that his findings were sustained by the agency?

Mr. ROYBAL. Yes.

Ms. EASTWOOD. Then the agency has to report to us what they have done about the findings of wrongdoing.

Mr. ROYBAL. No; but that employee goes back to his old agency?

Ms. EASTWOOD. He may have been there all the time.

Mr. ROYBAL. He still goes back to the same agency?

Ms. EASTWOOD. Yes.

Mr. ROYBAL. And that employer could be angry and could remain angry for the rest of his life, and that person then who was a whistleblower can have a very hard time?

Ms. EASTWOOD. That is true.

Mr. ROYBAL. What happens when that takes place?

Ms. EASTWOOD. Supposing the employee is not fired. He is being reassigned across the country and he has to sell his home and move, and he believes that this is in reprisal. He can ask our office to enter the case. We have the authority to investigate as a prohibited personnel practice.

We can ask the Merit System Protection Board to stay the action while we conduct our investigation to determine whether or not there is a connection between the whistleblowing and the proposed reassignment, so we can try to stop that reprisal action.

When we complete our investigation, we can make a recommendation to the agency not to reassign him, and if the agency does not wish to cancel the action, we can then file a petition to the Board to order the agency to not reassign him. Those are the legal mechanisms.

Mr. ROYBAL. The worst kinds of reprisal would be psychological, not necessarily the transfer of people from one place to another. In many instances, I am sure that that employer or head of that department would tend to ostracize that individual to the point that he has a feeling that he does not belong anymore.

What happens in that instance?

Ms. EASTWOOD. In order for there to be a prohibited personnel practice for us to take it to the Board, there has to be a personal action. Say he ostracized the employee to the extent of excluding him from meetings, taking away some of his responsibilities, making it difficult for him to be working, that would be a personnel action if there were a reduction in his responsibilities.

Mr. ROYBAL. Well, he may not be precluded from attending meetings or he may not be transferred to anyplace, nor work taken away from him but, for example, he may be coming in every morning, no one says good morning to him. When there is anything of a social nature, he is never invited, and that can be worse than being transferred from one part of the country to another.

Ms. EASTWOOD. We have to wait until it is aggravated to a situation where it becomes some kind of personnel action.

Those kinds of things you mentioned are not personnel actions.

Mr. ROYBAL. Now, one other thing on that. It would be, I think, a most difficult situation for anyone to be in, as a whistleblower, to have to come back to his agency after going all through this process. That no doubt would prevent or preclude people from whistleblowing?

Ms. EASTWOOD. I am sure that it would preclude some employees. It does take courage to blow the whistle and the Civil Service Reform Act was the first step in trying to provide some protection against reprisal.

Mr. ROYBAL. Please provide for the record a detailed analysis of the difference between the amount requested by the Special Counsel and the amount requested in the President's budget.

[The information follows:]

Ms. EASTWOOD. We have requested \$5.228 million and 142 positions whereas the President's budget requests only \$4.373 million and 120 positions for fiscal year 1982, a difference of \$855,000 and 22 positions. If the Congress appropriates only the \$4.373 million requested by the President, an amount which is slightly less than the fiscal year 1981 level, it would mean that:

1. Instead of 120 positions, only 112 position could in fact be filled, because an increase of \$206,000 over the fiscal year 1981 levels will be necessary for GSA space payments and related charges (\$115,000) and for within-grade increases and promotions (\$91,000), while other object classes will continue in fiscal year 1982 to be funded at the low fiscal year 1981 levels.

2. Because of the continuing understaffing of the Office, only 2,800 or 68 percent of the 4,100 cases could be completed.

3. Offices planned for New York City and St. Louis, to assure minimal representation in all regions and to complete the regional structure, could not be established.

The \$855,000 which we are requesting above the President's request will fund an additional 22 positions as well as the aforementioned increases such as SLUC which are necessary to maintain our current (fiscal year 1981) levels. The additional 22 positions will enable us to complete action on 3,700 or 90 percent of the 4,100 cases projected for fiscal year 1982 and to complete the establishment of our basic organizational structure. Congressional appropriation of \$5.228 million and 142 positions would permit the Office to fulfill our statutory responsibilities and to meet statutory deadlines.

Mr. ROYBAL. Mr. Gunnels, do you have any questions?

Mr. GUNNELS. I don't believe I have any questions, Mr. Chairman.

Thank you.

Mr. ROYBAL. Miss Eastwood, I would like to thank you and your colleagues for your testimony.

Ms. EASTWOOD. Thank you, Mr. Chairman.

Mr. ROYBAL. The committee will take it under advisement.

The committee is adjourned.

[The justifications follow:]

## OFFICE OF THE SPECIAL COUNSEL

## SALARIES AND EXPENSES

For expenses necessary to carry out functions of the Office of the Special Counsel; pursuant to Reorganization Plan No. 2 of 1978; and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109; rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles, [\$4,390,000] \$5,228,000.

## Obligations by Object

	1981 appropriation	1982 estimate	Increase or Decrease
Total number of permanent positions	162 <u>1/</u>	142	-20
Other positions			
Total number of all positions	162 <u>1/</u>	142	-20

(In thousands of dollars)

Personnel compensation:			
Permanent positions	\$3,303	\$3,882	+579
Positions other than permanent			
Other personnel compensation			
Total personnel compensation	\$3,303	\$3,882	+579
Personnel Benefits	292	350	58
Travel and transportation of persons	135	200	65
Transportation of things	39	60	21
Standard level user charge	357	452	95
Communications, utilities, and other rent	60	80	20
Printing and reproduction	46	46	-
Other services	38	38	-
Supplies and materials	60	60	-
Equipment	60	60	-
Total obligations by object	\$4,390 <u>2/</u>	\$5,228	\$+838

1/ The 1981 appropriation under the continuing resolution authorized staffing of 162 permanent full time positions within the funding level of \$4,250,000 which did not provide supplemental funding for FY 1981 pay increases. The funding level of \$4,250,000 permits staffing up to 130 positions by September 30, 1981, with 35 of those positions being filled only for the last 3 to 6 months of the fiscal year ending September 30, 1981. The personnel ceiling assigned by OMB as of March 12, 1981 is 124 permanent positions for FY 1981.

2/ The figure of \$4,390,000 includes the 1981 appropriation of \$4,250,000 under the continuing resolution and another \$140,000 recommended by OMB to the Congress to cover FY 1981 pay increases.

Office of the Special Counsel

Analysis of Authorized Level for Fiscal Year 1982  
(Dollars in Thousands)

Perm Pos.

1981 Appropriation enacted by Congress

162

Estimates, 1982

142

Digest of Budget Estimates by Activities Fiscal Year 1982

Activity	Appropriation		FY 1981		FY 1982		Increase or Decrease (-) for 1982		Other Changes	
	FY 1980	Pos Amount	FY 1981	Pos Amount	FY 1982	Pos Amount	Total Changes	Pos Amount	Program Changes	Pos Amount
Investigation/ Prosecution	84	\$2,143	109	\$3,901	127	4,739	+18	+838	+18	+838
Prohibited Practices	12	373	15	489	15	489	-	-	-	-
Processing Whistle- Blower Allegations	96	2,516	124 <sup>1/</sup>	\$4,390	142	5,228	+18	+838	+18	+838
Total Appropriation Authorized Level and Budget Estimate	96		(124) <sup>1/</sup>		(142)					
Permanent Positions Established										

<sup>1/</sup> Indicates actual number of positions which can be filled by September 30, 1981, at funding level of \$4,390 (116 full staff years) although 162 positions were authorized by the Congress under the continuing resolution whereas 124 positions were most recently allowed by OMB for FY 1981.

Office of the Special Counsel

Summary Explanation of Changes Requested for Fiscal Year 1982  
(Dollars in Thousands)

	Activity 1	Activity 2
	PO AMT	PO AMT

Program Changes:  
Increases:

1. Personnel Compensation and Benefits for Increase of 20 professional staff years over FY 1981.	14	\$556	-	-
2. Personnel Compensation and Benefits for Increase of 6 secretarial staff years over FY 1981.	4	96	-	-
Total Program Changes	18	\$652	-	-

161

Other Changes:

Increases necessary to maintain current levels:

1. Net cost of within-grade increases	-	39	-	-
2. Promotions (Grade to Grade)	-	52	-	-
3. Full year cost of 1981 personnel actions	-	-	-	-
4. Payment to GSA for space and related changes	-	115	-	-
Subtotal, Other Increases	-	206	-	-

## Office of the Special Counsel

Summary Explanation of Changes Requested for Fiscal Year 1982  
(Dollars in Thousands)

	<u>Activity 1</u>		<u>Activity 2</u>	
	PO	AMT	PO	AMT
<u>Reductions, nonrecurring costs and other savings:</u>				
1. Net savings in equipment costs due to computer system.	-	-	-	-
2. Net savings in personnel services payments due to computer system.	-	20	-	-
Subtotal reductions nonrecurring costs and savings (Equipment and Services)	-	20	-	-
Total, other changes	18	\$838	-	-
Total, Increases or Decreases 1982 compared with 1981 appropriation and proposed authorized level:	18	\$838	-	-

## Office of the Special Counsel

## Summary Justification of FY'82 Budget Estimates

General Statement

The Office of the Special Counsel is responsible for implementing certain provisions of section 202 of the Civil Service Reform Act of 1978 (P.L. 95-454 and 5 U.S.C. 1204-1208).

The primary functions of the Special Counsel are:

1. To receive and investigate allegations of prohibited personnel practices and certain other activities prohibited by civil service law, rule, or regulation. (including Hatch Act violation by Federal and certain State and local employees).
2. To receive and refer to agencies for investigation and a report thereon certain disclosures of information reasonably believed by the discloser to evidence a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
3. To recommend corrective action to the agency involved when it is determined that there is reasonable ground to believe that a prohibited personnel practice has occurred, exists, or is to be taken.
4. To file with the Merit Systems Protection Board requests to order corrective action (if the agency has not taken the corrective action recommended after a reasonable period), requests for stays of prohibited personnel actions, and complaints for disciplinary action against federal and certain State and local employees, and intervene or otherwise participate in any proceeding before the Board.

The requested obligation authority for FY 1982 is \$5,228,000 and 142 positions, an increase of \$838,000 (19 percent) over the FY 1981 appropriation of \$4,390,000, but a reduction of 20 positions (12 percent) from the 162 positions authorized by the Congress (within available funds) for FY 1981. (The OMB established ceiling for the Office for FY 1981 is 124 positions, with further constraints imposed by restrictions on new hires which will limit actual staffing to the equivalent of 116 staff years by the end of FY 1981.) The increase in budget is based solely on workload demands.

An increase of \$838,000 will enable staffing 142 permanent positions and result in a real increase of 26 staff years of work over FY 1981. These increases will enable the Office to complete necessary action on 1000 more cases (40 percent more) than in FY 1981, or a total of 3700 (90 percent) of 4100 cases projected for FY 1982. It is expected that action will be completed on 2500 (70 percent) of 3600 cases in FY 1981, leaving 1100 cases to be carried over into FY 1982. The overall goal of the Office is to

achieve and maintain 90 percent currency on all pending cases. With the additional resources, it is expected that productivity can be increased through establishment of two additional branch offices (in New York City and St. Louis), which will reduce the response time and travel costs for action on cases in those regions, and the addition of support and professional staff needed to increase the efficiency, effectiveness, and control of actions taken on allegations received nationwide.

1. Office of the Special Counsel: Investigation/Prosecution-Prohibited Activities

Program Purpose:

To assure that activities by Federal employees and certain State and local employees, prohibited by civil service or related law, rule, or regulation, are detected promptly, investigated in a timely manner, and appropriate disciplinary and/or corrective actions are instituted when found warranted.

Program Description:

Receive, process, investigate as necessary, and resolve in a timely manner all allegations or complaints of activities by Federal and certain State and local employees prohibited by civil service or related law, rule, or regulation under the investigative responsibility of the Special Counsel as mandated by the Civil Service Reform Act of 1978.

Program Objectives:

To resolve all allegations of prohibited activities properly and in a timely manner and to obtain appropriate disciplinary and corrective actions when found warranted.

Program Accomplishments:

During FY 1980, investigative action was completed on 1600 cases of a total 2500 cases pending during the year. In FY 1981, action is expected to be completed on 2500 cases of a total 3600 cases (including the 900 cases carried over from FY 1980.)

In FY 1980, the following actions were initiated or taken before the Merit Systems Protection Board: 4 disciplinary action complaints, including 3 for Hatch Act violations and 1 for other violations; 27 petitions for stays of personnel actions involving prohibited personnel practice; 3 requests for consideration of corrective action; intervention in 5 proceedings pending before the Board; and 6 legal briefs filed in other cases pending before the Board. Based on the projected caseload, it is expected that these type of actions before the Board will increase by at least 50 percent during FY 1981.

Additionally, a substantial number of cases were resolved during FY 1980 through mutual agreement with the agency involved without recourse to formal proceedings before the Board. Efforts to obtain such informal resolution will be continued, when warranted, during FY 1981 as a means of more expeditiously and economically resolving conflicts between employees and agencies.

## 2. Office of the Special Counsel: Whistleblower Disclosures

### Program Purpose:

To assure that all information received which evidences a violation of any law, rule, or regulation (not otherwise subject to Special Counsel investigation), or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety, is acted upon promptly and correctly.

### Program Description:

To assure accomplishment of the following: Identify and refer all whistleblower information to the head of the agency involved promptly on receipt; Within 15 days of receipt, determine whether there is substantial likelihood that whistleblower information received evidences wrongdoing covered by the Civil Service Reform Act of 1978, and on such determinations, require the head of the agency concerned to investigate and report thereon to the Congress, the President, and the Special Counsel; Determine adequacy of agency reports and take further actions; Make adequate public disclosure and adequately protect identities of persons who disclose information.

### Program Objectives:

To provide employees a protected means of disclosing information that evidences wrongdoing involving Federal agencies with assurance that appropriate and necessary action will be taken on such disclosures with the action taken thereon subject to review by the Congress, the President, and the Special Counsel in appropriate cases.

### Program Accomplishments:

During FY 1980, 67 referrals were made to agency heads. In 11 of these cases, the agency heads were required to conduct an investigation and report thereon to the Congress, the President, and the Special Counsel. It is expected that 150 such referrals will be made in FY 1981.

## Office of the Special Counsel

## Selected Workload Data

Activity and Principal Workload Factors	1980 actual	1981 Estimate	1982 Estimate	Percent of Increase or Decrease over 1981
1. Hatch Act Cases Acted Upon	77	105	85	-19
2. Prohibited Practices Complaints Acted Upon	1,550	2,500	3,500	+40
3. Whistleblower Allegations Acted Upon	67	150	150	-

## Office of the Special Counsel

Principal Categories	Summary of Employment				Increases for 1982	
	Actual	Estimated		Total	Program	Other
	1980	1981	1982	Increases	Increases	Increases
1. Managerial/Admin Direction	8	13	13	-	-	-
2. Managerial/Admin Support	4	7	7	-	-	-
3. Attorneys	21	23	29	6	6	-
4. Investigators	33	39	47	8	8	-
5. Stenos, typists, and Secretaries	25	35	39	4	4	-
6. Other Admin	4	6	6	-	-	-
7. Wage Board	1	1	1	-	-	-
Subtotal	96	124	142	18	18	-
Temporary	-	-	-	-	-	-
Total Positions	96	124	142	18	18	-

OFFICE OF THE SPECIAL COUNSEL  
 Schedule of Permanent Positions  
 Salaries and Expenses

	<u>1980</u> <u>Actual</u>	<u>1981</u> <u>Estimate</u>	<u>1982</u> <u>Estimate</u>
Executive Level IV		1	1
ES 6			1
ES 5		1	2
ES 4		2	2
ES 3	1	2	
ES 2	1		
ES 1			
GS-16			
GS-15	6	4	4
GS-14	5	7	12
GS-13	24	44	57
GS-12	17	14	13
GS-11	11	5	5
GS-10			
GS-9	1	1	1
GS-8	1	2	2
GS-7	3	7	7
GS-6	6	8	8
GS-5	9	11	12
GS-4	7	12	12
GS-3	2	3	3
GS-2	2		
Permanent Positions	96	124	142
Other	-	-	-
Total Positions	96	124	142

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THURSDAY, MARCH 19, 1981.

## INTERNATIONAL BUFFER STOCK

### WITNESSES

MICHAEL CALINGAERT, DEPUTY ASSISTANT SECRETARY OF STATE  
FOR INTERNATIONAL RESOURCES AND FOOD POLICY  
DONALD PHILLIPS, DIRECTOR, COMMODITY POLICY, OFFICE OF THE  
UNITED STATES TRADE REPRESENTATIVE

### OPENING STATEMENT OF MICHAEL CALINGAERT

Mr. ROYBAL. The committee will now hear from contributions to the International Stock.

Will you please proceed in any way that you may desire?

Mr. CALINGAERT. Thank you, Mr. Chairman.

I am Michael Calingaert, Deputy Assistant Secretary of State, and with me is Donald Phillips, Director of Commodities Policy for the U.S. Trade Representative.

I have a statement which I would like to submit for the record, and if you prefer I can give a short summary of those remarks.

Mr. ROYBAL. Will you please do that and the statement will be included in the record in its entirety.

[The statement of Mr. Calingaert follows:]

#### PREPARED STATEMENT OF MICHAEL CALINGAERT, DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL RESOURCES AND FOOD POLICY

Mr. Chairman, members of the subcommittee, I am very pleased to testify here today on behalf of the Administration's request for \$120 million to meet U.S. obligations to the buffer stock of a Sixth International Tin Agreement (ITA). Negotiations for this new agreement are underway in Geneva right now.

The outlines of the new agreement are fairly clear, and it promises to be far different from the existing agreement.

The Ford Administration decided in 1976 that the United States would join the current, or Fifth, International Tin Agreement, which was ratified by the Senate September 15, 1976. It has been extended for the maximum permissible period of one year, and will now expire June 30, 1982. Thus if the United States joins a new tin agreement, it will be liable for financial obligations to that agreement in July 1982. That is why this budget request is before you today.

When the negotiations for a new tin agreement are completed, the Administration will carefully review the agreement to determine whether it is in our national interest to participate. If so, it will be sent to the Senate for advice and consent to ratification, and the necessary authorizing legislation will be submitted to both Houses. At this time, we do not know the precise details of the new agreement, but we do know its general provisions. I would like, however, to sketch for you the general principles which we seek to have incorporated in the new tin agreement, in order that it will provide equitable benefits for tin consumers as well as tin producing nations.

#### INTRODUCTION

For many years, it has generally been U.S. policy to examine international commodity problems on a case-by-case basis, and to support the concept of international commodity agreements for those few products where there have been severe

price fluctuations and where internationally agreed-upon measures appeared to offer workable and appropriate solutions. Although the term "commodities" covers a broad range from tin and natural rubber, for example, to sugar and coffee, these commodities have a number of common attributes: They are important revenue earners for developing nations, they are principally consumed by the industrialized countries, and they are subject to cyclical fluctuations in supply or demand. Arising from such varied causes as weather conditions or rapid changes in economic activity in the industrial world, these fluctuations can result in sharp surges, upward and downward, in price levels. This type of unstable price activity causes difficulties for the exporting developing nations owing to unpredictable changes in foreign exchange receipts, may result in long-term loss of markets for the product in question, and may discourage investment in new, more efficient production capacity.

In the case of certain products, we have advocated use of larger buffer stocks as an appropriate price stabilization measure, together with supply assurances and other measures to encourage production to respond to market forces. We have, in these cases, viewed buffer stocks as the device most likely to be economically efficient and to yield benefits for consumers as well as producers.

Simply stated, when a buffer stock mechanism is used to stabilize prices in an international commodity agreement, the organization established by the agreement purchases the commodity when prices drop below an agreed-upon point, and keeps on buying until the price returns to the desired level. Subsequently, when prices exceed an agreed-upon level, sales are made in order to drive prices down to the desired range. The existence of price-stabilizing commodity arrangements is intended to offer an enhanced environment for productive new investment, and to offer the benefits of greater market stability to efficient producers and to consumers.

#### THE FOREIGN POLICY CONTEXT

As a group and individually, the developing countries have a continuing and strong interest in world commodity trade. For many of them, raw material exports remain an essential source of foreign exchange earnings and employment. Many of these nations place great store, as they evaluate our concern for their political stability and development, on what we show ourselves ready to do to help alleviate commodity market instability.

U.S. commodity initiatives in the past have thus often earned us useful political dividends at marginal costs. They have contributed to our set of cooperative relationships with important countries such as Brazil, Indonesia, the Philippines and Malaysia. Although we cannot satisfy many of their demands, our demonstrated willingness to listen and to act where possible is often a major plus in our overall relations with these countries. This also creates a basis for achieving other U.S. economic strategic and political goals in these countries.

Participation in the international tin agreement not only provides the U.S. with potential economic benefits through price stabilization, but also contributes to our interest in supporting the progress and stability of a number of friendly developing nations, including three key members of the Association of Southeast Asian Nations (ASEAN)—Malaysia, Thailand and Indonesia. The U.S. has an important strategic interest in supporting these nations in the face of increasing Soviet and Vietnamese military activity in Southeast Asia. The world's fourth largest tin exporter is Bolivia, a nation whose views of the United States have often been colored by its perception of our tin stockpile policy.

#### U.S. OBJECTIVES IN A NEW TIN AGREEMENT

As members since 1976 of the fifth tin agreement, we have determined that the agreement in its present form does not promise to provide the benefits we would hope for. This problem has several elements, including the question of supply policies in producing countries. A particular element which has become a major focus in the negotiations is the relatively small size of the buffer stock in the current agreement and the low point at which export controls may be imposed. The result is that the agreement potentially can serve to defend the floor price and assist producers, much more than it can defend the ceiling price and offer commensurate benefits to consumers.

Among our primary objectives in negotiating a new tin agreement are a much larger buffer stock, together with agreement that export controls may only be imposed as a measure of last resort. A working paper, which was acceptable to most producers, circulated at the December negotiations, proposed a buffer stock of 50,000 tons. In contrast, the current agreement provides for a mandatory buffer stock of only 20,000 tons, which has never been fully acquired and might never be, since producers may request a vote to impose export controls when only 5,000 tons have

been purchased by the buffer stock. The U.S. has told other participants in the negotiations that we still seek improvements in the approach proposed in the working paper. We feel that a large buffer stock is necessary not only to defend the floor price, but also to defend a ceiling price. The Agreement will also afford a forum where consumers can press for assurances that future tin supplies will be adequate to meet demand at reasonable prices.

#### CALCULATING THE U.S. SHARE

Monies requested to cover potential U.S. contributions to the buffer stock can be considered an investment, rather than an outright expenditure, since the agreement will provide that funds in the buffer stock account shall be returned to members upon termination of the agreement. Our estimates, based upon reasonable and prudent assumptions regarding future tin prices and other factors, indicate that the total cost of acquiring, insuring and storing the large buffer stock we seek would be approximately \$850 million. Producers and consumers will share these costs equally. We estimate that the U.S. share of this cost would be \$120 million. This financial obligation is determined by our share of votes in the agreement, which in turn is determined largely by our share of world tin consumption.

We anticipate that the new agreement will provide for members to make direct financial contributions to pay for the greater part of the tin to be acquired for the buffer stock. Acquisition of the remaining portion would be financed by borrowing, using existing tin holdings in the buffer stock as collateral. To ensure that the full amount of the buffer stock will actually be purchased, we are insisting that member governments fully commit themselves to whatever financing is needed for the acquisition and maintenance of the full buffer stock. Accordingly, our estimate of \$120 million is based upon the U.S. share of the entire buffer stock. In actual practice, we anticipate that only an initial contribution will be required in fiscal year 1982. The remainder of the \$120 million budget authority would remain available for the life of the sixth tin agreement to enable the U.S. to make contributions to the buffer stock account, if and when they are called for.

#### CONCLUSION

If a new tin agreement such as I have outlined here is intended to benefit both consumers and producers, you might well wonder why negotiations have dragged on through three lengthy sessions (April-May 1980, December 1980, March 1981). The reason is, not surprisingly, that other nations participating in the tin agreement do not necessarily share our objectives, nor our concerns about the cost-benefit analysis. Some tin consuming nations view commodity arrangements in part as extensions of their foreign aid programs and thus do not insist as strongly as we do upon an equitable division of economic benefits between producers and consumers. Some nations also are less concerned about the agreement's ability to defend ceiling prices than they are about the cash costs of participating in an agreement involving a large buffer stock.

At this stage, it is difficult to predict exactly how the negotiations for a new tin agreement will turn out. I am sure you understand that I cannot be very specific about our precise negotiating objectives here in public, since the negotiations are presently in course. However, I do want to stress again that once a new agreement is reached, the Administration will examine it very carefully before a decision is reached to join it and seek Congressional approval.

Mr. CALINGAERT. I am very happy to be here to testify on behalf of the Administration's request for \$120 million to meet U.S. obligations to the buffer stock of a Sixth International Tin Agreement.

The United States is a member of the existing Fifth Tin Agreement, which the United States joined as a result of the decision by the Ford Administration in 1976. That agreement has been extended for the maximum permissible period of one year, and it will expire on June 30, 1982.

Therefore, if the United States joins the new Agreement, it will be liable for financial obligations in July of 1982. Negotiations are presently in course. When they are completed, the Administration will carefully review the agreement to determine whether it is in our national interest to participate. If that is so, it will be sent to

the Senate for advice and consent to ratification, and the necessary authorizing legislation will be submitted to both Houses.

Perhaps it would be useful if I say a few words about the concept of international commodity agreements and explain a little bit about this specific one.

There is of course a whole range of commodities traded in the world. To a certain extent there are common attributes to these. Many of these are important revenue earners for developing countries and they are principally consumed in the industrialized countries. Many of them are subject to cyclical fluctuations in supply or demand. The fluctuations have caused difficulties for exporting developing nations, and also for consuming countries like our own.

The general policy of the United States has been to examine international commodity problems on a case by case basis, and to support the concept of an international commodity agreement where there have been severe price fluctuations and where internationally agreed-upon measures appear to have offered workable solutions.

In the case of certain products we have advocated the use of large buffer stocks as an appropriate price stabilization measure together with supply assurances and other measures to ensure production. In these cases we view buffer stocks as being the best devices for yielding benefits to consumers, as well as to producing countries.

The mechanism itself in essence is that the organization established by the particular agreement will purchase the commodity when prices drop below an agreed-upon point, and will continue to buy in order to support the price. Then, conversely, at such time as the prices exceed an agreed-upon level, sales are made to dampen down the price.

The purpose of this kind of price stabilizing arrangement is to offer enhanced environment for productive investment and offer benefits of greater market stability to both producers and to consumers.

Now a word about the foreign policy context.

Developing countries have strong interest in world commodity trade, and for many of them these exports of commodities are very important in terms of foreign exchange earnings and employment. They have viewed U.S. attitudes toward these agreements as being important in their bilateral relationship and, indeed, I think some of those have contributed to the cooperative relations we have with many of the developing countries.

As I mentioned, we are a member of the existing Fifth Tin Agreement. We have determined that in its present form it does not provide the benefits that we would have hoped for, and a major focus in negotiations has been to try to improve that agreement to make it conform more to our interests.

Our major focus has been on the relatively small size of the buffer stock and the low point at which export controls may be imposed. Particularly we want to ensure that export controls may be imposed only as a measure of last resort. We feel that a large buffer stock is necessary, not only to defend the floor price, but also to defend the ceiling price and, finally, that the agreement affords a forum where consumers can press for assurances that

future tin supplies will be adequate to meet demand at reasonable prices.

The money which is requested to cover the potential U.S. contributions can be considered an investment rather than an outright expenditure, since the agreement will provide that the funds in the buffer stock account shall be returned to the members upon termination of the agreement.

Our estimates, based on reasonable and prudent assumptions regarding future tin prices and other factors, indicate that the total cost of acquiring, insuring and storing the large buffer stock we seek will be approximately \$850 million. Those costs will be shared equally by the producing and the consuming countries, and we have estimated the U.S. share of that at \$120 million.

We anticipate that the new agreement will provide for members to make direct financial contributions to pay for the greater part of the stock and then another quantity, another part of that stock, would be financed by borrowing, using existing tin holdings and the buffer stock as collateral.

We have been insisting that member governments fully commit themselves to whatever financing is needed for the acquisition and maintenance of the full buffer stock.

We anticipate only an initial contribution will be required in fiscal 1982 and the remainder of the \$120 million budget authority would remain available for the Sixth Agreement.

As I mentioned, the negotiations are presently being carried out. There have been three sessions. The third one, of course, is in Geneva now, and it is difficult to predict what the outcome will be; but, as I mentioned at the outset, once an agreement has been reached, the Administration will examine it carefully before taking a position on whether to join it and seek congressional approval.

Mr. ROYBAL. Mr. Phillips?

#### OPENING STATEMENT OF DONALD PHILLIPS

Mr. PHILLIPS. Thank you, Mr. Chairman, members of the committee.

I believe you also have a statement that we have prepared which is very brief and basically supportive of the statement by Deputy Assistant Secretary Calingaert.

I would like to make a few comments.

Mr. ROYBAL. Without objection, the text of your statement will be included in the record at this point.

[The statement of Mr. Phillips follows:]

#### PREPARED STATEMENT OF DONALD PHILLIPS, DIRECTOR, COMMODITY POLICY, USTR

Mr. Chairman, Members of the Subcommittee, thank you for your invitation to testify on behalf of the Administration's request for \$120 million to fund an anticipated U.S. contribution to the buffer stock of the new International Tin Agreement (ITA) now under negotiation in Geneva. Under Reorganization Plan No. 3 of 1979, the Office of the United States Trade Representative was given the lead responsibility for the development of U.S. policy on international commodity agreements and the conduct of commodity negotiations as part of its overall responsibility for international trade policy. In line with this directive, USTR has worked with the other government agencies to determine the U.S. negotiating position on tin; we have also led the U.S. Delegations to the various tin negotiating conferences which have taken place over the past year.

The statement just made by Deputy Assistant Secretary Calingaert has described the background of the current negotiations and outlined the reasons why we feel our participation in the Sixth Tin Agreement would be beneficial to the United States—assuming, of course, that our current negotiating efforts are successful. Therefore, I will make only a few brief comments in support of the deputy assistant secretary's statement.

As was mentioned, the current Fifth ITA is deficient in a number of respects from our point of view. Its buffer stock provisions are inadequate and it allows a too easy recourse to export controls.

In entering into the negotiation of the Sixth Tin Agreement, the United States made clear that substantial improvements were a necessary pre-condition of our continued participation. Our objectives are to moderate the cyclical price swings, provide incentive for increased investment, and assure adequate supply. While the outcome of the current negotiations is still in doubt, I think it is clear that a great deal of progress has already been made. For example, the latest proposal put forward by the Chairman of the negotiating conference, which was widely subscribed to by producer countries, would allow the imposition of export controls only after 35,000 tons of buffer stocks have been purchased—as compared with 5,000 tons under the existing agreement. Similarly, the proposal called for a total buffer stock of 50,000 tons as compared to mandatory stock purchases of only 20,000 tons under the current agreement. We still feel that some further improvements are necessary with regard to these and other aspects of the agreement. If these can be secured in the current negotiations, we believe that we will have an agreement that will offer protection against price surges as well as price declines and that will, thus, provide substantially greater benefits to consumers.

The U.S. is working very hard to secure basic improvements in the Tin Agreement at the current negotiations. The United States has been a member of the Tin Agreement only since 1976 and this is our first opportunity to achieve such improvement in this agreement. The ITA has been in operation for 25 years, since 1956; even without U.S. participation, a new ITA would, in all likelihood, still be put into effect. Therefore, we feel that the best way we can serve the interests of U.S. consumers is to continue to seek an improved agreement and, if that is achieved, to ensure that it is operated in a manner consistent with consumer interests.

There is one more aspect of the negotiations that I would like to point out to the Subcommittee and that concerns our relationship with the U.S. private sector. We have worked very closely with representatives of the U.S. tin-consuming industries and consumer group representatives throughout the negotiations and have tried to take their views into account to the maximum extent possible. We have discussed the issues with them prior to the negotiating sessions, and, in addition, have made extensive use of private sector advisors during the actual negotiations.

As Deputy Assistant Secretary Calingaert has indicated, once the negotiations are concluded, the Administration will examine the new agreement very carefully before deciding whether or not to seek Congressional approval for joining. The views of the U.S. tin-consuming industry will provide a major input into that decision.

Mr. PHILLIPS. Under the Reorganization Plan No. 3 of 1979, the Office of the United States Trade Representative was given the lead responsibility for the development of U.S. policy on international commodity agreements and for the conduct of commodity negotiations as part of its overall responsibility for international trade policy, and in fact we have exercised this lead role or lead responsibility in the Tin Agreement.

As was mentioned by Deputy Assistant Secretary Calingaert, we feel that the current Fifth Tin Agreement is deficient in a number of respects, and I believe he outlined those. As a precondition of entering into negotiations of the Sixth Tin Agreement, we made clear that we felt substantial improvements in the agreement were necessary, and although the outcome of the current negotiations is still in doubt, we feel that a great deal of progress will be made.

For example, under the previous agreement, export controls could be put on when only 5,000 tons of buffer stock had been accumulated where as at the current stage of negotiations the proposal made by the Chairman of the negotiating conference

would allow the imposition of export controls after 35,000 tons were accumulated.

We still feel that further improvements are necessary, and we are working very hard to secure these in the current negotiations.

I would also like to point out that even without U.S. participation it is likely that there will be a tin agreement, a Sixth Agreement will be put into effect, so we feel that if we can obtain an improved agreement it will be in our best interests and in the interests of the U.S. consumer if we continue in the agreement and work to improve it and work to ensure that it is operating in a manner consistent with consumer interests.

There is only one more aspect of negotiations I would like to point out, and that concerns our relationship with the U.S. private sector.

We have worked very closely with representatives of the U.S. tin consuming industries and consumer group representatives. We confer with them before the start of the various negotiating sessions, and we included industry representatives and consumer representatives as a private sector advisors at the negotiations.

Their views will continue to be taken into account and will be a major input into our final decision as to whether or not we should proceed to seek congressional approval of the Sixth Agreement.

Thank you.

Mr. ROYBAL. Thank you, Mr. Phillips.

#### OPERATION OF THE BUFFER STOCK

In order to get clarification with regard to this subject matter, will you please explain using actual price examples of the way the fund should work. Give us an overview of what it is, what you are trying to do, and how you think it should ultimately be working.

Mr. CALINGAERT. It might be best to use an example of the existing agreement which sets a floor and a ceiling price.

At the moment, the floor is \$5.47 per pound, and these are prices in Penang in Malaysia, and the ceiling is \$7.12.

That price range is intended to cover a general market trend. The purpose of this agreement and all agreements, essentially, is to try to maintain prices within a market trend and not to substitute for market forces because that simply won't work.

The range is divided into five parts. At the lowest end, the floor, the \$5.47 is where the buffer stock manager must make purchases for the buffer stock. That is intended to support the price.

There is a lower section from \$5.47 to \$6.02 where he has discretionary authority to purchase. There is a middle zone, which is from \$6.02 to \$6.57, where basically the buffer stock does not operate. He may operate if the Council gives authority, but that is a neutral zone in the middle of the range.

There is then an upper sector from \$6.57 to \$7.12, where the buffer stock manager may sell, and then there is the ceiling of \$7.12 where he must sell.

That is what the existing agreement is, and the new agreement would have some sort of a similar procedure, sir.

Mr. ROYBAL. What is the current price of tin as of today?

Mr. CALINGAERT. The current price is—

Mr. PHILLIPS. It is \$6.24.

Mr. ROYBAL. So he is not at the ceiling. You tell me the ceiling range is \$6.57?

Mr. CALINGAERT. Where he must begin to sell.

Mr. ROYBAL. All right; now suppose the price of tin stays at the current level; what will happen then?

Mr. CALINGAERT. If it stays within that neutral zone, then presumably there would be neither buying nor selling, because in fact the price of tin is about in the middle of this zone.

Mr. ROYBAL. So the price of tin then will have to go up to \$7.57 before you sell?

Mr. CALINGAERT. \$6.57.

Mr. ROYBAL. Before you sell?

Mr. CALINGAERT. At that point the buffer stock manager may begin to sell. He has discretionary authority.

Mr. ROYBAL. All right; when does he start buying?

Mr. CALINGAERT. When it goes down below. He may buy when it goes below \$6.02 and he must buy if the price reaches the floor which is \$5.47.

Mr. ROYBAL. Okay; so the purchase of tin at that \$5.47 then is mandatory, and the sale of tin at the higher price of \$6.57?

Mr. CALINGAERT. The ceiling is \$7.12.

Those are the two mandatory points.

Mr. ROYBAL. All right; the two mandatory points then are \$5.47 to buy and \$7.12 to sell.

Mr. CALINGAERT. That's right.

Mr. ROYBAL. Thank you.

Mr. CALINGAERT. In fact, this particular agreement has not worked terribly well because there has not been a large buffer stock and, obviously, the larger the buffer stock, the greater effect it is going to have on the market.

Mr. ROYBAL. Well, the whole concept of the buffer stock involved buying at a low price and selling at a high price so as to keep the price within a certain range, and that is the purpose of all these agreements.

Now, supposing you never reached any agreement. What would happen to the price of tin?

Supposing everyone did what he wanted and let the matter fluctuate.

Mr. PHILLIPS. I think you would have much more severe fluctuations in the price than has been the case.

You would tend to have much more marked up and down fluctuations which we don't think would be to the benefit of U.S. industry.

Mr. ROYBAL. Is it possible that tin would go below the \$5.47 per pound?

Mr. PHILLIPS. Yes; it would be conceivable, although I would also like to point out that there has been a tin agreement in effect for 25 years. We have just been a member since 1976.

Mr. ROYBAL. I am just asking a "for-instance" question.

What would happen if you did not enter into this type of agreement; would you be able to get tin at a lower price?

Mr. PHILLIPS. In some cases it is conceivable you could get it at a lower price, but this would generate a cutback in investment and

production and would lead to paying a much higher price some years hence.

This chart which we have here would give some idea of what we would hope to accomplish in the next agreement. It shows the trend of prices in recent years and, as you see, there is quite a movement up and down.

As Secretary Calingaert mentioned, there has not been a large buffer stock in previous years. We would hope in the future we would be able to smooth out some of those peaks which have occurred in price and which have been disruptive to our tin consuming industry, so that would be what we would hope to gain by the improvements we are seeking.

Mr. ROYBAL. The total amount you can spend on your budget is how much?

Mr. PHILLIPS. The total is \$120 million.

Mr. ROYBAL. Mr. Campbell?

#### BENEFITS OF THE TIN AGREEMENT

Mr. CAMPBELL. Do I understand that there is another benefit from this other than the stabilization in price, and that is access to the market.

It increases your access to the tin market in the world and stability of some of the producing countries not only to tin but perhaps even to other resources?

Mr. PHILLIPS. Yes; we would feel, just looking at it from a narrow economic point of view, we would feel it would help to assure our access to tin supplies, and we have used the forum provided by the Council to try to persuade various countries to modify their policies or to adopt policies which will ensure that there will be adequate supplies of the tin in the future.

There are also I think broader implications for the stability of some of these countries, and perhaps Mr. Calingaert would like to comment on those.

Mr. CALINGAERT. Just generally, the agreement is intended through this mechanism to give greater assurance of supply over the long term, which is clearly in our interest as a consuming country.

It is certainly viewed, as Mr. Phillips says, by the participating developing countries, including several of Southeast Asia, as being important for stability in this market.

Mr. CAMPBELL. Is there any one country with enough of a supply of tin that can literally move this market by itself to within the parameters you have set for the purpose of general manipulation?

Mr. PHILLIPS. Malaysia has a very large role in the tin production. I think it accounts for about 36 percent of world trade.

I think it would be difficult for them on their own to manipulate the market, but the tin production is fairly concentrated in a relatively small number of countries, and I think it is conceivable that they could, in collusion, manipulate the market.

Mr. CAMPBELL. They don't have a loose cartel or anything working?

Mr. PHILLIPS. They have been working through this International Tin Agreement.

Mr. CAMPBELL. If you got the type of buffer you are talking about, the 50,000 tons of tin with this type of agreement, would you think that that would be enough of an insurance policy against any type of a manipulation of the market? With the trigger mechanisms that you have, is 50,000 tons sufficient to prevent any type of manipulation?

Mr. PHILLIPS. The exact amount of the buffer stock is still under negotiation. That is what has been in the Chairman's proposal and we are still negotiating that, but we feel a stock in that general area would be sufficient, and agreement of the type that we are talking about now would be a sufficient guarantee against this sort of cartel type operation that you described.

We feel that with this type of agreement, the producers, it would be in their interest to participate in this type of arrangement.

Mr. CALINGAERT. Could I add to that?

We have tried in commodity management in general to participate in consumer-producer group organizations, so that there would not be one-sided action as in the case of producers and provide a forum where all the interests could be aired, and it would be much more likely then that some kind of cooperative policies would emerge.

Mr. CAMPBELL. Next to that forum is a benefit far behind just tin?

Mr. CALINGAERT. Sure.

Mr. ROYBAL. Mr. Akaka?

#### FINANCIAL OBLIGATIONS TO THE TIN AGREEMENT

Mr. AKAKA. Thank you very much.

We are grateful for your testimony this morning.

I would like to ask some questions about on page 1 of your testimony. You say that as a member of this new tin agreement we will be liable for financial obligations.

Does that refer to the \$120 million or are there other obligations?

Mr. CALINGAERT. There are two kinds of obligations. There would be administrative costs, which are running about \$200,000 a year, which come out of the State Department budget. What we are referring to here is the expenses involved in the buffer stock which would really be the central part of the agreement.

Mr. AKAKA. You also state here that there is a need to increase the buffer stock. Would this \$120 million be the amount of money from the United States that would increase it to the amount that you desire?

Mr. CALINGAERT. It is a little bit the other way around, sir. What we are trying to negotiate is an agreement with a larger buffer stock, since a larger buffer stock would be much better able to provide the kind of benefits that the agreement is intended to provide.

What we have done is to calculate what that total amount of money might be and our expectation of a potential U.S. share.

Mr. AKAKA. What you are attempting then is yield benefits to the consumers by increasing the buffer stock and by making an attempt to set a floor.

I think you mention here a floor price for our consumers.

Here also you mention the organization established by the agreement purchasers. What organization is this? Can you expand on that for me, please?

Mr. CALINGAERT. Let me comment on your first statement about the benefits to consumers.

Basically, we would be defending a floor price and a ceiling price. The benefits to the consumers are really on both ends. Certainly, a ceiling price benefits the consuming country and there are benefits from a floor price in terms of maintaining production and investments in production and, therefore, ultimately, supplies to the consuming countries.

The organization is that under the terms of agreement, there presently is and would be an Executive Chairman and a buffer stock manager, who is responsible for carrying out the activity of buying and selling and accumulating the buffer stock.

Mr. AKAKA. Now, would you say that you desire to establish a floor price, that is determined by production costs? Are these costs then the cost of producers which would be the foreign countries that we are dealing with? Would they set the floor price?

Mr. CALINGAERT. The organization, the Council, sets the price range which is to be defended, and it is based on estimates and discussions as to indeed what are costs of production and what are market trends.

Mr. AKAKA. Under your foreign policy, you stated that in world commodity trade, that the foreign nations concerned are likely to use U.S. attitudes. My question to you is, what are the attitudes of the United States that those foreign countries are interested in?

Mr. CALINGAERT. In this case what they are looking to is our attitude toward commodity organizations and commodity agreements and, as I mentioned, particularly in the case of countries like those of Southeast Asia, which are large exporters of tin and other commodities, they are looking for an attitude of the United States that takes into account the importance of their commodities to their economy and, therefore, how accommodating we are to their views both in general terms of participating in these kinds of organizations and more specifically in decisions within the organizations.

Mr. AKAKA. I think I understand this; but I will just ask it.

You state that the U.S. will share the costs with consumers equally. Does this mean that the consumers then would contribute about \$120 million?

Mr. CALINGAERT. What we are expecting to do in this agreement is that the cost first would be divided equally between producing and consuming countries, and then within each group the share of, for example, each consuming country would be based on its share of world trade.

#### INTERNATIONAL SUGAR AGREEMENT

Mr. AKAKA. Well, have you had any experience, I see here you are in ITA, International Tin Agreement; have you had any experience with ISA, International Sugar Agreement?

Mr. CALINGAERT. Myself, personally?

Mr. AKAKA. Yes; or your office.

Mr. CALINGAERT. Well, we have certainly been involved in both the negotiation of the International Sugar Agreement and carried it out. I was our representative a year ago at the Sugar Council meeting, yes.

Mr. AKAKA. Do you feel that the ISA is effective in providing stability?

Mr. CALINGAERT. I think it is a good example of the way a commodity agreement can help to mitigate price fluctuations, but also a very good example that they cannot run counter to the market. What happened earlier in the past several months, I think, is that as the additional stocks were put on the market under the terms of the agreement, stocks, which had been held back as the price was going up, served to hold prices back somewhat. This was clearly not sufficient and couldn't be sufficient to counter a market trend.

Mr. AKAKA. Now, in your experience, is there any way in which ISA could be made more effective?

Mr. CALINGAERT. I am not sure I am prepared for that one. Clearly, there have been lots of problems with it, and I understand, although I was not involved in the negotiations, they were very difficult and very complex. We will within the Administration have to review that, because the agreement expires during the course of next year and those are the questions we will address.

I am afraid I can't answer more specifically.

Mr. AKAKA. Let me ask you one more question and I think you know why I am interested in ISA.

How would ISA be affected if Cuba and Russia were participants in ISA?

Mr. CALINGAERT. Well, Cuba is a member of the ISA. The Soviet Union, I can't remember.

Mr. PHILLIPS. I am not sure whether they are or are not. I think they may be as well.

Mr. CALINGAERT. My recollection is that they are, yes.

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

Thank you.

#### CONTRIBUTIONS TO THE BUFFER STOCK

Mr. ROYBAL. Mr. Calingaert or Mr. Phillips, what is the tin stockpile at the present time?

Do you have an inventory?

Mr. CALINGAERT. The U.S. stockpile? It is 200,000 tons.

Mr. ROYBAL. When you enter into those agreements do you agree to purchase so much and make a commitment that you will be purchasing  $x$  number of tons, or what is the agreement?

Mr. CALINGAERT. The U.S. stockpile is totally separate from this.

Mr. ROYBAL. I understand.

Mr. CALINGAERT. The only connection is that under the existing agreement we agreed to make a voluntary pledge of tin from our stockpile. Under the existing agreement, producers have the obligation to provide for the buffer stock and consumers and others may contribute voluntarily, and we made a voluntary contribution which is in the course of being carried out. Basically the mechanism, the buffer stock of the agreement, is centrally controlled by

the organization, and when the price conditions are right, they will call upon members to make contributions.

Mr. ROYBAL. All right; and are the contributions fixed contributions that you agreed to?

I don't really understand the matter of contributions, whether it is something that is a fixed amount; how is that contribution determined?

Mr. PHILLIPS. It is determined essentially, as was mentioned, on the basis of the buffer stock that is chosen ultimately. Say we might decide that we will have a buffer stock of 55,000 tons and your contribution or obligation to the organization would depend on your share of funding that 55,000 tons, and that is where our estimate of \$120 million came from.

That is essentially based on our share of the vote in the International Tin Agreement.

Mr. CALINGAERT. I think what you are referring to, Mr. Chairman, is that at a particular time the buffer stock manager would decide how much he wishes to purchase.

Mr. ROYBAL. That is right.

Mr. CALINGAERT. At that point then the financial contribution for that is divided up among the countries, and so he would say within 30 or 60 days or whatever the period is, contributions are required so he can go on the market to make a purchase.

Mr. PHILLIPS. We would assume this would probably not be directed to the exact amount purchased.

At the beginning of the agreement, it is anticipated there will be a certain fund set up of perhaps \$100 million, and the U.S. share would be about \$15 million, so that would be an initial contribution so the buffer stock manager would have some funds available to influence the market if there were a quick change in price.

As the market situation would further evolve, he might ask for the various members to make additional contributions, so that he would be in a position to purchase stock.

Mr. ROYBAL. All right; now in your written statement you said that the chairman of the negotiating conference put forward a proposal which is widely subscribed to by producing countries, and that would allow the imposition of export controls only after 35,000 tons of buffer stock had been purchased.

Now, is that the present agreement; that is your testimony.

Mr. PHILLIPS. No; the Fifth Agreement would allow imposition of export controls by a vote, of course, after only 5,000 tons had been purchased. We find that a very unfavorable aspect of the existing agreement, because on the one hand it prevents us from accumulating a large enough stockpile so we can dampen price increases and, secondly, we think it would take tin out of production prematurely.

Mr. ROYBAL. This has not been agreed to yet?

Mr. PHILLIPS. No; that has not been agreed to, and we are still negotiating on that and we still feel that the condition for the imposition of export controls should be even more rigid than that, but I gave that as an illustration of what we feel is an example of the progress that has already been made in negotiations.

## THE APPROPRIATION REQUEST

Mr. ROYBAL. What would happen if the \$120 million were not made available by this committee?

Mr. PHILLIPS. Effectively that would preclude us from participating in the agreement.

Mr. ROYBAL. Supposing it were decided that half of that amount would be obligated; would you participate halfway?

Mr. PHILLIPS. We would be in a very difficult position in order to meet our obligations and I am sure it would affect our participation in the agreement.

Mr. ROYBAL. What I am trying to find out is what is your obligation.

I was asking questions whether or not you agree that you are going to do certain things, buy so many tons and so forth, so I don't really get the connection between the Sixth Agreement that has not been decided on and the \$120 million that you are requesting.

Mr. CALINGAERT. If we are to join the Sixth Agreement, we would have financial obligations.

Mr. ROYBAL. Oh, haven't you already joined it?

Mr. CALINGAERT. No, sir. The Sixth we have not. The Sixth is the one that is presently under negotiation and the Fifth expires in the middle of 1982.

Mr. ROYBAL. What would happen if you did not get the \$120 million? You would not participate in the Sixth Agreement?

Mr. CALINGAERT. Assuming that we join, there would have to be funds so we would be able to meet potential obligations under the terms of that agreement.

Mr. ROYBAL. Now, if you do join in the Sixth Agreement and you do have \$120 million, do you agree to use that amount for the purchase of tin if the occasion arises?

Mr. PHILLIPS. Yes; if necessary, but it is in a sense a contingency fund. It would only be used if it became necessary for the buffer stock manager to purchase tin; but if in fact the prices were stable or higher than anticipated, we might in fact wind up not using any of the money.

In any case, we would get the money back at the end of the agreement.

Mr. ROYBAL. How long is the agreement?

Mr. CALINGAERT. Five years.

Mr. ROYBAL. During that five-year time, the price would fluctuate to a point where you may have to buy or have to sell.

Mr. PHILLIPS. Yes.

Mr. CALINGAERT. The agreement would provide at termination that the proceeds would be divided among the countries, and at this point one does not know what those proceeds would be, but basically our contribution should be there.

Mr. ROYBAL. Any further questions?

Mr. CAMPBELL. Thank you.

I have two very briefly.

When you don't know what the price is going to be, if you go above your ceiling when he the manager has to sell and he sells and the price keeps going, at that point is there no backup mechanism in this agreement for replenishing the stockpile or renegotiating a price, or do you have to renegotiate a whole new agreement?

Mr. CALINGAERT. If the prices go above the ceiling and the buffer stock is exhausted, under the agreement, nothing would happen until the price goes back.

Mr. CAMPBELL. Then you lose your safety valve against the cartel or something else at that point?

Mr. CALINGAERT. Yes. I assume that one would have mitigated the upward price movements in the case of sugar. It doesn't mean that at the end of that period there would be proceeds of the sale and the United States would have its share.

#### THE INTERNATIONAL TIN COUNCIL

Mr. CAMPBELL. One other question: What bearing does the International Tin Council have; is that the forum you had access to, or what?

Mr. PHILLIPS. International Tin Council is a part, it is set up by the International Tin Agreement. It is the executive body of the agreement, and we are now members of the Fifth International Tin Agreement.

Mr. CAMPBELL. Are you aware of the State Department budget, up now, strikes the Tin Council out for 1982?

Mr. PHILLIPS. The administrative expenses we are talking about?

Mr. CAMPBELL. No; participation in the budget.

Mr. PHILLIPS. I was not aware of that.

Mr. CAMPBELL. I believe you ought to become aware of that.

Mr. CALINGAERT. We are not aware of it.

Mr. CAMPBELL. You ought to go take a look at it, because it is one that was in the list that was proposed, and the argument that you are making here may be running a little counter to the cost of participation.

I am just wondering about this, and I don't know what the rationale is one way or another, but I would like to find it out.

Mr. CALINGAERT. So would I.

#### STATUS OF UNITED STATES FISCAL YEAR 1982 PAYMENT TO ADMINISTRATIVE ACCOUNT

Subsequently, the State Department provided the following information about the status of the United States fiscal year 1982 payment to the administrative account of the International Tin Council (ITC):

Last year when the State Department budget was prepared, it was expected that the earliest a new Sixth International Tin Agreement (ITA) could enter into force would be July 1, 1981, the expiration date of the existing Fifth ITA. Therefore, following normal procedures, the request for a fiscal year 1982 \$200,000 payment for the U.S. share of the administrative budget of the ITC was placed in a category that includes contingencies—the International Conferences and Contingencies section of the International Organizations budget—not in the Contribution to International Organizations section.

Subsequently, at its January 1981 session, the ITC extended the existing Fifth ITA through June 30, 1982 to allow additional time to complete negotiations for the Sixth ITA. The Fifth ITA will remain in force until July 1, 1982. Since the ITC fiscal year runs from July 1 through June 30, the United States will have an obligation of about \$200,000 to the administrative account of the Fifth ITA during the United States fiscal year 1982 requiring expenditure of those funds presently requested in the International Conferences and Contingencies section of the budget.

#### LEGISLATIVE PROCEDURAL MATTERS

Mr. ROYBAL. Mr. Gunnels?

Mr. GUNNELS. Mr. Chairman, I do have one question. It is or timing.

I notice here you say when the negotiations of this tin agreement are completed then the Administration will review it and if they like it then they will send it to the Senate for advice and consent, and if that happens then it will be sent to the legislative committees for authorization.

But you are asking this committee to give you \$120 million before the agreement is complete. That seems to be out of order.

Couldn't you wait until you got all of those things and then say, this is the agreement, and we need the money to participate?

Mr. CALINGAERT. It is a question of the cycle. If we were to join, these are funds that we would be requesting for fiscal 1982, which is the present budget.

Mr. GUNNELS. Suppose some of those propositions here do not occur; this committee would be in a position of going out on the floor and asking for \$120 million before we have an agreement?

Next year, or any time, you could have a supplemental to implement this.

The legislative committees, when they consider it, the Senate when it considers the ratification, they could let the Appropriations Committee know that this is their position.

That troubles me a little bit, the order in which this is being handled.

Mr. PHILLIPS. I guess at this time it is the intention of the Administration to participate in the agreement, so I think it is probably in the interest of candidly completing the budget, we would be including this item because we feel, assuming these negotiations are successfully completed, it would be something that we would be asking for in the fiscal year 1982 budget.

Mr. GUNNELS. Then you are assuming that all of these actions will occur?

Mr. PHILLIPS. Yes.

Mr. GUNNELS. You are going on an assumption?

Mr. PHILLIPS. Yes; I feel it would be easier to ask initially rather than say come out of the blue in the middle of the fiscal year.

Mr. ROYBAL. What position would the committee be in if we request this amount on the Floor before those actions take place?

Mr. PHILLIPS. Well, I am not that familiar with the procedures in Congress, but I would think it would be presented in the light that this Congress will have the chance to review this specific appropriation at a later date and it might not be requested.

Mr. GUNNELS. Technically under the Rules of the House, we cannot propose appropriations unless there is authorizing legislation for it, and any member can object to it and the Speaker of the House would have no choice except to rule it out of order. That is the position we would be put in, proposing money before there is authorization for it.

Mr. CALINGAERT. The other side of the problem is not so much proceeding with the negotiations, but finding ourselves where the schedule is such that when the agreement comes in effect we are not able to carry out our obligations.

Mr. ROYBAL. Well, you could still come in with a supplemental at a later time, if this request for \$120 million is not approved.

Mr. PHILLIPS. The current round of negotiations is scheduled to end at the end of next week.

Mr. GUNNELS. That might solve it.

Mr. CALINGAERT. The intention had been to conclude negotiations. This round would give countries one year in which to go through the various legislative and other procedures.

Mr. ROYBAL. So there is actually time then to consider this.

Mr. CALINGAERT. Yes.

Mr. ROYBAL. All right, sir.

Thank you very much.

Mr. CALINGAERT. Thank you.

Mr. PHILLIPS. Thank you, Mr. Chairman.

CARTER BUDGET

INTERNATIONAL COMMODITY AGREEMENTS

FEDERAL FUNDS

*General and special funds*

Contributions to International Buffer Stocks

For the United States' contribution to the Common Fund for Commodities, \$73,850,000, to be available upon ratification and while the Common Fund is in effect with respect to the United States; and for the United States' contribution to the Sixth International Tin Agreement, \$165,000,000, to be available upon ratification and while the Sixth Tin Agreement is in effect with respect to the United States; and funds made available under any Act for the United States' contribution to the International Natural Rubber Agreement shall remain available while that Agreement is in effect with respect to the United States. (Additional authorizing legislation to be proposed.)

PROGRAM AND FINANCING

[In thousands of dollars]

identification code 11-0043-0-1-155	1980 actual	1981 est.	1982 est.
Program by activities:			
Capital investment, funded:			
1. U.S. contribution to the International Natural Rubber Agreement .....		88,000	
2. U.S. contribution to the Common Fund for Commodities .....			73,850
3. U.S. contribution to the Sixth International Tin Agreement .....			165,000
10.00 Total obligations (object class 33.0) .....		88,000	238,850
Financing:			
40.00 Budget authority .....		88,000	238,850
Relation of obligations to outlays:			
71.00 Obligations incurred, net .....	88,000		238,850
72.40 Obligated balance, start of year .....			83,000
74.40 Obligated balance, end of year .....	-83,000		-291,810
90.00 Outlays .....	5,000		30,040

U.S. participation in the International Natural Rubber Agreement includes a contribution for the Agreement's buffer stock, which will trade on world markets to stabilize rubber prices and encourage adequate production. For similar objectives, a contribution is requested for the proposed Sixth International Tin Agreement. The proposed Common Fund for Commodities would pool the resources of several commodity agreements to achieve economies in financing international buffer stocks. Upon termination of these Agreements, the U.S. share of the remaining assets would be refunded.

REAGAN BUDGET AMENDMENT  
INTERNATIONAL COMMODITY AGREEMENTS

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I-D29 .....	Contributions to international buffer stocks .....	238,850,000	-118,850,000	120,000,000
	(In the appropriation language under above heading delete "the United States contribution" through "and for" and delete "\$165,000,000" and insert in lieu thereof \$120,000,000.)			

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This amendment deletes the 1982 request for the Common Fund, \$73.85 million, and reduces the 1982 request for the Sixth Tin Agreement from \$165 million to \$120 million. This action would reduce 1982 outlays by \$20 million.

THURSDAY, MARCH 19, 1981.

**COMMITTEE FOR PURCHASE FROM THE BLIND AND  
OTHER SEVERELY HANDICAPPED**

WITNESSES

CLYDE C. COOK, CHAIRMAN  
CHARLES W. FLETCHER, EXECUTIVE DIRECTOR

Mr. ROYBAL. The committee will now hear from the Committee for the Purchase from the Blind and Other Severely Handicapped Persons.

The witnesses are Mr. Clyde C. Cook, Chairman, and Mr. Charles W. Fletcher, the Executive Director.

You may proceed in any way you may desire.

WRITTEN STATEMENT

Mr. COOK. With your permission, I will submit a written statement for the record.

Mr. ROYBAL. Without objection, your full statement will be inserted at this point in the record.

[The statement of Mr. Cook follows:]

PREPARED STATEMENT OF CLYDE C. COOK, CHAIRMAN, COMMITTEE FOR PURCHASE  
FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Mr. Chairman, we are pleased to appear here today to present the appropriations request of the Committee for Purchase from the Blind and Other Severely Handicapped for fiscal year 1982. With me today is Mr. Charles W. Fletcher, the Executive Director of the Committee.

This Committee was created by the Javits-Wagner-O'Day Act (Public Law 92-28) in 1971. The Committee is the successor to the Committee on Purchases of Blind-Made Products established by the Wagner-O'Day Act of 1938. Its purpose is to increase employment opportunities for blind and other severely handicapped, and whenever possible, to prepare these individuals to engage in normal competitive employment. The Committee's primary means for achieving its objective is to direct the Government's procurement of selected commodities and services to qualified workshops serving the blind and other severely handicapped.

The 15 members on the Committee are appointed by the President. Eleven members represent various Government agencies and four are private citizens who are conversant with the problems in employing the blind and other severely handicapped.

Under the Act, the Committee has the responsibility for determining which products and services are suitable for provision to the Government by qualified workshops serving the blind and other severely handicapped, and for establishing the price which the government will pay for those commodities and services.

The Committee has a full-time staff of twelve persons to assist in the implementation of the program. The staff is responsible for developing recommendations and proposals for the consideration of the Committee. Operationally, it supervises the selection and assignment of new commodities and services; assists in establishing the fair market price and reviewing price changes; verifies the qualifications and monitors the performance of workshops; and serves as a vital link between the workshops and the Federal Government in expanding the program and resolving production problems. In addition, the staff handles all of the administrative functions for the Committee such as developing policies and procedures, initiating and responding

to correspondence, preparing the Committee's budget, and performing all the functions required of an independent Government agency.

During the past year, the Committee has continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped individuals.

Workshop sales to the Federal Government under the Committee's program during fiscal year 1980 were \$98 million. In addition, sales through the military resale program were over \$9 million for a total of over \$107 million under this program. This represents an increase of \$15 million over the total workshop sales of \$92 million in fiscal year 1979.

Blind workshop sales, including those through the military resale program, increased from \$71 million in fiscal year 1979 to over \$79 million in the past year.

Government sales by other severely handicapped workshops under this program were \$28 million, an increase of \$7 million over fiscal year 1979.

During the past year, the Committee approved the addition of 61 commodities and 35 services to the Procurement List with a value of \$25 million. These additions created new jobs for 900 blind and handicapped individuals.

By the end of fiscal year 1980, the Committee had authorized 70 blind and 123 other severely handicapped workshops to provide one or more commodities and services on the Procurement List. This represents an increase of 4 blind workshops and 15 other severely handicapped workshops over the totals at the end of fiscal year 1979.

Our appropriations request for fiscal year 1982 is for \$621,000. In addition to the \$500,000 in the fiscal year 1981 budget request, the Committee has requested a program supplement of \$39 thousand and a pay supplemental of \$26 thousand for a total of \$565,000 in fiscal year 1981. Our fiscal year 1982 request is \$56 thousand above that total.

The major portion of the increase of \$56 thousand is made up as follows:

Personnel compensation has increased \$15 thousand and is primarily to cover step increases in salary and funds to reimburse other agencies for special services.

The bulk of the increase in "Communications, Utilities and Other Rent" is \$19 thousand for the rent of a new computer-word processing system to replace the Committee's current Linolex 4000 system which no longer meets our data system needs.

Of the increase for "Other Services", \$10 thousand is for programming support for the new data system discussed above.

The balance of the increase is made of minor increases of from \$1 thousand to \$3 thousand in the various object classifications. The increase of only \$2 thousand in "Travel and Transportation of Persons" reflects the President's guidance to reduce travel in fiscal year 1982 by 15 percent.

In our view this budget request is the minimum the Committee requires to discharge its responsibilities in expanding the employment opportunities for the blind and other severely handicapped of our Nation.

#### BUDGET SUMMARY

Mr. Cook. Mr. Chairman, during the past year the committee has continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped individuals.

Our appropriations request for fiscal year 1982 is for \$621,000. In addition to the \$500,000 in the fiscal year 1981 budget request, the committee has requested a program supplemental of \$39,000 and a pay supplemental of \$26,000 for a total of \$565,000 in fiscal year 1981. Our fiscal year 1982 request is \$56,000 above that total.

The major portion of the increase of \$56,000 is made up as follows:

Personnel compensation has increased \$15,000 and this is primarily to cover step increases in salary and funds to reimburse other agencies for special services and for a number of expenses which I will discuss.

The bulk of the increase in communications, utilities and other rent, is \$19,000 for the rent of a new computer-word processing system to replace the committee's current Linolex 400 System

which no longer meets our data system needs. Shortly, we will not be able to maintain it because of the lack of parts.

Of the increase for Other Services, \$10,000 is for programming support for the new data system discussed above.

The balance of the increase is made of minor increases of from \$1,000 to \$3,000 in the various object classifications.

The increase of only \$2,000 in Travel and Transportation of Persons reflects the President's guidance to reduce travel in fiscal year 1982 by 15 percent.

This completes my summary. We shall be happy to answer any questions you may have on our request.

Thank you.

Mr. ROYBAL. Anything to add to that, Mr. Fletcher?

Mr. FLETCHER. No; I think that covers the main points, sir.

Mr. ROYBAL. Thank you.

Mr. Cook, why isn't it possible for you to be able to absorb the increase of \$56,000?

Mr. COOK. To absorb that increase, sir, would call for two things, and one would be a reduction in staff below the current level.

It is my personal opinion that the staff is the minimum required to continue to increase the employment opportunities for the handicapped in workshops. A major portion of the cost of travel is for staff visits to workshops to determine that they are properly qualified to produce under the Javits-Wagner-O'Day Act.

Mr. ROYBAL. How many employees are involved?

Mr. FLETCHER. There are 12 members on the staff.

Mr. ROYBAL. And those 12 members travel to different parts of the country to inspect the workshops?

Mr. COOK. Two or three staff members do most of the traveling.

#### WORKSHOP SALES

Mr. ROYBAL. What is the total amount of the sales to the government in fiscal year 1981 and what is the estimate for 1982?

Mr. COOK. For 1981 it was a little over \$107 million.

Mr. FLETCHER. We don't have the total for fiscal year 1981 because the year is not complete. We have data for 1980 which ended last September?

Mr. COOK. I am sorry, sir; the total was for 1980.

Mr. ROYBAL. The \$107,000 is for 1980?

Mr. COOK. Yes, sir.

Mr. ROYBAL. Do you have any projections as to what the amount would be for 1981?

Mr. COOK. Based on the amount of increase that we achieved last year, the total in 1981 would probably be in the neighborhood of \$125 million, perhaps more.

Mr. FLETCHER. I would say around \$120 million in 1981 and then for 1982 in the range of \$130 to \$135 million.

#### COMMITTEE FUNCTIONS

Mr. ROYBAL. All right; explain to me briefly your function when it comes to purchasing from the blind.

What do you do exactly?

Mr. COOK. The committee was established by the Javits-Wagner-O'Day Act. Most of the committee members are appointed from various departments and agencies of the Government. The committee approves either all or a part of certain commodities used by the Federal Government for purchase from the workshops of the blind and other severely handicapped. Once the Committee approves an item, Federal agencies are required to use the workshops as their source of supply.

The committee's function is to determine which items are suitable and to determine the fair market price which the government must pay for these commodities or services. Additionally, before it approves an item, the Committee considers the impact of its action upon the commercial supplier of the item.

Mr. ROYBAL. Anything that is purchased is used by the government?

Mr. COOK. Yes, sir.

However, those workshops may make other items that are not covered by our program.

Mr. ROYBAL. They are not just contracted to produce for the government?

Mr. COOK. They may also have commercial sales, and many do.

Mr. FLETCHER. The committee itself procures no items except those needed for the support of the 12-person staff.

These pens have been made by the blind for the last 12 or 13 years; these are the standard government pens.

Mr. ROYBAL. Oh, yes.

Mr. COOK. You see the word, "Skilcraft"; that is the trade-name for the blind shops.

Mr. FLETCHER. This marker is likewise made by the blind, and these pencils are also made by blind workers.

#### GOVERNMENT PRICES

Mr. ROYBAL. Now, when you enter into a contract with a particular shop, and they also sell to the general public, does the government pay a wholesale price for those pens or on what basis do you make the purchase?

Mr. COOK. The price the government pays, in the case of the pens, would compare with the wholesale price. The committee's function is to determine that the price is reasonable in terms of what the commercial market is charging for same or similar types of items.

Generally speaking, when an item is first listed, this will be determined by comparing the price asked by the workshops with the last open competitive purchase from commercial sources adjusted, if necessary, because of inflation.

#### BLIND WAGES

Mr. ROYBAL. Now, what is the average wage for blind people in the workshops?

Mr. FLETCHER. The average wage for the blind people working on our program is \$3.23 an hour. That was in fiscal year 1980.

Mr. ROYBAL. Isn't that below the minimum wage?

Mr. FLETCHER. In calendar year 1980 the minimum wage was \$3.10 an hour. Fiscal year 1980 started out at \$2.90 an hour for the first three months, it went to \$3.10 for the last nine months. This past January the minimum wage went to \$3.35.

Mr. ROYBAL. You are paying \$3.23?

Mr. FLETCHER. That is the average. That is the take-home pay that they get. Blind and handicapped persons in workshops are authorized by the Department of Labor to be paid in accordance with their productivity, so that a blind person who is only 50 percent productive and is doing a job which normally pays \$4.00 an hour will actually receive \$2.00 an hour based on his productivity.

This is covered under Department of Labor regulations.

We review wage rates in connection with our pricing actions, and where we feel that there is a question about whether or not the pay is adequate, we bring this to the Department of Labor's attention.

Mr. Cohen, who appeared here with me earlier this month, is the Department of Labor member on the committee, and I communicate directly with him on these matters.

Mr. ROYBAL. You see to it that the severely handicapped or blind person is not being taken advantage of?

Mr. FLETCHER. We do within our capability, although we do not have the responsibility for the enforcement. That rests with the Department of Labor. If we see a case which looks suspicious or questionable to us, we bring it to the Department of Labor's attention.

Mr. ROYBAL. If you feel that they are being taken advantage of, you report this to the Department of Labor?

Mr. FLETCHER. That is correct. The Secretary of Labor, under law has the responsibility for the enforcement.

#### WORKING CONDITIONS

Mr. ROYBAL. But that is not your function to look into the working conditions of the blind?

Mr. FLETCHER. It is not our primary function, but our inspectors observe what is going on in the workshop and if they see unsafe working conditions, they bring it to the attention of the Department of Labor who has the responsibility for the OSHA program.

#### PRODUCTS ON PROCUREMENT LIST

Mr. ROYBAL. How many products do you now have on the approved list and what is the potential for more?

Mr. COOK. We have 281 groups of commodities totalling 1,157 line items, and in addition there are 35 types of services at 141 locations. Also, there are 103 items that are sold through the military resale program in the PX's and commissaries.

Mr. FLETCHER. In fiscal year 1980 we added 61 groups of commodities and 35 separate services to the procurement list. I would expect in fiscal year 1981 we will add approximately the same number, so we are increasing at a rate of 15 to 20 percent per year.

This is not entirely accurate since each year government agencies drop items that they have been procuring so there is move-

ment on the procurement list with items being dropped as well as items being added.

The net effect is that we are adding probably in the range of 10 to 12 percent as some additions to the procurement list are off-set by deletions from the procurement list.

Mr. ROYBAL. The workshops that produce these pens, do they produce something else?

Mr. FLETCHER. Some do and some don't. Because the pens are such large volume items and all of GSA's requirement for these pens are made by only four or five blind workshops, they are kept busy just producing those pens for the Federal Government.

Mr. ROYBAL. Mr. Campbell?

Mr. CAMPBELL. No questions, Mr. Chairman.

#### PRICE OF PRODUCTS

Mr. ROYBAL. I have one last question.

Overall, how much does the government pay for products produced by the blind and severely handicapped?

Mr. FLETCHER. The total was something over \$107 million, as we indicated, last year. We would expect this year for it to go to \$120 to \$125 million.

Mr. ROYBAL. Now, do you think that you are getting your money's worth, particularly, let's say, on these pens, that it is a competitive price?

Mr. FLETCHER. Originally, there were two types of ballpoint pens. This is a retractable ballpoint pen which is the most popular and there was a nonretractable which was made the same except that it did not have this little plunger at the top.

The blind, working with GSA but at the instigation of the National Industries for the Blind, actually developed this stick-type pen, which is a more popular type of pen. It is comparable to the Bic Pen.

This stick-type pen saved the government two cents apiece. That does not sound like very much but when you are talking about millions of pens being used each year, it eventually runs into millions of dollars.

This pen, incidentally, contains the same cartridge as the retractable pen and has a shelf life of several years.

Each lot of these cartridges is tested at the National Industries for the Blind Laboratories in St. Louis to determine that they meet the government specifications. One of the requirements is that they start to write within a few inches after hitting the paper, and that they write for 5,000 feet without skipping or blotting. The standards for this pen are higher than industry's, and that is why these pens are so popular, because they write for so long.

Mr. ROYBAL. This was actually developed by the blind?

Mr. FLETCHER. The replacement item was developed on their own initiative; that is correct.

Mr. ROYBAL. I am pleased to hear that.

Mr. FLETCHER. This pen is substantially cheaper than the comparable Bic Pen, and the quality is substantially higher.

Mr. ROYBAL. The truth of the matter is we are getting our money's worth?

Mr. COOK. Yes, sir.

Mr. FLETCHER. Visiting the workshops and seeing these blind and handicapped people doing useful work is the greatest satisfaction to me. It is an inspiration to see how pleased and happy they are to be useful, productive citizens rather than simply sitting at home on welfare.

Mr. ROYBAL. I had the opportunity of visiting some of the workshops, and I was very pleased with what I saw, particularly the report that I got with regard to their promptness. No one is late on that job. They start at eight or nine o'clock and they are there on the dot or before. They don't start leaving at fifteen minutes to five. They start leaving at five or leave at fifteen after, and those are the kinds of reports I got from the people who are involved.

I was very pleased with what they were doing. Now, I am even more pleased to find that we are getting our money's worth and that is the bottom line.

Gentlemen, I thank you very much for your testimony.

The committee will take it under consideration.

The committee is recessed until two o'clock.

[The justifications follow:]

COMMITTEE FOR PURCHASE FROM THE BLIND  
AND OTHER SEVERELY HANDICAPPED

## Salaries and Expenses

For expenses necessary for the Committee for Purchase from the Blind and Other Severely Handicapped established by the Act of June 23, 1971, Public Law 92-28, including hire of passenger motor vehicles (\$500,000). \$621,000

(Treasury, Postal Service, and General  
Government Appropriation Act, 1981)

Note: The appropriation for this account for 1981 had not been enacted at the time this budget was prepared. The 1981 amounts shown below are based upon a continuing resolution (Public Law 96-536) in effect through June 5, 1981.

COMMITTEE FOR PURCHASE FROM THE  
BLIND AND OTHER SEVERELY HANDICAPPED

## PROGRAM AND PERFORMANCE

The Committee for Purchase from the Blind and Other Severely Handicapped was established by the Wagner-O'Day Act of 1938, as amended. Its primary objective is to increase the employment opportunities for the blind and other severely handicapped and, whenever possible, to prepare them to engage in normal competitive employment.

The Committee determines which commodities and services are suitable for Government procurement from qualified nonprofit agencies serving the blind and other severely handicapped; publishes a procurement list of such commodities and services; determines the fair market price for commodities and services on the procurement list; and makes rules and regulations necessary to carry out the purposes of the Act.

The Committee staff supervises the selection and assignment of new commodities and services, assists in establishing prices, reviews and adjusts these prices, verifies the qualifications of workshops, and monitors their performance.

In 1982, 32,000 blind and handicapped individuals are projected to be employed in 237 producing workshops. The Committee also proposes to have 1,920 items on its procurement list, for an estimated workshop sale of \$130 million to the Federal Government in that year.

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-101

COMMITTEE FOR PURCHASE FROM THE BLIND  
AND OTHER SEVERELY HANDICAPPED

Rev. 2-20-81

Program and Financing  
(in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
95-2000-0-1-505			
<u>SALARIES AND EXPENSES</u>			
<u>Program by activities:</u>			
Select, price, and assign products and services of the blind and other severely handicapped for supply to the Government (Total program costs, funded) 1/	454	526	621
Change in selected resources (undelivered orders) . . . .	7	---	---
10.00 Total obligations	461	526	621
<u>Financing:</u>			
25.00 Unobligated Balance Lapsing	29	---	---
39.00 Budget Authority	490	526	621
<u>Budget Authority:</u>			
40.00 Appropriation	490	500	621
44.20 Supplemental requested for civilian pay raises	---	26	---
<u>Relation of obligation to outlays:</u>			
71.00 Obligations incurred, net	461	526	621
72.40 Obligated balance, start of year	77	74	74
74.40 Obligated balance, end of year	-74	-74	-74
77.00 Adjustment in expired accounts	-5	---	---
90.00 Outlays	459	500	621
91.20 Outlays from civilian pay raises	---	25	1
1/ Includes capital investments as follows: 1980 - \$4 thousand; 1981 - \$3 thousand; 1982 \$4 thousand.			

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

COMMITTEE FOR PURCHASE FROM THE BLIND  
AND OTHER SEVERELY HANDICAPPED

A-11-34A  
Rev. 2-20-81

SALARIES AND EXPENSES

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
95-2000-0-1-505			
Personnel compensation:			
111.101 Permanent positions	285	332	337
111.301 Positions other than permanent. . . . .	5	8	10
111.501 Other personnel compensation . . . . .	1	1	1
111.801 Special personnel service payments . . .	0	0	6
111.901 Total personnel compensation . . . . .	291	341	354
p Personnel benefits:			
112.101 Civilian. . . . .	26	32	34
121.001 Travel and transportation of persons. . .	26	28	47
123.101 GSA, SLUC . . . . .	24	34	34
123.201 Rent, communications, and utilities. . . . .	19	16	43
124.001 Printing and reproduction . . . . .	34	32	42
125.001 Other services. . . . .	31	30	50
126.001 Supplies and materials.	6	10	13
131.001 Equipment . . . . .	4	3	4
999.901 Total obligations . . .	461	526	621

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 500-101

COMMITTEE FOR PURCHASE FROM THE BLIND  
 AND OTHER SEVERELY HANDICAPPED

A-11-34A

## PERSONNEL SUMMARY - SALARIES &amp; EXPENSES

Identification code	19 80 actual	19 81 estimate	19 82 estimate
95-2000-0-1-505			
Total number of permanent positions . . . . .	12	12	12
Full-time equivalent of other positions . . . . .	0	0	0
Total Compensable Work Years . .	12.05	12.05	12.05
Average GS grade . . . . .	10.25	10.18	10.16
Average GS salary . . . . .	\$24,517	\$25,657	\$26,123

STANDARD FORM 306  
July 1968, Bureau of the Budget  
Circular No. A-11, Revised.  
306-103

COMMITTEE FOR PURCHASE FROM THE BLIND  
AND OTHER SEVERELY HANDICAPPED

A-11-35

## Salaries and Expenses

## DETAIL OF PERMANENT POSITIONS

95-2000-0-1-505	80	81	82
	19 actual	19 estimate	19 estimate
ES-2 . . . . .	0	1	1
GS-15 . . . . .	1	1	1
GS-14 . . . . .	1	1	1
GS-13 . . . . .	1	0	0
GS-12 . . . . .	3	3	3
GS-11 . . . . .	2	2	2
GS-9 . . . . .	0	1	1
GS-7 . . . . .	2	1	1
GS-5 . . . . .	1	1	1
GS-4 . . . . .	1	1	1
Total permanent positions . . . . .	12	12	12
Unfilled positions, Sept. 30 . . . . .	0	0	0
Total permanent employment, end of year . . . . .	12	12	12

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THURSDAY, MARCH 19, 1981.

## ADVISORY COMMITTEE ON FEDERAL PAY

## WITNESS

LILY MARY DAVID, CONSULTANT, ADVISORY COMMITTEE ON FEDERAL PAY

Mr. ROYBAL. The committee will come to order.

The committee is in session to hear from the Advisory Committee on Federal Pay.

You may proceed with your statement in any way that you may desire.

Ms. DAVID. Thank you, Mr. Chairman.

I am Lily Mary David, Economic Consultant to the Advisory Committee on Federal Pay

Our Chairman, Jerry Rosow, regrets that he cannot be with you today. He has a bad cold and felt it unwise to come down from New York under the circumstances.

You have Mr. Rosow's statement for the record, and I will simply highlight some of the points made in that statement, if that is agreeable.

Mr. ROYBAL. The written statement will be included in the record at this point and you may proceed and summarize.

[The statement of Mr. Rosow follows:]

PREPARED STATEMENT OF JEROME M. ROSOW, CHAIRMAN, ADVISORY COMMITTEE,  
ON FEDERAL PAY

I am Jerome M. Rosow, Chairman of the Advisory Committee on Federal Pay.

The Advisory Committee's statutory responsibility is to make recommendations with respect to annual increases in pay rates of approximately 1.4 million white-collar Federal employees. Changes in military pay are directly related to changes for these workers. Annual Federal civilian compensation costs are about \$36 billion—inclusion of the military raises this to close to \$70 billion. Each 1-percent increase in Federal white-collar civilian and military compensation costs close to \$700 million a year.

The Federal Pay Comparability Act of 1970 gave the Advisory Committee the duty of making independent recommendations to the President with respect to the annual Federal white-collar comparability pay increase. The pay reform legislation proposed by the previous administration would extend the Committee's role to pay plus benefits. The new Administration apparently is endorsing the principle of extending comparability to pay *plus* benefits for civilians but is proposing that Federal compensation be set at 94 percent of that in the rest of the economy.

Recommendations of the President's Panel on Federal Compensation in December 1975 and an Executive Order signed on July 20, 1977 expanded our Committee's original responsibilities. As a result, we are charged with acting as a third party to improve the pay decision process between the President's Pay Agent and organizations representing Federal employees and with making longer term policy recommendations regarding Federal pay policy.

Our mediation role between the Pay Agent and representatives of Federal employees has been in limbo since the members of the Federal Employees Pay Council resigned to protest the 1978 decision to issue an alternative plan. Since that time, representatives of the Federal employee organizations have met with the Committee to express their views regarding the annual pay increase recommendations and

have apparently considered us a bridge to the President and his Pay Agent with respect to white-collar pay.

Federal employee organizations reportedly are now considering a return to the Council. Should the Pay Council be reconstituted, the Committee will resume its mediation role in discussions between the Council and the Pay Agent. Our expenses for this will be small and are, of course, covered by the present appropriation request.

#### DEPARTURES FROM COMPARABILITY

1980 was the third successive year in which alternative plans reduced the annual civilian white-collar pay increase below comparability. (The military received a larger increase—equal to what was expected to provide full comparability with the private sector.) Knowing that there would be an alternative plan, the Committee made not only its required recommendations as to a full comparability increase but urged the President, instead of giving the alternative increase as a uniform percentage adjustment, to give increases coming as close as possible to comparability levels at each grade.

We were disappointed that the alternative increase was a uniform percentage adjustment for all grades except the two lowest, instead of varying among grades in proportion to comparability. Four successive uniform percentage increases have created a serious lag behind comparability in the upper grades of the Federal pay scale, whereas pay at the lower grades is either at or close to comparability.

#### PROBLEMS OF UPPER-LEVEL FEDERAL PAY

I would like to spend a few minutes talking about the serious problem of upper level Federal pay, where higher pay is important to improve the effectiveness of government and government management.

The problem at the upper levels is caused in part by increases that have departed from comparability but is also the result of failure to raise the ceiling on executive pay. It is further compounded by incentives to retire—notably, liberal early retirement and CPI escalation of pensions. We pointed out in our 1980 report that, while pay in Grades 13, 14, and the first step of Grade 15 increased 20.8 percent from October 1976 to October 1979, pay for comparable work in private industry rose 27 to 31 percent and CPI escalated pensions by 30 percent. Both in our annual reports and in my recent testimony before the Quadrennial Commission on Executive, Legislative and Judicial Salaries, we have urged substantial increases in the ceiling on executive pay, which would relieve the pay compression on managers and professional employees covered by the General Schedule.

The gap at the upper end of the Federal salary scale has not been corrected by the pay provisions of the Civil Service Reform Act. The Act does not change the salary scale for Grades 13 to 15; it simply changes the rules by which workers attain various steps within their grade. Those in the lowest steps of GS-15 receive approximately 11 percent less than their counterparts in the private sector, but those at the top of that grade lag even farther behind. These are the workers whose performance is judged to be the highest—they are in these steps because of merit pay. However, because of the Executive Level V pay ceiling, they are paid as much as \$10,500—or 18 percent—below comparability. If Congress does not raise the Executive Level V ceiling on General Schedule pay, the ceiling will prevent pay increases for more and more of the workers in these middle management grades and will have a greater restrictive effect on those whose above average performance puts them in the upper part of the pay scale. We already have seven levels of responsibility—in the General Schedule, in the Senior Executive Service, and at Executive grades—receiving the same pay.

For some members of the Senior Executive Service, the bonus provisions of Civil Service Reform will provide some relief from the pay ceiling, but even this relief has been curtailed by Congressional and Executive action. The proportion eligible for bonuses was reduced from the half provided in the legislation to 25 percent by Congress and to 20 percent by administrative action. Moreover, to the extent that the ceiling on pay plus bonuses does not keep pace with the increase in pay of General Schedule workers, the persistent problem of compression will erode incentives to accept more responsibility.

#### COMMITTEE ROLE IN POLICY RECOMMENDATIONS

The Committee is the only independent voice that exists to make policy proposals with respect to the enormous Federal payroll. Everyone else dealing with pay issues is subject to pressures to save money in the immediate future or to get the workers they represent as much as possible right now. Besides making its recommendations

with respect to each annual pay increase, the Committee has tried to keep its eye on the longer term problems of Federal compensation and labor relations. We have tried, with some success, I believe, to take account of longer term problems in our annual reports. Not only is the Federal payroll huge, but it should be used to improve Federal program management and efficiency.

In addition to making policy recommendations, we have consistently supported the principle of comparability, and there are times when I feel we are the only voice, or certainly one of the rare voices, crying in the wilderness. The mounting, shortsighted, attacks on Federal compensation reflect serious lack of public awareness of its importance as a management tool. The latest assault on pay comparability is a claim, published by a respected organization, that Federal pay varies among agencies because of the political pressure the agencies exert on Congress. This study ignores completely the fact that pay levels vary among agencies because of differences in occupational needs. Compare, for example, NASA's occupational needs with those of HEW or Agriculture.

As part of its effort to give an independent assessment of pay policy, the Committee, a couple of years ago, issued an 8-year history of Federal pay comparability. We are just about to issue a revision covering the first decade of the pay comparability legislation. The earlier report created a great deal of interest. The conclusions of both the 8- and 10-year reports are the same, notably, that the principle of comparability serves the public and Federal employees well but that it has been jeopardized by frequent departures from comparability and needs to be constantly guarded and improved.

We have a responsibility to react to proposals for pay reform—bringing to bear the knowledge that the Committee members have of good pay and compensation practices and administration. The Committee provided advice to the previous administration regarding its pay reform proposals. It agrees with the proposals of both the Reagan and Carter Administrations to extend comparability to benefits. However, we have serious questions about the methods to be used to extend the comparability principle to the complicated benefit area. We believe that any new system (a) should be fully tested before there is a final and specific commitment to a new benefit or compensation system, and (b) should be easy for Federal employees and the public to understand. The "black box" should be as simple and as open as possible.

We are deeply concerned not only about the formulas to be used but about the principle that is inherent in the total compensation comparability proposals—that is, that pay and benefits are interchangeable parts of a compensation system. In fact, immediate pay and deferred benefits serve different motivational purposes and, to some extent, attract different kinds of employees. A system that would compensate for overly generous retirement by reducing pay below levels in the private sector is likely to attract workers who are unwilling to take risks or are less innovative. Already large numbers of our most competent middle and upper level managers are leaving to take advantage of over generous retirement provisions and to escape from limitations on their pay, which keep it well below the levels for comparable work in the private sector. During a recent 12-month period, about three-fourths of those Federal employees eligible to retire and at the pay ceiling in the age 55 to 60 bracket retired. What is needed is to reform directly the retirement system for new Federal employees and future service of present employees and to tighten up on escalation of annuities.

So far as other pay reform proposals are concerned, we endorse proposals to add State and local government to the base against which Federal pay comparability is measured and to set pay of at least some white-collar workers on a locality basis. However, we believe that the system for setting locality pay should be as simple and streamlined as possible. Moreover, we question whether the locality approach should be extended to middle and upper level management positions; such an extension would be contrary to the practice followed in the private sector. We also believe that there is need for reform of blue-collar pay fixing.

#### USE OF PROPOSED BUDGET

The appropriation request for our Committee for Fiscal 1982 is \$218,000—\$26,000 more than our appropriation for Fiscal 1981. This will just about maintain the real value of our budget, considering increases that incurred in our rent, GSA support services, and pay scales. It will cover salaries and benefits of three full-time employees—an economist, a staff assistant, and a secretary; reimbursement of a part-time economic consultant and a very part-time mediator, who will serve as needed when the Pay Council is reconstituted; rent and operating expenses of our headquarters office; and salaries and travel expenses of the Committee members when they are engaged in Committee work.

In the past, the Committee has never spent its entire appropriation. We have always held back on spending, keeping a reserve to deal with compensation issues that might arise. It was only after we saw the specific proposals for pay reform that we felt a strong need for an independent look at data on these proposals. Even after deciding on the need for this review, we were cautious in hiring, since the quality of a small staff is so crucial, and now we are caught in the current hiring freeze. We have now discovered a number of highly promising candidates for the economist position that we need to fill, and, with the present budget request, we plan to fill this position once the hiring freeze is lifted.

This economist and part-time consultant will spend as much time as possible analyzing some of the issues raised by pay reform, such as Federal civilian retirement policy issues, the desirability of splitting the General Schedule into two pay plans instead of continuing with a single General Schedule, an analysis of alternative methods of determining locality pay rates, and study of alternatives to the present linkage between Federal white-collar and military compensation. We will probably concentrate our efforts initially on the problem of retirement policy and its impact on Federal pay in view of the certain and very serious consequences of the present policies and the proposals that would hold down current pay instead of facing up to the retirement problem.

#### RESPONSIBILITIES OF COMMITTEE

Ms. DAVID. The statutory responsibility of the Advisory Committee is to make recommendations with respect to annual increases in pay rates of approximately 1.4 million white collar Federal employees.

Changes in military pay are normally related to changes for those workers.

The Federal Pay Comparability Act of 1970 gave the Advisory Committee the duty of making independent recommendations to the President with respect to the annual Federal white collar comparability increase.

The pay reform legislation proposed by the previous Administration would extend the committee's role to benefits as well.

The present Administration apparently is also endorsing the principle of extending comparability to benefits for civilians, but of course it is too soon to know what will happen, whether there will indeed be legislative changes to extend comparability to benefits.

Our committee is also charged as a result of an executive order and because of recommendations of the Rockefeller Panel of 1975, with acting as a third party to try to improve the interaction between Administration representatives and organizations that represent Federal employees in the annual pay decision process, and with making long-term recommendations regarding Federal pay policy.

#### UNIQUE ROLE OF COMMITTEE

The Advisory Committee is the only independent voice that exists to make policy proposals with respect to the Federal white collar role. Everyone else dealing with pay issues is subject to pressures to save money in the immediate future or to get the workers they represent as much as possible as soon as possible.

The Advisory Committee has tried to take account, and I think with some success, of longer term problems. It has recognized that the Federal payroll should be used to improve Federal program management and efficiency, and that short-term economies may be costly in the long run.

The Committee has tried to explain to the public that pay levels that are comparable with the private sector are important if people who will be able to do a good job of managing Federal programs are to be recruited and kept in the Federal service in the interest of high quality performance. It has advocated that, even when alternative plans are enacted in periods of economic emergency, whatever money is available for a Federal pay increase should be distributed in such a way as to provide pay scales as close as possible to comparability at all pay grades.

#### COMPARABILITY DEPARTURES AT UPPER LEVELS

Unfortunately, however, serious departures from comparability have developed at the upper end of the scale. These departures are a result primarily of two factors.

First of all, the practice has developed of giving all grades the same percentage increase, even though pay has been going up faster for upper and middle level white collar jobs in private industry.

This has meant that the gap at these grades has been growing and growing.

Second, congressional and executive decisions to maintain a pay freeze have imposed an absolute ceiling on executive pay. At present seven levels of responsibility receive the same pay. That does not seem to be a very good way to run a railroad or a government.

The gap at the upper end of the Federal pay scale behind private industry has not been corrected by the provisions of the Civil Service Reform Act.

Indeed, with the executive pay ceiling, those employees in Grades 13, 14, and 15, whose performance is judged to be the best are the ones who lag the most behind private industry.

Even the relief that the bonus provisions of the Civil Service Reform Act will provide for some members of the Senior Executive Service has been restricted by recent congressional and executive limitations on the number of these bonuses.

#### ASSESSMENT OF COMPARABILITY

I can summarize by saying that the committee feels that the principle of comparability serves the public and Federal employees well when it is observed in practice.

However, the principle needs to be constantly guarded, and the procedures used to determine comparability need to be constantly improved.

As a result, the committee has made suggestions from time to time as to improvements that could be made and has provided advice with respect to the various pay reform proposals that have been developed.

In general, the committee supports most of the current pay reform proposals, but it has some questions about specific proposals.

#### PROBLEMS WITH TOTAL COMPENSATION COMPARABILITY

Its most serious concern involves the principle of total compensation comparability. While it believes that benefits in the Federal

Government should generally be comparable with those in the private sector, it does not look on pay and benefits as interchangeable as the total compensation comparability approach would do.

That approach essentially says, if benefits are too high, simply cut pay, but the committee feels quite strongly that pay and benefits are simply not interchangeable. They attract different people. Various people of different characteristics are attracted differently by pay than they are by benefits.

For example, a young person who is considering entering Federal service or is trying to decide whether or not he will stay or go out in the private sector is much more likely to be concerned about a salary that will meet his immediate needs and those of his family than about a pension he may expect to get in 10 or 15 years.

Already we see the effects of the failure of Federal pay to keep pace with living costs and pay in the private sector at the same time that retirement provisions continue to be very generous and keep pace with increases in the Consumer Price Index.

As a result, large numbers of middle and upper level civil servants are leaving Federal service just as quickly as they can, just as soon as they become eligible to retire.

The committee believes that what is needed is direct reform of the retirement system for new Federal employees and probably for future service of present employees and some tightening up on escalation of annuities, instead of cutting pay and letting retirement benefits continue unchanged.

#### COMMITTEE APPROPRIATION

The committee's appropriation for fiscal 1981 is \$218,000. This will just about maintain the real value of its present budget. That budget covers salaries and travel expenses of the committee members when they are engaged in committee work, salaries and benefits for three full-time employees, reimbursement of a part-time economic consultant, and a senior part-time mediator, rather small contingency funds for research for tabulating services, and rent and operating expenses.

That essentially summarizes our statement.

I will be glad to try to answer any questions you may have.

#### CONTINGENCY STUDY FUNDS

Mr. ROYBAL. Thank you, Mrs. David.

Is it possible for the committee to absorb the \$26,000 which is the difference between the 1981 and 1982 request?

Ms. DAVID. Well, if we absorb it it will simply mean that we have very little money for any special contingency studies.

We have always tried to keep in our budget some money in case some issue comes up at the time of the annual pay increase, or at the present time, if some issue arises with respect to pay reform proposals, to finance some special studies.

If those needs do not arise, we have simply turned the money back.

The money represents a cushion which we may or may not need, and we have been very careful not to spend money unless it was absolutely urgent that we do so.

Mr. ROYBAL. Well, if the proposal that you have made with regard to the method of establishing Federal pay is adopted, would that result in savings and perhaps under those conditions you could absorb the \$26,000?

Ms. DAVID. I don't think that that would affect the need. As a matter of fact, I think we would need probably more than less resources if the comparability principle is extended to benefits, by legislation, as I think it will be eventually—though it is hard to know when—and if the committee's responsibilities are extended to benefits.

#### REFORM PROPOSAL

Mr. ROYBAL. Well, what are some of the recommendations that you have made for change?

Ms. DAVID. Well, in the past we have made—you mean at the present time?

Mr. ROYBAL. At the present time.

Ms. DAVID. We have in general endorsed the general outlines, for example, the general outlines for reform that have been proposed by the Administration.

For example, setting white collar pay on a locality basis. However, we have questions about whether that should be extended to all levels of white collar workers or whether in fact the general schedule, which includes clerical workers, technical workers, professional workers, managers, administrators, is not really too broad—whether it is not covering too many jobs. The committee questions whether it would not be better to have two schedules, one, say going up to Grades 7 or 9, which would cover clerical people, and with the rates for those people set on a locality basis, whereas for managers and executives there would still be a national scale.

It is our belief that this is more comparable to what is done in private industry, so that we have some question about that.

We also are all a little bit concerned if a locality pay system is established for white collar employees, that the procedure that is adopted for setting specific rates be as simple and as easy to understand as possible, and we are not sure at this point how that will be done. I think we may well have some words of advice on that issue.

You can make setting locality pay into an enormously complicated job or you can keep it simple.

Mr. ROYBAL. As far as comparability is concerned, how does the government compare then with the private sector; that is one part of the question, and the other is, how would that affect paying that individual on a rate based on local pay comparability?

Ms. DAVID. Well, you could do it in a number of different ways.

One of the problems is that if you do extend comparability to benefits presumably you are not going to try to get benefit comparability area by area, and you can get into some rather complicated questions of equity if you have a national benefit scale and a local pay scale. You could presumably do surveys in every single community in which there are substantial numbers of government white collar workers, and say you are going to base the pay for the Federal employees in that area on that survey.

## IS PAY NOW COMPARABLE?

Mr. ROYBAL. Let's try to establish one thing at a time and establish this fact.

Is the government paying comparable wages to those in the private sector?

Ms. DAVID. Nationally?

Mr. ROYBAL. On a national basis.

Ms. DAVID. It would be if there had not been three alternative pay plans which have given smaller than comparability increases on average and if it had not given uniform percentage increases to workers at all grades, even though that is not what has happened in private industry. As a result the lag in pay for people in grades, say, GS-11, 12, 13, 14 and up is greater than it is at the lower grades.

Mr. ROYBAL. That is in the government sector?

Ms. DAVID. That is right.

Mr. ROYBAL. So what we are saying is that we are in fact lagging behind the private sector, especially in the upper grades?

Ms. DAVID. The upper grades.

Mr. ROYBAL. Thank you.

Ms. DAVID. That, and in addition the fact that there is a ceiling on executive pay has exacerbated the problem.

Mr. ROYBAL. When we talk about comparability, are we also including fringe benefits in that?

Ms. DAVID. At the moment, no.

Mr. ROYBAL. We are talking about comparability pay which does not include fringe benefits?

Ms. DAVID. That is right.

Mr. ROYBAL. How is that figure arrived at, the comparability of pay of any individual in the Federal Government based on a rate schedule of a comparable position in industry?

Ms. DAVID. It is based initially on a survey that the Bureau of Labor Statistics does each year on earnings for selected occupations in private industry.

That is the so-called PATC Survey. It covers a selected group of professional, administrative, technical and clerical jobs.

That information is then used by the Office of Personnel Management to develop pay by grades. There is a pay rate for grades one, two, so forth, which is essentially, or which would, if put into effect, result in average pay in that grade being the same as average pay for comparable work in private industry.

Mr. ROYBAL. All right.

Now, GS-11, 12, 13, 14 and above and also the other executive or supergrade positions, they are at the present time lagging behind the private sector?

Ms. DAVID. That is right.

Mr. ROYBAL. By what percentage? Do you have an idea?

Ms. DAVID. Well, it varies. It is rather small still at 11 and even at 12. Well, at 12 it is around 4 percent; at 13 it is almost 6 percent; at 14 it is 8; and at 15 it is almost 11.

Mr. ROYBAL. So it increases at the rate of 2 percent every grade?

Ms. DAVID. Yes.

Mr. ROYBAL. When it gets to the higher bracket, GS-15, it increases more than 2 percent?

Ms. DAVID. Well, yes, it goes from 8 to almost 11.

Mr. ROYBAL. How does that compare to the executive pay on the very top levels?

Ms. DAVID. There is not really very good information on executive pay in the private sector. There have been some estimates, but there has never really been much money spent in tying that down, partly because I think there is general recognition that the Federal Government is never going to pay people in executive positions, in the supergrades, for example, or the Senior Executive Service, as much as they would get in private industry.

The only concern is that the gap should not become so great that you cannot get people to take those positions and stay in them.

#### INCENTIVES TO WORK FOR THE GOVERNMENT

Mr. ROYBAL. Yes; but the Grades GS-11, 12 are not in exactly the supergrade category.

Ms. DAVID. No.

Mr. ROYBAL. But those are young men and women with a lot of ability that chose to come to work for the Federal Government who now find that they are lagging behind their counterpart working in the private sector.

What effect will that have on the morale, one, and the other, on any expectations that they may have to reach a higher paying position, if this lid continues to exist?

Ms. DAVID. I think if they really are terribly ambitious and concerned about their careers, they are likely to get out if they get a chance.

Mr. ROYBAL. The reason I ask that question is that I have been asking various departments what their employment rate is with regard to Hispanic, and we find that departments are lagging far behind what I would think would be a reasonable hiring rate.

One of the departments at one time said, well, maybe you can get us some, and I did.

Two young men came out here. One is a graduate of Harvard School of Business with a Masters Degree and the other had a Masters Degree in Public Administration.

The one that was trained in business was here a year and a half and he saw that he just could not get anyplace. He is now working in California making a lot better salary.

The one that came here as a graduate of the School of Public Administration has decided to leave and is leaving this June for the same reason.

We are losing, I think, very capable young men and women because of the situation.

Ms. DAVID. You are illustrating the point that these people are not going to stay by telling them "if you stick around until you are 55 or 60 you are going to have a really good pension".

They are not interested in what is going to happen then. They cannot pay for a house with a pension."

Mr. ROYBAL. Sure, and a pension is not going to educate their children.

Ms. DAVID. No.

Mr. ROYBAL. So they are looking at things from the standpoint of what does the family need at this moment, and the end result, as I

can see it, is we may be losing a lot of good capable people simply because of this restriction that we have, and I think the Congress of the United States is partially responsible for it.

Ms. DAVID. I think unfortunately that is true.

#### RENT

Mr. ROYBAL. Mr. Campbell?

Mr. CAMPBELL. Thank you, Mr. Chairman.

I just want to ask one question on your budget.

What is the increase from \$14,000 to \$30,000 under standard level user charges?

Ms. DAVID. For rent.

Mr. CAMPBELL. That is why it went up, because it more than doubled, as you can see.

Ms. DAVID. We had a lease. I think the government makes five-year leases and we had a five-year lease and when the lease expired that is what happened.

Mr. CAMPBELL. Same location?

Ms. DAVID. Yes; we considered moving and decided that there really was not a great deal of difference in where we are and where we could find space, and that the moving costs would not be worth it, but it was really a great shock.

Mr. CAMPBELL. That is a shock.

No further questions, Mr. Chairman.

Mr. ROYBAL. One last question, Mrs. David.

#### POSSIBLE LEGISLATIVE CHANGES

What legislative changes in the rate of pay would you recommend?

Ms. DAVID. Well, we would certainly endorse extending comparability to benefits but comparability to benefits separately from pay.

The inclusion of State and local government in the base against which Federal pay is measured would be desirable. I don't think anybody really knows how much effect that would have, but State and local government has certainly grown greatly in employment and it probably would be desirable for comparability purposes if it were included with the private sector as a base for measuring Federal pay.

Setting pay on a locality basis for some white collar jobs would presumably improve the acceptability of Federal pay scales. Certainly in communities in which pay is low, Federal pay scales must seem just completely out of line, whereas in other communities like, well, probably New York, certainly the West Coast, current Federal pay scales are low compared to private industry, and it makes it more difficult for the Federal Government to keep top flight people.

Either they over-grade the jobs or they lose the people.

I do not think that locality pay setting will save much money initially. It might cost some money, but it certainly would seem to be a desirable thing to consider seriously.

We do believe that if you are really concerned about true comparability, you should try reducing the lag. There is a six-month lag now between the date on which private industry pay is surveyed

and the date when Federal pay is increased. Hence, all those numbers that I mentioned to you, are the Federal pay lag behind what happened in private industry six months earlier.

I would say those are principal areas where we would endorse change.

Mr. ROYBAL. Mrs. David, we thank you very much for your testimony.

The committee will take it under advisement.

Ms. DAVID. Thank you for the opportunity to be here.

If you have any further questions let us know.

Mr. ROYBAL. If we have any, they will be submitted to you. Thank you very much.

[The justifications follow:]

## ADVISORY COMMITTEE ON FEDERAL PAY

## SALARIES AND EXPENSES

For necessary expenses of the Advisory Committee on Federal Pay, established by 5 U.S.C. 5306, \$218,000.

## General Statement

The appropriation will pay the expenses of the three members of the Committee for such time as they spend on Committee business, the salaries of the Committee's three full-time employees, rent and other expenses of maintaining an office, as well as the cost of special studies and economic advice in evaluating proposals with respect to proposed annual changes in the pay of 1.4 million Federal white-collar employees and the longer term issues involving Federal compensation policies. The direct compensation bill for white-collar employees totals about \$36 billion a year; the total direct compensation bill for all employees, including the military, whose pay is affected by the Committee's recommendations, is close to \$70 billion.

## ADVISORY COMMITTEE ON FEDERAL PAY

## JUSTIFICATION OF APPROPRIATION REQUEST, 1982

The Advisory Committee on Federal Pay was appointed by the President in January 1972 as an independent establishment in accordance with the Federal Pay Comparability Act of 1970. (Public Law 91-656). It consists of three members who are not otherwise employed in the Government of the United States. The Committee is responsible for preparing an independent annual report to the President with respect to increases in pay of the approximately 1.4 million Federal employees covered by the General Schedule, those employed in the Bureau of Medicine and Surgery of the Veterans Administration, and the Foreign Service of the United States. Changes in military pay are related to the changes put into effect for these workers. Annual direct compensation costs for Federal white-collar employees now amount to about \$36 billion and the total direct compensation costs directly or indirectly affected by the Committee's work--including military--amount to close to \$70 billion a year.

In preparing its report, the Committee must consider not only the recommendations of the President's Pay Agent (the Director of the Office of Management and Budget, the Director of the Office of Personnel Management, and the Secretary of Labor) but views of organizations representing Federal employees.

The Advisory Committee has two additional responsibilities, assumed as a result of recommendations of the President's Panel on Federal Compensation in December 1975 and an Executive Order signed on July 20, 1977. The first is a labor relations-mediation role--intended to improve the day-to-day and long-term relationships between the President's Agent and representatives of Federal employees and thus make possible a more satisfactory and smooth decision as to the annual white-collar pay increase. The second involves recommendations to the President regarding changes that should be proposed in Federal compensation policies and practices.

The members of the Committee are paid at a daily rate plus per diem and travel expenses for time spent on Committee business. In addition, the Committee needs funds to pay for special studies on questions relating to its annual report and longer term compensation policy issues, to obtain economic assistance in preparing its annual report and in monitoring relationships between Federal pay and the economy, to obtain assistance in mediating between the Pay Agent and representatives of Federal employees in their on-going negotiations with respect to Federal pay, and for the administrative expenses involved in its activities and maintaining a small headquarters office.

ADVISORY COMMITTEE ON FEDERAL PAY  
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 95-1800-0-1-805	1980 actual	1981 est.	1982 est.
<b>Program by activities:</b>			
Reviews and makes recommendations on Federal pay comparability (program costs, funded).....	94	192	218
Change in selected resources (undelivered orders).....	6	--	--
<b>10.0001 Total obligations.....</b>	<b>100</b>	<b>192</b>	<b>218</b>
<b>Financing:</b>			
<b>25.0001</b> Unobligated balance lapsing.....	132	--	--
<b>40.0001 Budget authority (appropriation).....</b>	<b>232</b>	<b>192</b>	<b>218</b>
<b>Relation of obligations to outlays:</b>			
<b>71.0001</b> Obligations incurred, net.....	100	192	218
<b>72.4001</b> Obligated balance, start of year.....	16	20	22
<b>74.4001</b> Obligated balance, end of year.....	-20	-22	-24
<b>77.0001</b> Adjustments in expired accounts.....	-2	--	--
<b>90.0001 Outlays.....</b>	<b>94</b>	<b>190</b>	<b>216</b>

1/ Includes capital investment as follows: 1980, \$2 thousand; 1981, \$2 thousand; 1982, \$2 thousand.

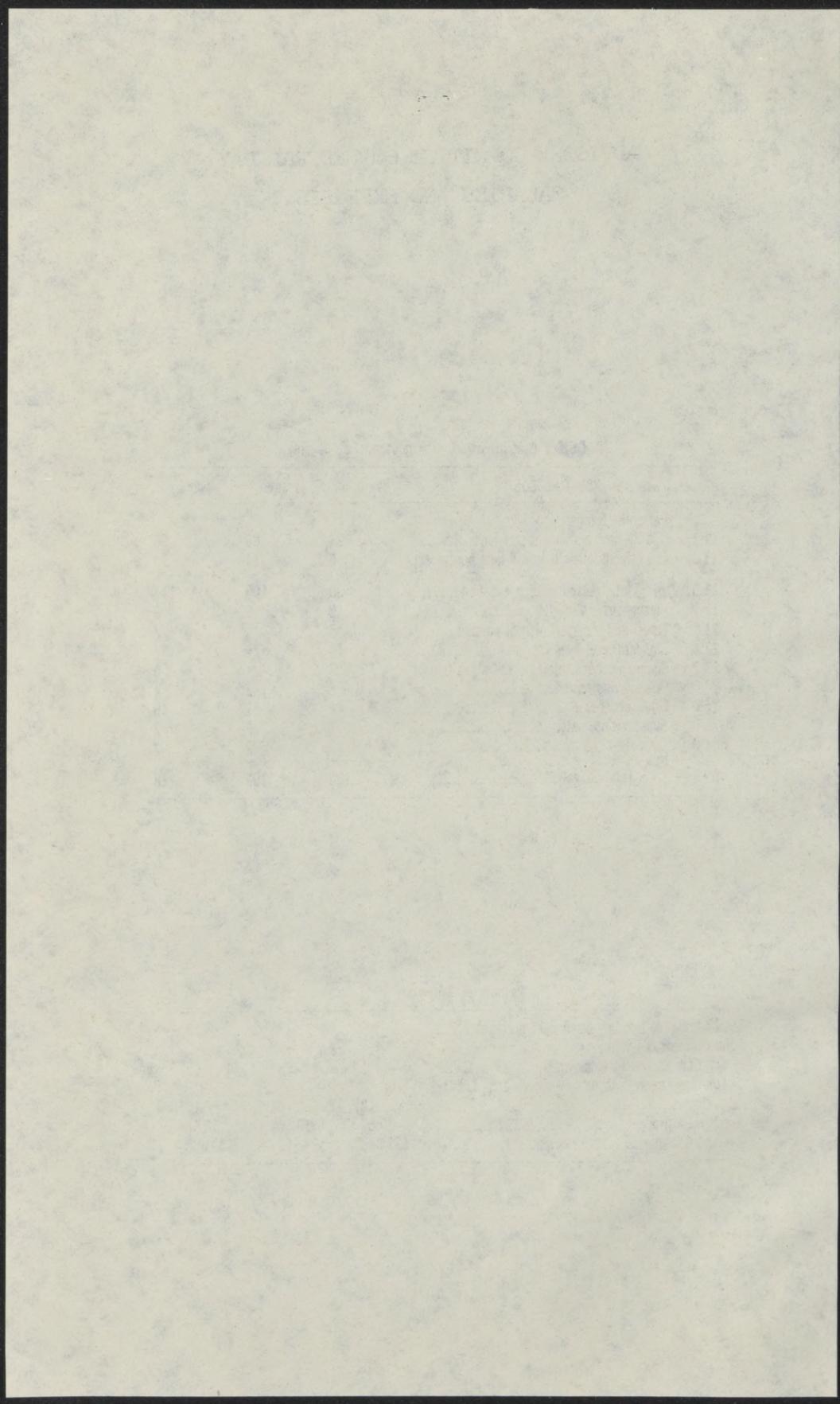
ADVISORY COMMITTEE ON FEDERAL PAY  
SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 95-1800-0-1-805	1980 actual	1981 est.	1982 est.
Personnel compensation:			
11.1 Full-time permanent positions.....	24	86	96
11.3 Positions other than full-time permanent	6	14	15
11.9 Total personnel compensation.....	30	100	111
12.1 Personnel benefits: Civilian.....	2	9	9
21.0 Travel and transportation of persons.....	3	8	8
23.1 Standard level user charges.....	14	14	30
23.2 Communications, utilities, and other rent....	3	4	6
24.0 Printing and reproduction.....	1	2	4
25.0 Other services.....	44	51	46
26.0 Supplies and materials.....	1	2	2
31.0 Equipment.....	2	2	2
99.9 Total obligations.....	100	192	218

Personnel Summary

Total number of full-time permanent positions.....	3	3	3
Total compensable workyears:			
Full-time equivalent employment.....	1	3	3
Full-time equivalent of overtime and holiday hours.....	(0)	(0)	(0)
Average GS grade.....	10.67	10.67	10.67
Average GS salary.....	\$25,803	\$28,667	\$32,000



WEDNESDAY, MARCH 18, 1981.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

WITNESSES

REUBEN R. ROBERTSON, CHAIRMAN

STEPHEN L. BABCOCK, EXECUTIVE DIRECTOR

Mr. ROYBAL. The committee will resume its sitting and hear the Administrative Conference of the United States regarding their fiscal year 1982 budget request.

Will you proceed, Mr. Robertson?

Mr. ROBERTSON. Thank you, Mr. Chairman.

My name is Reuben Robertson. I am Chairman of the Administrative Conference. With me today is our Executive Director, Stephen Babcock.

FISCAL 1982 APPROPRIATION REQUEST

I thank you for the opportunity to discuss with you our fiscal 1982 budget request.

I would like to briefly summarize what we have been doing during the past twelve months and tell you something about our plans for fiscal 1982.

Since I appeared before you last week in support of our fiscal 1981 supplemental request for the Equal Access to Justice Act work, I won't again take the time to describe the overall setup of the Administrative Conference.

Our appropriation request for 1982 is for \$1,244,000. This is basically a flat budget when compared to 1981. It consists of the same basic appropriation for the current fiscal year, \$1.1 million, plus \$67,000 for the October 1 pay raise. In addition, we request \$75,000 for continued work on an annual report to Congress, which is required under the Equal Access to Justice Act.

This request provides funding at only the very minimum level possible to maintain the operation of the Administrative Conference, and indeed the fact that this basic request has survived two rounds of scrutiny under the current Office of Management and Budget, as well as the prior one, should in itself suggest that our 1982 request includes funds only for the most essential of expenditures.

During the past year, the Conference has had two major meetings of all the members and adopted six formal recommendations, which I have described in some detail in the prepared statement.

If it would be better, I would like to provide that statement for the record.

Mr. ROYBAL. Without objection, your entire statement will be inserted in the record.

### THE "RACE TO THE COURTHOUSE"

Mr. ROBERTSON. I will mention one recommendation adopted last December, dealing with the so-called "race to the courthouse problem."

The Conference recommended that Congress should amend the Judicial Code in a way to provide for random selection of the proper reviewing court, for deciding which of the Circuit Courts of Appeals should take review, when petitions for review of agency decisions have been filed in two or more of the circuits.

I might add we are advised that legislation embodying this recommendation will be introduced in the near future in this Congress.

### NEW STANDING COMMITTEES

Also, at our December Plenary Session, the Conference revised its committee structure to provide a better focus and a more consistent theme for each committee's work, and I expect that this will improve the quality of committee deliberations and stimulate the interest and participation of our members.

A new Committee on Interagency Coordination was established in place of a former Committee on Compliance and Enforcement Proceedings, and a new Committee on Regulation of Business was created by merging two other former committees.

The Committee on Rulemaking and Public Information was separated into two separate entities, one on Rulemaking and the other on Public Access and Information.

### ADVICE AND IMPLEMENTATION

In the past year the staff of our office has continued to provide advice and assistance to agencies on a number of administrative and legal matters, and our annual report, which will be published and delivered to the Congress soon, will list several such projects on which agencies have received assistance from our office.

We have also continued to provide testimony and advice to committees of Congress and, in fact, the staff of our office was asked to testify before more congressional committees in the past year than in any previous year.

We also were asked to and did submit written comments on 18 separate bills and draft bills, in addition to those in which testimony was provided.

During 1980 and 1981 the Office of the Chairman has also increased its efforts to have Conference recommendations implemented by Federal agencies and Congress.

To help achieve this, we have developed an implementation agenda, selecting particular recommendations for special effort and attention.

For example, one of those that I discussed last week and just mentioned is "the race to the courthouse" problem, in which we are working with the Justice Department and other affected parties, including the Judicial Conference, to develop the proper solution.

Another implementation effort which we completed during the past year involved, I believe, our very first formal recommendation, which was in 1969.

This recommendation called on the General Services Administration to assist administrative law judges in the Federal agencies by establishing a central assignment system for out-of-town hearing room facilities, and our work in this area, which was unfortunately done without any substantial assistance from GSA, resulted in our publication recently of a new Directory of Administrative Hearing Facilities.

I have copies with me, if you would care to have them.

Mr. BABCOCK. We also furnished them with our statement.

Mr. ROBERTSON. During the past year the Office of the Chairman also released a report on adjudicative hearing caseloads in Federal agencies, a document entitled, *The Federal Administrative Law Judge Hearings—Statistical Report for 1976-1978*.

This is a 373-page report with caseload statistics and elapsed time data on over 100 different types of agency adjudications conducted by the 28 Federal agencies that employed administrative law judges during the covered years.

Our report has been used by numbers of persons interested in ALJs and their caseloads, including several committees of Congress, and we think it will provide an invaluable data base for our efforts to report to Congress on the Equal Access to Justice Act, in compliance with that law.

We also have extra copies of our report, if you need them.

Finally, we have recently distributed a work entitled, *Federal Reorganization*, which was produced by a number of consultants working under a small grant from the Administrative Conference, and the authors who collaborated writing papers for this book.

Included are Harold Seidman, Lester M. Salamon, Alan Schick, I. M. Destler, and Alan Dean, all of whom are well-known authorities in the field of government organization; and Peter Szanton, who was responsible for reorganization studies under the Carter Administration, was the editor of this book and one of the authors as well.

I think it is a very topical publication and we have made copies available to a number of officials in the new Administration and others interested in the structure of governmental bodies.

#### THE COMING YEAR'S ACTIVITIES

During the remaining portion of fiscal 1981 the Conference will continue to work in these areas in addition to fulfilling our new responsibilities under the Equal Access to Justice Act.

We are working on a new research plan which we hope will help rationalize our project selection process and increase participation of our members and the public in selecting future research projects.

We also have a number of interesting studies which we hope to have ready for consideration by the membership at the upcoming Plenary Session, which is scheduled to be held in June of 1981. Plans for fiscal 1981 are essentially to continue the kinds of work that we have been doing in the past.

The change of Administration obviously will affect our organization in that I expect a new Chairman will be appointed by President Reagan in the near future. Furthermore, a number of our agency members will be replaced by their counterparts in the new Administration.

Therefore, while I can't give you any details of specific new initiatives that the Conference will undertake under new leadership in 1982, I am confident that the Conference will continue to produce the same kind of thoughtful, nonpartisan and policy-neutral advice for which it has become respected.

I thank you, Mr. Chairman, for your attention and, of course, Mr. Babcock and I will be pleased to respond to any questions that you may have.

#### ELIGIBILITY FOR EQUAL ACCESS TO JUSTICE ACT AWARDS

I do want to mention one thing. Last week Congressman Miller asked about whether fee awards would be available under the Equal Access to Justice Act for Legal Services Corporation attorneys.

I asked one of our staff to prepare a Memorandum of Law on this issue, and we do have copies of that which I would like to provide to you. I am not sure it is relevant to this record, but there is no time like the present.

[The information follows:]

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W. SUITE 500  
 WASHINGTON, D.C. 20037  
 (202) 254-7020

OFFICE OF  
 THE CHAIRMAN

March 17, 1981

MEMORANDUM

TO: Reuben B. Robertson  
 Chairman

FROM: Mary Candace Fowler *Mary Candace Fowler*  
 Attorney

SUBJECT: Fee Awards under the Equal Access to Justice Act for the Services of  
 Legal Services Attorneys

The Equal Access to Justice Act, P.L. 96-481, provides for the award of attorneys fees and other expenses to most individuals, small businesses and other organizations who prevail over Federal agencies in civil court cases and adversary administrative adjudications, unless the agency can show that its position in the proceeding was substantially justified. We have been asked whether the Act would permit fee awards for services provided by Federally-funded legal services offices and other legal aid programs serving the poor. The Act would apparently permit such awards. Statutory restrictions on the authority of Federally-supported legal services offices to accept fee-generating cases, however, would probably limit the number of cases in which legal services attorneys actually received awards of fees.

Under the Equal Access to Justice Act, fee awards are to be based on "the prevailing market rates for the kind and quality of the services furnished," up to the statutory ceiling of \$75 per hour. This language was explained in the report of the House Judiciary Committee on S. 265, a bill substantially identical to the Act as passed:

In general, consistent with the above limitations, the computation of attorney fees should be based on prevailing market rates without reference to the fee arrangements between the attorney and client. The fact that attorneys may be providing services at salaries or hourly rates below the standard commercial rates which attorneys might normally receive for services rendered is not relevant to the computation of compensation under the Act. In short, the award of fees is to be determined according to general professional standards.

H. Rep. No. 96-1416, September 26, 1980, at 14-15. See also S. Rep. No. 96-253, Report of the Senate Judiciary Committee on S. 265, July 20, 1979, at 16-17. There is no language in either the Act or the legislative history to suggest that this approach does not extend to services provided for free by a public interest organization or by a legal

services program.

Under existing statutes providing for awards of attorneys fees, courts have generally made awards to legal services attorneys as well as to private attorneys. See, e.g., Lund v. Affleck, 587 F.2d 75 (1st Cir. 1978) (Civil Rights Attorneys' Fees Awards Act of 1976); Barber v. Kimbrell's, Inc., 577 F.2d 216 (4th Cir. 1978) cert. denied, 439 U.S. 934 (1978), (Truth-in-Lending Act); Rodriguez v. Taylor, 569 F.2d 1231 (3d Cir. 1977), cert. denied, 436 U.S. 913 (1978) (Age Discrimination in Employment Act); Card v. Dempsey, 445 F.Supp. 942 (E.D. Mich. 1978) (Civil Rights Attorneys' Fees Act); Kulkarni v. Nyquist, 446 F.Supp. 1274 (N.D. N.Y. 1977) (Civil Rights Attorneys' Fees Act). The rationale for these decisions was explained by the court in Rodriguez:

Typically, congressionally approved awards are designed to encourage private enforcement of individual rights and to deter socially harmful conduct. . . . The award of fees to legal aid offices and other groups furnishing pro bono publico representation promotes the enforcement of the underlying statutes as much as an award to privately retained counsel. Legal services organizations often must ration their limited financial and manpower resources. Allowing them to recover fees enhances their capabilities to assist in the enforcement of congressionally favored individual rights. [Citations omitted] 569 F.2d at 1245.

The Equal Access to Justice Act differs somewhat from earlier attorneys fees statutes in that it identifies the class of covered cases by the party involved -- the Federal government -- rather than by the substantive rights or interests to be protected. Nevertheless, in the absence of any explicit legislative indication that legal services organizations are not entitled to fee awards, the courts would probably apply a similar analysis to grant such organizations attorneys fees in Equal Access to Justice Act cases.

However, statutory restrictions on the acceptance of fee-generating cases by Federally-funded legal services programs (contained in 42 U.S.C. 2996f(b)(1)) should limit the number of cases in which legal services attorneys actually receive awards under the Equal Access to Justice Act. Guidelines adopted by the Legal Services Corporation under this statutory provision define fee-generating cases broadly to include all cases that "reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party," and prohibit legal services programs from using Federal funds to handle such cases "unless other adequate representation is unavailable." 45 C.F.R. 1609.2 and 1609.4. The possibility of recovering attorneys fees under the Equal Access to Justice Act should provide an incentive for private attorneys to handle cases in which the client's position is strong and there is a significant chance that the Federal agency's position will be found to lack substantial justification. Legal services programs would, as a result, handle primarily cases in which the possibility of an award is very speculative.

Mr. ROYBAL. We will accept them, and show it to Mr. Miller.

Mr. ROBERTSON. Our conclusion in short is that, under the Equal Access to Justice Act, such services provided by legal service attorneys would not be ineligible for awards, but that other restrictions on the ability of the legal services firms to accept such awards, since they are federally funded, would probably restrict the number of cases in which this would ever come up to very few.

Thank you, Mr. Chairman.

[The statement of Mr. Robertson follows:]

PREPARED STATEMENT OF REUBEN B. ROBERTSON, CHAIRMAN, ADMINISTRATIVE  
CONFERENCE OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, my name is Reuben B. Robertson and I am Chairman of the Administrative Conference of the United States. I am accompanied today by our Executive Director, Stephen L. Babcock.

I am glad to have this opportunity to appear before you in support of our fiscal 1982 budget request. I would like, first, to summarize the activities of the Administrative Conference in the past twelve months, and then to tell you the Conference's plans for fiscal 1982. Since I appeared before you only last week in support of our fiscal 1981 supplemental request for the Equal Access to Justice Act work, I will not again take the time to describe the Administrative Conference to you.

The administrative Conference's appropriation request for fiscal 1982 is for \$1,244,000. It is essentially a "flat" budget when compared to fiscal 1981: it consists of the same basic appropriation for the current fiscal year, of \$1.1 million, plus the \$67,000 amount of the October 1, 1980 pay raise, and, in addition, the amount of \$75,000 for continuing work on an annual report to the Congress required by the Equal Access to Justice Act.

This request provides funding only at the very minimum level possible to maintain the operations of the Administrative Conference. Indeed, the fact that this basic request has survived not one, but two, rounds of scrutiny within Director David A. Stockman's Office of Management and Budget should in itself suggest that our 1982 request includes funds only for the most essential expenditures.

In the year since we have last been before this Subcommittee, the Conference has adopted six formal recommendations. At the Twenty-first Plenary Session, held on June 5th and 6th of last year, the Conference adopted one recommendation relating to the Federal Trade Commission's experience under the rulemaking procedures established by the Magnuson-Moss Act. This recommendation included our members' views on the Commission's administration of those procedures, a recommendation to the Congress concerning the utility of procedures like those established in the Magnuson-Moss Act, and observations on the expense-reimbursement program administered by the Commission.

The second recommendation adopted at that session suggested to the Department of Energy and the Congress ways to simplify the appeals procedures in cases enforcing the Department of Energy's petroleum price regulations. A third recommendation called for improved Executive Branch coordination and implementation of the Federal Advisory Committee Act. The final recommendation adopted at the plenary session suggested standards and procedures to be used by agencies in determining whether to disqualify decisional officials from participation in informal rulemaking proceedings. That recommendation called on agencies to insure that the judgment of agency officials who shape regulations is not tainted either by conflict of interests, by inflexible prejudgment of pertinent factual positions, or by indecorous manifestations of hostility.

At the Twenty-second Plenary Session of the Administrative Conference, held this past December, the Conference adopted two additional recommendations. The first of these dealt with the so-called "race to the courthouse" problem. It recommended that the Congress should amend the judicial code to provide for random selection of the proper reviewing court, when petitions for review of agency decisions have been filed in two or more circuit courts of appeals. I might add, incidentally, that we are advised that legislation embodying our recommendation will soon be introduced in the 97th Congress. The second recommendation adopted in December relates to intragovernmental communications in informal rulemaking proceedings. It takes the position that it is not improper for the President or his advisors to communicate their views on the merits to Executive Branch officials conducting rulemaking proceedings, but that Departments and agencies should place in a public file a record of

any such communications from the Executive Office that include comments from persons outside the government.

Also at the December plenary session, the Conference revised its committee structure to provide a proper focus and a more consistent theme for each committee's work. This, I hope, will improve the quality of committee deliberations and will stimulate the interest and participation of our members in the future. Specifically, a new Committee on Interagency Coordination was established in place of a former Committee on Compliance and Enforcement Proceedings, a new Committee on the Regulation of Business was created through a merger of two other former committees, and the Committee on Rulemaking and Public Information was separated into two committees: one on Rulemaking and the other on Public Access and information.

In the past year the staff of the Office of the Chairman has continued to offer advice and assistance to agencies on numerous administrative matters. Our annual report, which will be published soon, will list seven such projects on which agencies received staff assistance.

The Office of the Chairman also continued to provide testimony and advice to committees of the Congress. Indeed, the staff of the office was asked to testify before more Congressional committees, in the past year, than in any previous year. We also were asked to and did submit written comments on eighteen separate bills and draft bills, in addition to those on which testimony was provided.

During 1980 the Office of the Chairman also increased its activities to encourage the implementation of Conference recommendations by Federal agencies and the Congress. To help achieve this, we developed an implementation agenda, selecting particular recommendations for special effort. For example, one of those selected is the recommendation suggesting a solution to the "race to the courthouse" problem which I mentioned in my testimony before this Subcommittee last week. Another implementation effort completed during the past year involved one of our very earliest recommendations, adopted in 1969. This recommendation called on the General Services Administration to assist administrative law judges in federal agencies by establishing a central assignment system for out-of-town hearing room facilities. Our work in this area, which was undertaken without assistance from GSA, resulted in the very recent publication of a new "Directory of Administrative Hearing Facilities." I have brought copies with me, if any of you care to examine it.

I am pleased to report that in July of the past year the Office of the Chairman released its second report on adjudicative hearing caseloads in Federal agencies, a document entitled "Federal Administrative Law Judge Hearings—Statistical Report for 1976-1978." This 373 page report contains caseload statistics and elapsed time data on over 100 types of agency adjudications, conducted by the 28 Federal agencies that employed administrative law judges during the covered years. Our report has been used by numbers of persons interested in administrative law judges and their caseloads, including several committees of the Congress, and we think it will prove an invaluable data base for our efforts to report to the Congress on the Equal Access to Justice Act, in compliance with the Congressional directive to do so contained in that Act. I have also brought with me copies of this Report.

Finally, we have recently distributed a work entitled "Federal Reorganization," which was produced by a number of consultants working under a small grant from the Administrative Conference. The six authors who collaborated in writing papers for this book are Harold Seidman, Lester M. Salamon, Alan Schick, I. M. Destler, and Alan Dean, all of whom are well-known authorities in the field of government organization; and Peter Szanton, who was responsible for reorganization studies under the Carter Administration, was the editor of this book and one of the authors as well. I have brought along copies of this document in case any of you are interested. We think it is very topical, and have made copies available to numbers of officials in the new Administration and others interested in the structure of governmental bodies.

During the remaining portion of fiscal year 1981 the Conference will continue to work in the areas that I have described, in addition to fulfilling its responsibilities under the Equal Access to Justice Act. We are working on a new research plan, in response to a resolution adopted by our members a year ago, which we hope will rationalize our project selection process and increase the participation of our membership in the selection of future research projects. We also have a number of interesting studies which we hope to have ready for consideration by the membership of the Conference at the upcoming Twenty-third plenary session, which is scheduled to be held in June of 1981.

Our plans for fiscal 1982 are essentially to continue the kinds of work that we have been doing in the past. The change in Administration will impact on our organization, in that I expect a new Chairman will be appointed by President

Reagan in the near future. In addition, a number of our agency members will be replaced by their counterparts in the new administration. Thus, while I cannot give you any details of specific new initiatives that the Conference will undertake under its new leadership in 1982, I can assure you that the Conference will be an organization that will continue to produce the same kind of thoughtful, non-partisan, and policy-neutral advice for which it has become respected in past years.

Mr. Chairman and members of the Subcommittee, I thank you for your attention. Mr. Babcock and I will be pleased to answer any questions that you might have.

#### THE ROLE OF THE CONFERENCE IN DEREGULATION

Mr. ROYBAL. I would like to make inquiries with regard to your statement.

What more do you expect to do in 1982 to cut down on the amount and complexity of government regulations?

Mr. ROBERTSON. Of course, this involves a substantive question.

We will not particularly be involved in the basic policy-oriented initiatives that are going to be undertaken.

Let me say, on a matter like deregulation of industry, it is my view, and I think has been traditionally the role of the Administrative Conference, not to be involved in the question and not to really take a position on whether a particular industry should be regulated or deregulated or what.

The role we would take is that, when a decision is made on a policy by Congress and by the Administration, we would be available for advice in getting the decision implemented in the most effective manner and with the least confusion, and we do have considerable expertise in this area.

I think that, over the past 12 years that the Conference has been very active, the formal recommendations that have been made have focused on causes and sources of inefficiency and unfairness in the process of decisionmaking and applying regulations.

We will continue exactly that kind of activity. Many problems have been dealt with effectively over this past period, and there is not going to be, as far as I know, any brand new initiative but a continuation of the same pattern.

#### IMPLEMENTATION EFFORTS

Mr. ROYBAL. Do you still have some problems with regard to implementation of recommendations by the Conference?

Mr. ROBERTSON. Yes.

Mr. ROYBAL. What kinds of problems do you have? Do you have problems due to lack of authority or what is the situation?

Mr. ROBERTSON. The Conference has no authority to force anybody to do anything. Our authority is really one of persuasion and example, but taking the case that we have talked about during the past week and today, the "race to the courthouse problem", we have identified this as a problem that springs from an ambiguity or complexity in the underlying statute, which provides, that: whoever files their appeal first in the Court of Appeals is the one that can choose the forum in which the appeal will be heard where a number of different parties are affected by a given administrative decision.

In this area our implementation effort is working with the Administration, with the Congress, and with the Judicial Conference,

in trying to achieve this, and we are trying to be the focal point of getting that work out.

Mr. ROYBAL. But it is advisory in nature?

Mr. ROBERTSON. It is advisory only.

Mr. ROYBAL. No one actually has to take those recommendations if they don't choose to do so?

Mr. ROBERTSON. This is where I think leadership can be important, because by having the Chairman's office and the membership of the Conference taking a position on how to resolve this, and working with groups like the American Bar Association, which we have been, and with the Judicial Conference and other agencies, we are able to call meetings and people get interested and want to participate, and I believe we have developed a broad consensus now on how to get this work out.

I understand that Senator Laxalt will be introducing an amendment that follows our recommendation within the next few weeks.

Obviously, we are not a rulemaking agency. It is leadership and effectiveness that count here.

Mr. ROYBAL. Would you say you have had any success in the implementation of some of those recommendations?

Mr. ROBERTSON. Yes. I would say, we do monitor our success; I would say over the past decade that there has been a great deal of success, and I believe that the administrative process is a much more efficient process today than it was a decade ago, and I think the Administrative Conference is one reason for that, and there are other reasons, obviously.

The studies that have been done in the committees of Congress have helped. Agencies themselves are more informed about how to conduct proceedings, and I believe that our own statistics indicate that cases are being decided faster and more effectively, and we are also trying to figure out what cases need full hearings and which cases do not.

We have a study coming on that very issue, techniques for agencies to narrow the focus of the hearing to really disputed issues, because nobody wants to have a hearing where there is not a material dispute of an important fact that would affect the decision.

#### FEDERAL REORGANIZATION

Mr. ROYBAL. Now on this book on Federal Reorganization, to whom was it submitted and what effort will be made to implement some of the recommendations you made in this book?

Mr. ROBERTSON. There are no formal recommendations made in this book. This is really an intellectual exercise that has been made available to the new Administration, since it only was completed last month.

It is based on lessons in the past. There has really been no study of this kind that we are aware of that brings together the combined experience.

Mr. ROYBAL. Is the fact that there are no recommendation something that was done purposely, or why don't you make recommendations of any kind?

There must be some recommendation that you will be making or should be making after you studied the Federal bureaucracy and came out with a book on Federal reorganization.

Mr. BABCOCK. We probably will be making recommendations based on this from time to time in response to requests from agencies, and more specifically from congressional committees, but it was not designed as a project which would lead to action by the Plenary Session.

For example, just yesterday afternoon—we were here on the Hill most of the day, and when I got back, a lady from one of the subcommittees of the Senate Judiciary Committee called and wanted our advice on the implications of different forms of enforcement of the Federal Fair Housing Law.

As you know, there was substantial controversy last year on that subject, and I guess a bill has been reintroduced on whether you should set up a system of enforcing the law by using magistrates or whether you should have administrative law judges who will be employees of the enforcing agency, which is HUD, or a third option would be to set up a separate commission, similar to the Occupational Safety and Health Review Act Commission, which is separate from the Department of Labor.

We often get a written request, and when we respond we will probably draw on work from this book.

Mr. ROYBAL. As a matter of interest, how widely is this distributed?

Mr. BABCOCK. We are in the process of distributing it.

Mr. ROYBAL. What is your intention?

Mr. BABCOCK. We will distribute about 600 or 700 copies, I believe. It was printed commercially, and we just bought some copies from the publisher. It was cheaper than having it printed ourselves. The authors are mostly professors and their students will buy it and it will be available commercially.

Mr. ROYBAL. You anticipated my next question, which was going to be how much did all of this cost?

Mr. BABCOCK. Well, this particular project, as I recall, the total bill was about \$12,000.

The purchase of the books was, I believe it was \$4,426, is my recollection of the invoice.

Mr. ROBERTSON. I don't believe there are many more cost-effective research programs in the government. The point I wanted to add, some of what we are doing is in the nature of pure research.

A great deal of the problem in the administrative process, is that many people don't know what is wrong or don't even know what the process is; some of our current efforts are either empirical and/or analytical approaches to seeing what is really going on in the government today.

Pure research is the kind of thing that sheds light on an area, and it is really not until people have thought about it and let the idea develop in their minds for some time and focus on a problem according to the results of the research, that consensus begins to develop about what are problems and how to deal with them, so there is a time factor here in terms of enlightening the membership of the Conference and other students in this area.

## GAO AUDIT REPORT

Mr. ROYBAL. One last question: Last year the GAO recommended that certain corrective action be taken on long-range planning of future projects and on other matters.

The Conference did not agree with all the recommendations but did agree to implement them.

How successful have you been in the implementation of these things?

Mr. ROBERTSON. Well, we are developing a long-range planning process and we have not gotten it in place yet. We have made some efforts at it. It has not been done in the past and in part because of the period of time before I became Chairman—when the Conference had no Chairman at all for about a year.

We have not completed that work, but we are actively approaching it.

Mr. BABCOCK. The other recommendations they have made we have all implemented, except that they did make one we have always wanted to implement but just can't: they suggested we should supplement our appropriation by getting money from other agencies to do our work.

Agencies are not willing to give money unless they have a right to edit the results.

Mr. ROYBAL. You mean they made the recommendation that you get money from other agencies?

Mr. BABCOCK. We thought that was fine. We even wrote them back and said maybe they could help us with it.

Mr. ROYBAL. You thought it was fine, providing you get the money.

Mr. BABCOCK. Yes, sir.

Mr. ROYBAL. When you looked into it, you found out you couldn't get the money?

Mr. BABCOCK. We weren't surprised to find that out. We are not willing to give up our independence, and other agencies are not likely to give us money when we might be critical of them.

Mr. ROYBAL. Do you get into any controversy with any agency, particularly GAO, with regard to recommendations you make?

Mr. BABCOCK. Oh, once in a while; not GAO so much, but if we are critical of an agency they sometimes don't take too kindly to it. We try not to use a harsh approach, to come in and attempt to find something wrong, no matter what. We try to involve the agency and be a bit more restrained in our approach.

Mr. ROYBAL. When that situation—

Mr. BABCOCK. That minimizes the problem.

Mr. ROYBAL. When that situation arises with any particular agency, then your powers of persuasion are actually coming into play?

## DISQUALIFICATION IN RULEMAKING PROCEEDINGS

Mr. ROBERTSON. Yes; they do, and let me give you an example where a recommendation of ours touched a slightly sensitive nerve in more than one agency.

You will recall last year the controversy over whether the Chairman of the Federal Trade Commission was biased, or predisposed

to a particular outcome, in one of their cases, and a Federal District judge disqualified him from the proceedings on the grounds he had given speeches about how the rulemaking should come out; or that was at least the judge's interpretation.

The Conference made some formal recommendations on this area, based on a very excellent consultant's report which essentially said that agencies should strive not to give the appearance that they were predisposed in any proceeding.

Based on the Conference formal recommendation, the Office of the Chairman has been working with various agencies in trying to design model rules that would implement the spirit of this outcome.

Some of the agencies have written back to us about this recommendation saying, of course, we don't have that problem at this agency. Well, no one had suggested that they did have that problem. It is rather a generic problem that arises any time that public officials are giving speeches about things that are underway at their agency.

I think now that we have some sort of model guidelines on how agencies might implement that, my expectation is that there will be a good deal of acceptance of it, as long as it is in a non-accusatory vein.

Mr. ROYBAL. Very interesting discussion with regard to the Conference.

Mr. Gunnels, do you have any questions?

#### TRAVEL AND SPACE-RENTAL EXPENSES

Mr. GUNNELS. Yes, I have two.

Mr. Chairman, I notice that your travel has increased proportionately rather substantially. In 1980 it was \$26,000, increasing to \$39,999 in 1981, and you are asking for \$59,000 in 1982.

As you know, last year the Congress and the Administration cut back travel substantially.

Does this represent an increase in the amount of travel or is it just cost of travel because of inflation?

Mr. ROBERTSON. This is largely the cost. The per diem in Washington, for example, is now \$75. To bring people in from Alaska—

Mr. BABCOCK. We have one native American now from Alaska, and that one person made a quantum jump in our travel budget.

Mr. ROBERTSON. This person will have to come in for committee hearings three or four times a year, plus Plenary Sessions, and that right now will cost us about \$10,000.

Mr. BABCOCK. We have put out instructions to our members and we do use the contract airlines that the GSA has negotiated. We got a compliment from OMB because we were one of the first agencies to get out our memo and let our members know it was there, and I told them if they don't use it I won't approve their reimbursement vouchers.

Mr. GUNNELS. Your rental money increases from \$57,000 to \$81,000 to \$110,000.

Mr. BABCOCK. That's right.

Mr. GUNNELS. What was the cause of that increase?

Mr. BABCOCK. Well, as you may know, the General Services Administration periodically reassesses what they feel is the market value of the leases—the long-term leases they have negotiated. And through this year we have been very lucky. We are paying about \$9.58 per year for our space. Unfortunately, next year it will jump to around \$14 or \$15. I don't know what the exact figure is, but it is almost double, as these figures reflect, because they have reassessed the lease. Now, it is still below what we would have to pay for that space if we were to go out and get space on the open market, but not far below.

Mr. GUNNELS. You are not requiring additional space, and you do not have additional people?

Mr. BABCOCK. We have asked for additional space, and we have been asking for additional space for many years. But this figure does not assume we will get much, if any. It is the huge jump in the price that we have to pay for our existing space that makes this difference.

Mr. GUNNELS. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROYBAL. Gentlemen, I would like to thank you for your testimony.

The committee will take it under advisement.

[The justifications follow.]

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W. SUITE 500  
WASHINGTON, D.C. 20037  
(202) 254-7020

OFFICE OF  
THE CHAIRMAN

March 18, 1981

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
JUSTIFICATION OF THE FISCAL 1982 BUDGET ESTIMATES

The Conference's FY 1982 budget request of \$1,244,000 is only slightly more than the proposed appropriation for the current year, (including the requested \$67,000 FY 1981 pay increase supplemental and excluding the special program supplemental of \$341,000 for the Equal Access to Justice Act). Despite the effects of general inflation, the Conference plans to maintain its existing programs, and will attempt to manage its funds carefully so as to fulfill its basic goals. The Conference must receive the entirety of its request, however, in order to do so: the request has already been "trimmed" to exclude all unnecessary expenditures. The Conference will use its FY 1982 resources in the following five areas.

The first, and most important, activity of the Conference is the research and development of formal recommendations. This activity, in which particular improvements are studied by consultants working with the staff under the aegis of one of the Conference's nine committees, is the Conference's core activity. While new projects for FY 1982 have not yet been selected, several are being considered for possible commissioning. The Conference proposes to devote 53% of its budget, amounting to about \$660,000, to its research activities. These activities are important not only for the recommendations that they produce but because they are the primary source of data and principles on which the Conference relies in performing its advisory, clearinghouse, and consultative activities.

The second area of Conference activities consists of efforts to assure the implementation of current recommendations and to obtain and maintain comprehensive and current information pertaining to the implementation of the Conference's past recommendations. Funding at the requested level will permit the Conference to devote 20% of its budget, equivalent to \$249,000, to implementation activities. This will allow the Conference to continue its current level of activities in this area, which have been stepped-up during FY 1981.

The Conference intends to devote 15% of its resources, amounting to \$187,000, to its advisory and consultative activities. These include commenting to Congress, OMB, and the agencies on the procedural aspects of proposed legislation, offering assistance to agencies with respect to proposed procedural changes that they may wish to adopt by regulation, and assisting in the implementation of the procedural aspects of new laws. Funding at the requested level will enable the Conference to continue to answer inquiries and requests for advice on a time-available basis.

The remaining two areas of the Conference's FY 1982 activities will consist of its statistical program and its clearinghouse and educational activities. The Conference anticipates that it will devote 12% of its resources, or \$149,000, to these activities. One of these will be to continue its current efforts to update and tabulate data for its Uniform Caseload Accounting System. Also within this category will be the Conference's continuing responsibilities, under the Equal Access to Justice Act, to prepare an annual report to the Congress describing the implementation and effects of the Act in all Federal agencies.

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
SALARIES AND EXPENSES

PROGRAM AND FINANCING  
(in thousands of dollars)

Identification code	1980 actual	1981 estimate	1982 estimate
95-1700-0-1-751			
<u>Program by activities:</u>			
Studies to improve administrative procedure (program costs, funded) 1/	1,035	1,167	1,244
Change in selected resources (undelivered orders)	-80	—	—
10.00 Total obligations	1,115	1,167	1,244
<u>Financing:</u>			
25.00 Unobligated balance lapsing	4	—	—
39.00 Budget authority	1,119	1,167	1,244
<u>Budget authority:</u>			
40.00 Appropriation	1,119	1,100	1,244
44.20 Supplemental for civilian pay raises	—	67	—
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net	1,114	1,167	1,244
72.40 Obligated balance, start of year	326	365	390
74.40 Obligated balance, end of year	-365	-390	-405
77.00 Adjustments in expired accounts	-8	—	—
90.00 Outlays, excluding pay raise supplemental	1,067	1,077	1,227
91.20 Outlays from civilian pay raise supplemental	—	65	2
1/ Includes capital investment as follows: 1980, \$25 thousand; 1981, \$4 thousand; 1982, \$5 thousand.			

STANDARD FORM 304  
 May 1959, Bureau of the Budget  
 Circular No. A-11, Revised.  
 304-103

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
 SALARIES AND EXPENSES

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code 95-1700-0-1-751	1980 actual	1981 estimate	1982 estimate
Personnel compensation:			
11.1 Permanent positions.....	481	616	660
11.3 Positions other than permanent.....	63	54	50
11.5 Other personnel compensation.....	6	-	-
<del>11.8 Special personal services payments</del>			
Total personnel compensation.....	550	670	710
Personnel benefits:			
12.1 Civilian.....	48	62	66
<del>13.0 Benefits for former personnel.....</del>			
21.0 Travel and transportation of persons.....	26	39	59
23.1 Standard level user charges.....	53	57	110
23.2 Communications, utilities and other rent.....	52	55	60
24.0 Printing and reproduction.....	35	35	41
25.0 Other services.....	302	221	163
26.0 Supplies and materials.....	24	24	30
31.0 Equipment.....	25	4	5
<del>32.0 Lands and structures.....</del>			
<del>33.0 Investments and loans.....</del>			
<del>41.0 Grants, subsidies, and contributions.....</del>			
<del>42.0 Insurance claims and indemnities.....</del>			
<del>43.0 Interest and dividends.....</del>			
<del>44.0 Refunds.....</del>			
99.0 Total obligations.....	1,115	1,167*	1,244

\* Includes pay raise supplemental request of \$67,000.

STANDARD FORM 300  
 July 1964, Bureau of the Budget  
 Circular No. A-11, Revised.  
 500-101

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
 SALARIES AND EXPENSES

PERSONNEL SUMMARY

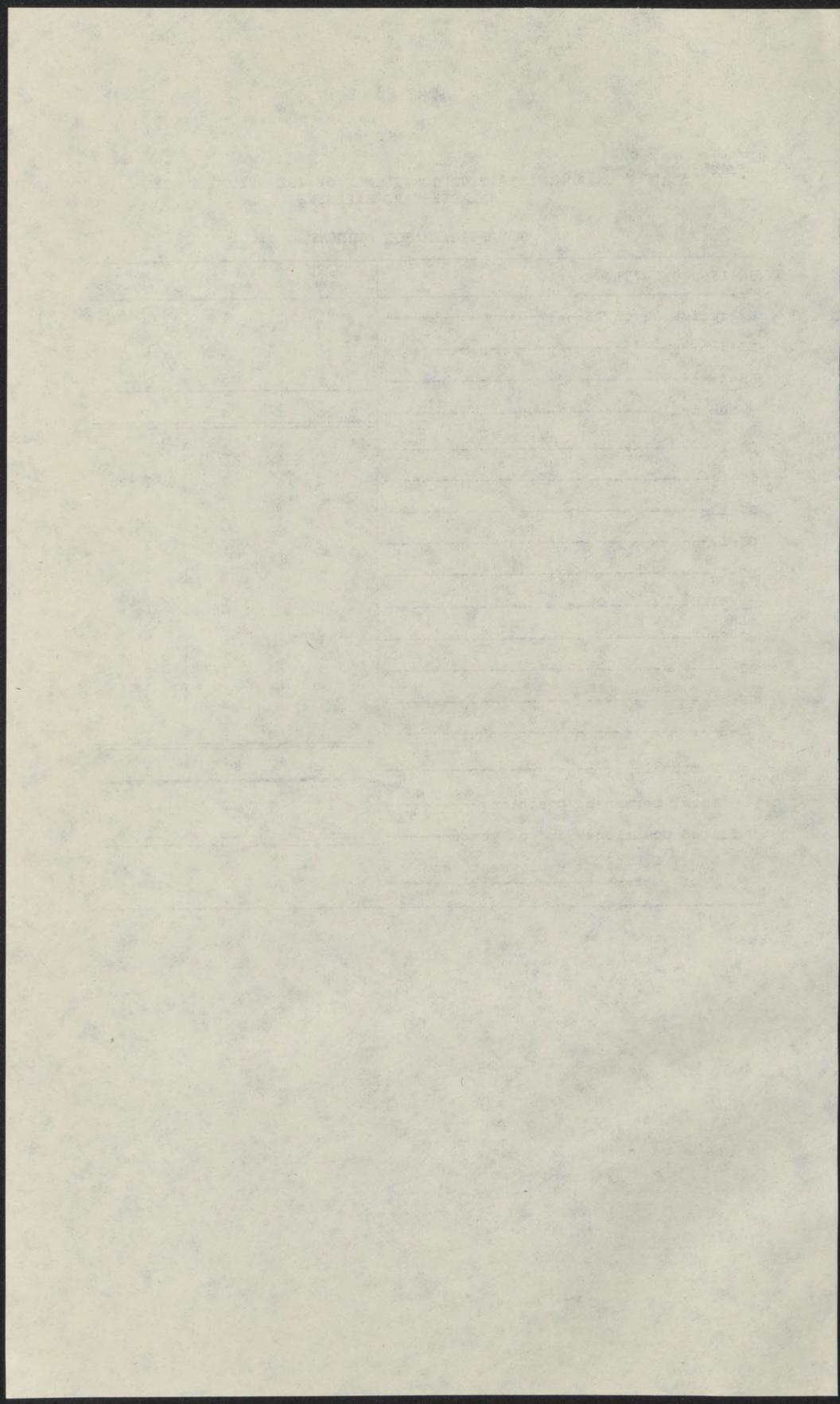
Identification code	1980 actual	19 81 estimate	19 82 estimate
95-1700-0-1-751			
Total number of full-time permanent positions-----	20	22	22
Total compensable workyears: Full-time equivalent employment	21	22	22
Full-time equivalent of over- time and holiday hours-----	--	--	--
Average ES salary-----	\$50,112	\$50,112	\$50,112
Average GS grade-----	9.93	10.00	10.27
Average GS salary-----	\$23,289	\$25,150	\$27,166

STANDARD FORM 306  
July 1962, Bureau of the Budget  
Circular No. 4-11, Revised.  
306-103

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES  
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	19 80 actual	19 81 estimate	19 82 estimate
95-1700-0-1-751			
Executive level II-----	1	1	1
ES-5-----	1	1	1
ES-4-----	2	2	2
Subtotal-----	4	4	4
GS-15-----	1	1	1
GS-14-----	2	2	2
GS-13-----	3	4	4
GS-12-----	2	2	2
GS-11-----	1	2	2
GS-9-----	1	1	1
GS-8-----	1	1	1
GS-7-----	2	2	2
GS-5-----	2	2	2
GS-3-----	1	1	1
Subtotal-----	16	18	18
Total permanent positions-----	20	22	22
Unfilled positions, end of year-----	-3	--	--
Total permanent employment, end of year-----	17	22	22



WEDNESDAY, APRIL 1, 1981.

U. S. OFFICE OF PERSONNEL MANAGEMENT

WITNESSES

DONALD J. DEVINE, DIRECTOR  
 ARCH RAMSAY, ACTING DEPUTY DIRECTOR  
 GARY R. NELSON, ASSOCIATE DIRECTOR, COMPENSATION GROUP  
 JAMES M. H. GREGG, ASSOCIATE DIRECTOR, WORKFORCE EFFECTIVENESS AND DEVELOPMENT GROUP  
 NORMAN BECKMAN, ASSISTANT DIRECTOR, OFFICE OF INTERGOVERNMENTAL PERSONNEL PROGRAMS  
 EDWARD A. SCHROER, DIRECTOR, OFFICE OF PLANNING AND EVALUATION  
 SIDNEY M. CONLEY, BUDGET OFFICER

Mr. ROYBAL. The committee will come to order.

The committee is in session this morning to hear from the Office of Personnel Management, Salaries and Expenses, with regard to their budget request for fiscal year 1982.

Mr. Devine, you may proceed in any manner in which you may desire.

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

I have brought several people with me.

I would like to introduce Arch Ramsay, the Acting Deputy Director; Gary Nelson, Associate Director of our Compensation Group; Jim Gregg, Associate Director of our Workforce Effectiveness and Development Group; Norm Beckman, Assistant Director for the Office of Intergovernmental Personnel Programs; Ed Schroer, Director of the Office of Planning and Evaluation, and Sid Conley, our Budget Officer.

I would like to give an overview of the budget.

We have taken, proportionately among the agencies, the largest cuts. Of the 24 largest executive departments and agencies, OPM has the fourth largest percentage reduction: an 8 percent reduction in full-time employment versus 4.6 percent average government-wide, outside of the Department of Defense.

Two major programs that are being curtailed are the Intergovernmental Personnel Programs and the Consulting Services Program.

Because of the new reduction on personnel, we are scaling down our recruiting and examining efforts, since there will be less work there.

We are also cutting back on management research and trying to emphasize making what we have work.

As you undoubtedly are aware, we have an October 1 deadline set by Congress to implement the performance appraisal and merit pay systems in the government. We are putting most of our effort

into making sure that the performance appraisal systems go into effect, and that they go into effect with a minimum of problems.

We are especially working hard to gain acceptance of this program. There is some concern among employees as to the effects of this, and any new program will meet some resistance.

The only program increase that we have is for the traditional responsibilities of the agency in the retirement and disability area.

We have a significant backlog there. We have worked substantially to reduce that backlog of retirement claims, of which I am sure you are well aware. We get more complaints from the Hill on retirement claims backlog than anything else, so we have taken some of our resources and moved them, even with the significant cut, into this area to try to catch up. I think we have made some significant improvements.

The average time in processing claims has gone down significantly. It is still long and we have a long way to go. That is why we need the extra resources there.

We also are putting somewhat more resources, although within this very significant cut, into our general oversight responsibilities. There has been criticism that OPM has delegated too much responsibility. We have a task force looking into the whole delegation area. I think the result is going to be more oversight regardless of the degree of it.

That is basically what I would like to say as an opening statement.

[The biographical sketch and statement of Mr. Devine follow:]

BIOGRAPHY OF DONALD J. DEVINE, DIRECTOR, U.S. OFFICE OF PERSONNEL  
MANAGEMENT

Born: April 14, 1937, Bronxville, New York.

Marital status: Married to Ann Smith Devine.

Children: Joseph Devine—age 14; Patricia Devine—age 15; William Devine—age 21; J. Michael Lewis (ward)—age 19.

Education: Syracuse University 1965-67, Ph.D in Political Science; City University of New York, 1963-65, M.A. in Political Science; St. John's University 1955-59, B.B.A. in Management.

Experience: Confirmed as Director, U.S. Office of Personnel Management, March 23, 1981.

1980-81: Transition Team Leader for the Office of Personnel Management, Office of the President-elect.

1967 to 1980: University of Maryland, Associate Professor, College Park, Maryland.

1973 to 1973: U.S. House of Representatives, Special Assistant, Representative John Ashbrook, Washington, D.C.

1972 to 1972: U.S. House of Representatives, Special Assistant, Representative Philip Crane, Washington, D.C.

1964 to 1965: Brooklyn College, Lecturer, Brooklyn, New York.

1960 to 1964: Continental Casualty Co., Senior Claims Adjuster, New York City.

1956 to 1960: U.S. Life Insurance Co., Cashier, New York City.

*Other professional activities*

Regional Political Director and Deputy Director of Political Planning and Analysis for the Reagan/Bush Committee, 1979 to 1980.

Republican nominee for Maryland State Comptroller, 1978.

Parliamentarian and Executive Committee Member of the Maryland Republican Party, 1974 to 1978.

Maryland State Chairman, Citizens for Reagan, 1976.

Member of the National Republican Rule 29 Committee, 1973 to 1975.

Floor Officer at the 1972, 1976, and 1980 Republican National Conventions.

Alternate delegate to 1976 and 1980 Republican National Conventions.

Chief of Planning for Montgomery County's County Executive Race, 1970.

*Professional associations*

American Political Science Association.  
American Association for Public Opinion Research.  
Southern Political Science Association.  
Midwest Political Science Association.  
Mont Pelerin Society.  
Philadelphia Society.

*Honors and awards*

American Men and Women of Science: Social and Behavioral Sciences.  
Who's Who in the East.  
Who's Who in American Politics.  
Social Sciences Citation Index: 1970-1977: 42 citations.  
1976 A Symposium, "New Perspectives on John Locke," held at the University of Maryland, University College, November 18-21, 1976. Sponsored by the Institute for Humane Studies.  
1972 General Research Board, University of Maryland, Faculty Research Award.  
1969 Department of Government and Politics, University of Maryland, Faculty Research Support Award.  
1968 General Research Board, University of Maryland, Faculty Research Award.  
1967 National Science Foundation, Doctoral Dissertation Research Award.  
Director Devine is the author of several books on American government and politics, and numerous articles and professional papers.

STATEMENT BY  
DONALD J. DEVINE, DIRECTOR  
OFFICE OF PERSONNEL MANAGEMENT

FISCAL YEAR 1982 BUDGET REQUEST  
HEARING BEFORE THE HOUSE SUBCOMMITTEE  
ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
10:00 A.M., WEDNESDAY, APRIL 1, 1981

Good morning. I am pleased to be here to discuss with you the Office of Personnel Management's budget request for Fiscal Year 1982. Since this is my first time before the subcommittee, I have brought a brief, biographical sketch which I will submit for the record.

My colleagues this morning include Mr. Arch Ramsay, Acting Deputy Director; Mr. Gary Nelson, Associate Director of the Compensation Group; Mr. James Gregg, Associate Director of the Workforce Effectiveness and Development Group; Mr. Norman Beckman, Assistant Director of the Office of Intergovernmental Personnel Programs; Mr. Edward Schroer, Director of the Office of Planning and Evaluation; and Mr. Sidney Conley, Budget Officer.

Our 1982 budget reflects the goal of streamlining the Federal government. We are eliminating some programs, cutting back on others, and strengthening programs critical to our primary mission. In fact, we are taking the lead in economizing: OPM has taken program cuts substantially above the governmental average. (For example, OPM's amended budget request includes an 8% reduction in full-time equivalent employment, whereas the government-wide reduction, excluding DOD, is only 4.6%. Of the twenty-four largest Executive

Branch departments and independent agencies, OPM had the fourth largest percentage reduction in full-time equivalent employment.)

Two major programs to be curtailed are the Intergovernmental Personnel Program, which administers a grant program for state and local governments, and our Consulting Services Program, which provides technical assistance to other Federal agencies. The IPA program has always been administered well. However, we can cut overall government administrative costs and reduce federal regulation of State and local government activities by consolidating many of the Federal government's grant programs into large block grants and giving State and local governments discretion over how the grant money is spent. The program of consulting and assisting other Federal agencies will be reduced, although we will continue our normal agency contacts. Where we discover a bona fide need for assistance in the personnel management and productivity areas, we will provide it. By placing the technical assistance responsibility back with our programs, we can streamline our operations, and reduce the cost of government services.

In addition, we will be scaling down our recruiting and examining efforts, in line with the new limits on the size of the Federal workforce. We will also be scaling down our reimbursable training function. Finally, we will be decreasing substantially the amount of public management research we conduct, placing our emphasis on research with the highest potential for improving the productivity of the Federal workforce.

We believe these reductions are consistent with the goal of a more streamlined, effective and efficient government. However, our budget request also reflects the fact that many critical tasks face the Office of Personnel Management in the coming fiscal year.

I see two major lines of effort to which much of our resources will be devoted in 1982. The first is a stress on implementing the incentives and other management tools provided by the Civil Service Reform Act so that we can concentrate the resources to realize the benefits of increased productivity and better service to the public. The second is a renewed emphasis on the critical and more traditional responsibilities of the agency, including its responsibilities in the area of Federal employee health, life insurance, and retirement benefits, its responsibility to provide leadership in Federal compensation policy, and its obligation to uphold civil service laws, rules, and regulations.

In the first area, I see the upcoming year as a critical test of whether we can convert the potential benefits of the Reform Act into actual results. Two of the improvements central to the Act, the new performance appraisal systems and the merit pay systems, must by law be implemented by agencies by October 1, 1981. OPM has already taken steps to assure that their implementation goes as smoothly as possible. We have reminded the agencies of their responsibilities. We have encouraged agencies to use dry runs to test their systems, have provided training and technical assistance, and have issued written guidance on implementation procedures and consultation obligations. However, no one can anticipate all the problems that may arise in introducing these changes on such a massive

scale. Therefore, OPM will be carefully monitoring agencies' experiences, and will be prepared to assist agencies, particularly in the early phases of operation of these two new tools.

I cannot overemphasize the importance of closely monitoring agency progress and responding quickly to problems as they develop. In particular, we will encourage actions to ensure that Federal employees accept and believe in the new systems. This requires working closely with individual employees and with employee unions in administering and revising the systems. The support of Federal employees is essential to the success of the reforms.

The second area of emphasis I see for the Office of Personnel Management is a renewed stress on the traditional responsibilities of the agency for services. I see several high priorities in this area.

The first is to make improvements in our retirement program. We need to clear up the backlog of retirement claims. New procedures already instituted will help reduce the backlog, but even more needs to be done to increase the productivity of claims examiners. Our administrative budget request contains only one program increase over 1981 levels, and that is in the trust fund limitation used to administer the retirement and disability program. This increase will be used to support automation and other changes in workload processing which should result in more timely processing of retirement claims. In FY 1982, we expect to process 302,000 annuity, disability, death, refund, and deposit claims, and answer over 900,000

retirement inquiries. The increase we have requested will enable us to handle this huge workload in a timely manner.

Secondly, I place high priority on Federal pay reform. While the Administration supports the principle of comparability as the basis for setting Federal civilian pay, we believe changes need to be made in the way comparability is calculated. In particular, we will be proposing legislation that bases comparability on both pay and benefits rather than on pay alone, and on State and local government compensation as well as that of private industry. Further, under the proposed legislation, pay for white-collar workers will be set on a locality basis. We feel that these changes will bring Federal compensation more closely in line with actual non-Federal compensation.

Thirdly, I believe one of OPM's most important roles is ensuring that merit principles and sound management practices are followed in all personnel activities of Federal agencies. Current law allows OPM to delegate much personnel management authority to agencies. I support delegation, because I believe it provides agencies with the flexibility to make Federal personnel systems responsive to agency needs. However, with increased flexibility comes an increased risk of mistakes made by inexperienced personnel, or even of deliberate merit system abuses. OPM will maintain a vigorous oversight program to make sure that such mistakes and abuses are detected and corrected. Such a program is critical to the success of the delegations.

For example, during the next few years, as the government workforce decreases in size, there will be many occasions when the early retirement provisions will be useful to equitably manage reductions in force. However, we do not want this management tool to be abused, and we have just recently reminded agencies of the strict criteria that must be met before OPM will approve the early out flexibility. We are also building in an agency requirement for cost estimates which will make managers think before they incur liabilities for the retirement system. This is an example of my concern that OPM strengthen its oversight. We cannot allow a basically sound program of reforms to fail because Federal employees, the Congress, or the public, feel that the reforms are being abused.

Having outlined my priorities for our 1982 resources, let me summarize briefly our budget request. Our Fiscal Year 1982 budget request totals just over \$15.0 billion in Federal funds, an increase of approximately \$1.0 billion over Fiscal Year 1981. Except for the increase in our trust fund limitation already mentioned, the entire increase is for payment of the retirement and insurance benefits of Federal workers which we are required to request under existing law. The budget also proposes legislation under which the pensions of Federal retirees would be adjusted once a year for increases in the cost of living rather than twice.

Over \$14.8 billion, or 98 percent of our budget request, is for the Civil Service retirement and insurance programs--\$4.2 billion of this amount is appropriated, and \$10.6 billion is provided under permanent

indefinite authorization. This part of the budget request will be reduced by \$600 million if the legislation annualizing cost-of-living increases for Federal retirees is passed. The remaining \$236.9 million represents \$43.6 million to be transferred from the trust funds to administer the retirement and insurance programs, \$73.5 million to provide reimbursable services for other agencies, and \$119.8 million in direct Salaries and Expenses appropriations to finance OPM's operating programs.

The amended Fiscal Year 1982 Salaries and Expenses appropriation request represents a decrease of \$4.3 million over the comparable Fiscal Year 1981 amount, including the supplemental now requested to finance the October 1, 1980 comparability pay adjustment. By reorganizing our functions around the priorities I have outlined, I am convinced that we can absorb this decrease and continue to provide high quality service to other agencies and the public.

This concludes my opening remarks on our budget request. My colleagues and I will be happy to answer any questions you may have on these or related matters.

## EFFECT OF BUDGET REDUCTIONS

Mr. ROYBAL. Mr. Devine, I would like to review your testimony.

In view of the fact that you will have an 8 percent reduction, what significant changes do you anticipate in OPM as a result of the decrease?

Mr. DEVINE. As I mentioned, the major thing we are doing is reducing two major programs, the Intergovernmental Personnel Program and the Consulting Services Program.

By reducing those programs, I believe that we will be able to perform the other functions that have to be performed with the funds requested.

Mr. ROYBAL. You made some reference to the fact there would be less recruitment and less research.

Would that be a significant change in your operation?

Mr. DEVINE. Well, it won't be as bad as it might have been. The Carter Administration instituted hiring freezes, so we have been in a period of declining recruitment. The Reagan proposals call for a significantly lower number of employees than did the Carter Administration, so presumably we will be doing even less recruiting.

Mr. ROYBAL. With regard to the impact that it will have on your operations, would you be operating with less people? Would some of the people be fired?

Mr. DEVINE. We expect to reduce our workforce by about 312 people. Our hope at the moment is that we are going to be able to do this through attrition. We are tracking this. To date we have had more attrition than planned, so we are ahead of our target of reducing people by attrition.

We are going to review the situation in May and decide on the need for a reduction in force.

Mr. ROYBAL. If you do go through a reduction in force, what system or what method will you use in determining who will be, I don't like to use the word "fired" but I will.

Who will be fired?

Mr. DEVINE. OPM, the institution, has Government-wide responsibility for the regulations which govern the order of retention in a reduction in force. These regulations are derived from the Veterans Preference Act of 1944. OPM, the agency, must follow the same reduction in force regulations that apply to most other Federal agencies. For reference, these regulations are found in Part 351 of Title 5 of the Code of Federal Regulations.

Mr. ROYBAL. So you don't anticipate any increase in personnel but you do anticipate a decrease?

Mr. DEVINE. That is right.

Mr. ROYBAL. What is the morale of the employees, in your opinion?

Mr. DEVINE. Well, of course, they are concerned. The first official act I took upon becoming Director was to write to the employees and tell them that we are going to make every effort to achieve these reductions through attrition, and that we are assisting people to move from the affected positions into other open positions in the agency. We are making every effort to deal with this very real problem and let the employees know we are concerned.

I think about 90 percent of the reduction will be taken care of by attrition.

Mr. ROYBAL. I get the impression that you are not very sure that attrition is going to take care of even the 90 percent?

Mr. DEVINE. Well, there is really no way to tell. If you look at traditional attrition rates, it should be done easily by attrition. The problem is, of course, in a period of cutback, the attrition rates go down also.

In fact, estimates that we used were significantly below the historical attrition rate, because we knew that they would not be as high in a period such as this.

I do have concerns about it. I just can't tell you that it is all going to be done through attrition. I don't know. I hope so, but I just don't know.

#### GOVERNMENT-WIDE EMPLOYMENT SITUATION

Mr. ROYBAL. Now, does the freeze preclude the transferring of people from one agency to another?

Mr. DEVINE. The freeze, by and large, is being lifted. As OMB sends the new personnel ceilings to agencies and departments, the freeze is lifted for those agencies. So the freeze itself will not be in effect for the overwhelming proportion of government.

Mr. ROYBAL. So we really do not know as of this moment what vacancies will be available to take care of some of the departments that have a decrease because not all departments will be affected in that manner?

Mr. DEVINE. That brings up a very good point.

Another thing we are looking into in our government-wide responsibility is setting up a register of people who are being let go through RIF procedures and trying to refer them to other agencies, especially in the Defense area, which is adding personnel. That is a very good point, and we are aware of that.

I am not sure, have we published that yet?

Mr. RAMSAY. We have had meetings with agency personnel officials and others to inform them of this interagency placement activity, and we have distributed materials through our own offices to be used with the agencies.

Mr. DEVINE. Thank you. So it is a very real concern, and we are working on placing people in gaining agencies from declining agencies.

Mr. ROYBAL. Again, going to the matter of the decrease of 8 percent, does that in any way put a freeze on promotions and upper mobility in general?

Mr. RAMSAY. Well, specifically, Mr. Chairman, the freeze does not prohibit promotions. An agency in trying to place people within its organization who have been displaced from another program could place those people in jobs towards which other people have been striving for promotion. In that sense there might be some limitations on promotion opportunities because the agencies are trying to place displaced employees at their present grades.

Mr. SCHROER. It does not stop the planned action for career mobility; those continue to operate.

Mr. ROYBAL. So from that standpoint, the employees can still look forward to some upper mobility action?

Mr. SCHROER. Absolutely.

Mr. DEVINE. A very interesting thing to me in a freeze situation, although the freezes are being let up, is that upward mobility opportunities are much greater than they are in the normal process. Since you can't hire anyone from outside, you are forced to increase upward mobility.

There are, of course, many other considerations about a freeze, but in that one area there is no question a freeze is a positive thing.

#### SENIOR EXECUTIVE SERVICE BONUSES

Mr. ROYBAL. Now, please explain in some detail the pay and bonus scales for the Senior Executive Service.

Mr. DEVINE. There are two basic bonus programs for the Senior Executive Service. One is the Presidential Award System, consisting of the Distinguished and Meritorious Rank Awards. The other is the Senior Executive Service bonus system.

The number of Distinguished Rank Awards may not exceed a maximum of one percent of SES positions governmentwide Meritorious Rank Awards may not exceed five percent. The Senior Executive Service bonuses may be given within each agency up to a maximum of 25 percent under current provisions. By OPM guidance we have suggested 20 percent.

You may remember Congress last year decreased the percentage of people who could be receiving bonuses from 50 to 25 percent of SES positions, and OPM received several messages from Capitol Hill that it might even be wiser to get that down lower. In a memo from the former Director in July 1980, OPM suggested that agencies stay closer to 20 than 25 percent. Thus, we didn't have every agency at 24 or 25 percent and technically meeting what Congress wanted, without meeting the intent. The guidance also reduced the computational base from the number of SES positions to the number of career executives.

Mr. ROYBAL. How many senior executive employees do you have?

Mr. DEVINE. There are about 8,600 authorized SES positions and approximately 6,800 SES appointees. We are, of course, in a transition period, since most of the noncareer people from the former administration have either left or are planning to leave, and the new administration has not fully come in. I don't know how many are actually there now.

Mr. ROYBAL. Of 6,800, how many are women?

Mr. DEVINE. I don't know off hand.

Mr. ROYBAL. Well, supply that for the record; the number of women, the percentage, and also include in that the percentage or number of Hispanics in the service, plus that of other minority groups.

Mr. SCHROER. All right. That is a standard format that we have provided in the past, and we will do that again for the record on the SES.

[The information follows:]

## SENIOR EXECUTIVE SERVICE MEMBERS

[As of Feb. 28, 1981]

	Number	Percentage
Total.....	6,734	100.0
Female.....	418	6.2
Minority <sup>1</sup> .....	462	7.0
Hispanic.....	62	0.9
Black.....	326	4.9
American Indian.....	30	0.5
Asian/Pacific Islander.....	42	0.6
Aleut and Eskimo.....	2	0.1

<sup>1</sup> The percentages of minority group members are computed as a proportion of executives on which a racial or ethnic identification is available (6640 executives).

## BONUS AMOUNTS AND AWARDING PROCEDURES

Mr. ROYBAL. Now, what amount in bonuses are the SES employees eligible for?

Mr. RAMSAY. The Distinguished Rank pays a maximum of \$20,000. The Meritorious pays \$10,000. The regular bonuses, which executives are eligible for, are up to 20 percent of base salary.

Mr. ROYBAL. Now, what is the average in 1980 and how do you determine who gets up to \$20,000?

Could it be less, could it be 16? How is a determination made?

Mr. DEVINE. The \$20,000 maximum award is limited by law to the amount payable for Level I of the Executive Schedule. It goes only to the select group of executives who are approved by the President for the Distinguished Rank Award. Each agency determines its own specific performance awards.

OPM approves a plan for granting the awards, but the actual awards are made by the different agencies and departments.

Mr. ROYBAL. Well, I ask that question because we get rumors that these awards are made on the basis of friendship.

Is there any truth to that rumor?

Mr. DEVINE. Well, like anything, I am sure there are examples of that. This is another thing we are looking at, a review of the whole process, since we are exercising oversight here. I intend to look into that and get a more accurate answer, and I will be very happy to pass the results of this along to you.

My impression is, however, that there are not many examples of this.

I do have some concern about placing people who are eligible to obtain the awards on the panels that review them, but it is kind of a Catch 22 situation. You want to have the best people on the performance review boards, but they are also the ones who are most likely to get the awards.

It is a tricky thing, and I don't have an answer to it, frankly.

Mr. ROYBAL. It would then be difficult to actually root out that type of practice?

Mr. DEVINE. Frankly, what I would prefer, although we need some legislative change on this, is that since noncareer executives are not eligible for bonuses, they should at least compose a majority of the Performance Review Boards.

Is it law or regulation that requires a career majority on PRBs?

Mr. RAMSAY. That is required by law.

Mr. DEVINE. It might be helpful if you get more noncareers on the PRBs. The off-setting problem is that people might claim it is politicizing.

It seems to me that it is a very sound doctrine of jurisprudence. The person who is not a party in a case is the best judge, and I think, if I had my druthers, that is what I would like.

The law does not allow that, so that is not a possibility. But to answer your question about abuses, I think through more vigorous oversight on OPM's part, we can cut down abuses. I think education efforts especially are needed.

The kinds of criticism that I have received in making my visits around Capitol Hill have been that the whole bonus program is in some danger of being eliminated. I think if the Senior Executive Service members recognize that the future of the program may well be on the line, that can help minimize these problems.

I think the people coming in with the new administration should recognize that this is a very important part of their responsibility and not something that they should just let happen. They should exercise some very careful oversight.

In fact, one of the reforms I am thinking of is to require that the agency head sign each bonus individually.

It is the practice in many of the agencies to sign one piece of paper to award scores or even hundreds of bonuses. I would think in maybe Defense, or something like that, to make them sign each one would cause them to recognize that they are making a major decision on each one of those.

I have not discussed this fully with staff but it might make some sense to make the agency head recognize that he is doing something important.

Mr. ROYBAL. Will you please prepare for the record a table which shows clearly and simply the SES salary and bonus schedule under current law?

Mr. DEVINE. Be happy to do that.

Mr. ROYBAL. That would be most helpful in trying to understand the situation.

[The information follows:]

#### SENIOR EXECUTIVE SERVICE SALARIES AND BONUSES

Pay for the SES is established by the President at rates which range from the rate of basic pay payable to GS-16, step 1, of the General Schedule to the rate of pay payable for Level IV of the Executive Schedule. The current rates of pay for the SES are as set out below. The "Scheduled Rates" are the rates established by the President. The "Payable Rates" are the rates permitted under Public Law 96-369.

Level	Scheduled rates	Payable rates
ES-1 .....	\$52,247	\$50,112.50
ES-2 .....	53,996	50,112.50
ES-3 .....	55,804	50,112.50
ES-4 .....	57,673	50,112.50
ES-5 .....	59,604	50,112.50
ES-6 .....	61,600	50,112.50
		<sup>1</sup> 52,750

<sup>1</sup> The rate of pay that is payable for SES members in ES-6 is \$50,112.50, except for members who are in positions (1) that were in Level IV of the Executive Schedule before conversion to SES and (2) positions that have been created since July 14, 1979, after the initial conversion to SES took place. SES members in ES-6 whose positions fall in either of these two categories are to be paid \$52,750.

SES career appointees are eligible for performance awards or bonuses, of up to 20 percent of their base pay under section 5384(b)(2) of title 5, United States Code. The payable rates, rather than the scheduled rates, are used as the basis for computing these awards. Thus in most instances, the maximum award currently permitted is \$10,022.50 (i.e., 20 percent of \$50,112.50). The Civil Service Reform Act of 1978 stated that the number of agency bonuses shall not exceed 50 percent of SES positions in the agency, and under the current appropriation act limitation they may not exceed 25 percent. Guidance issued by OPM has requested agencies to limit bonuses to 20 percent of eligible career appointees, unless the agency has OPM approval for a higher figure.

The aggregate amount that a career SES member may receive during a fiscal year as a result of base pay, performance awards, and Presidential rank awards may not exceed the salary for positions at Level I of the Executive Schedule, which is currently \$69,630.00.

#### RETIREMENT CLAIM BACKLOGS

Mr. ROYBAL. Mr. Rudd?

Mr. RUDD. Thank you, Mr. Chairman.

I am sure there are all sorts of problems you have not found yet that you are going to solve, but I am getting some that I will pass along to you.

To start with, I have had a lot of reports with regard to the backlog and delay in getting funds and benefits for ordinary retirees, and I assume that this situation just has not developed recently, that you inherited it and it has been going on for a while.

Do you have the extent of the problem in mind?

Mr. DEVINE. Yes, in fact the Chairman brought that up and during my confirmation hearings in the Senate I also mentioned that I consider the backlog that we have, although understandable in many ways, intolerable. We are absolutely committed to reducing the backlog, and I think we are reasonably well on the way.

Last summer we had a backlog of about 100,000 cases. We reduced that towards the end of the year to around 60,000 cases. Unfortunately, it has gone up again because at the end of the year there was an unanticipated high number of retirees.

We have projected that a 30,000 case backlog is about what the normal processing resources would allow us to have and still be able to exercise the oversight which we are required to do in order to assure that we process annuities properly.

We hope to reduce this backlog down to what we consider a normal one of about 30,000. I am absolutely committed to doing that, and I think we are on the way to doing that.

Mr. RUDD. Is this 30,000 a set goal that will always be there?

Mr. DEVINE. Yes, based on the volume that is sent in and the people we have to handle them, the amount of time it takes, I don't think we will ever be under that. I would say that we do have a program through which we make initial payments to individuals even before we have adjudicated the claim, so that there is some money coming in and it is over 80 percent of the amount due. Is that correct?

Mr. NELSON. Yes, sir; for employees who retire and are entitled to an annuity, we put people on special pay status within 20 days, and that is 86 percent of the eventual annuity.

Mr. RUDD. Once these people are on line there is no problem?

Mr. DEVINE. Of course, there is still a problem, because we are paying them 80 percent of what they should get rather than 100 percent of what they should get, so we still are not paying them

exactly right. But I think paying in the 80 percent category, most of what they are going to get, it is certainly a significant improvement over previous procedures.

Mr. RUDD. Why do you pay them 80 percent, rather than 100 percent? It takes the same amount of effort and time doesn't it?

Mr. DEVINE. Not really, because one cannot be sure precisely what they are going to get.

I was a claims examiner in the private sector. I spent about five or six hours going through this process from start to finish. It is a very complicated process.

The payment rates differ depending upon whether you are a veteran, and how long you are with one group or the other. It is really amazing. Some of those claims get very thick. Again, I have a background in claims and I don't believe it is padding.

I have looked through several of them. There are some very difficult technical questions that have to be decided to find out what the eventual rate of retirement pay is.

You have people that go into government service, go out again, come back in again, shift to the Defense Department or into the service and back, and each one of those changes can affect the eventual payment.

Mr. RUDD. Once the problem is solved, it does not happen every month, does it?

Mr. DEVINE. Oh, once the person is getting the 100 percent, then there is no delay.

Mr. RUDD. Do you process those checks and benefits in-house or contract them out?

Mr. NELSON. We do all of the substantive work ourselves in terms of preparing the annuity roll and processing the claims. We send a magnetic tape to Treasury in Chicago and it actually issues the checks. We send that tape usually on about the 13th of the month.

Mr. RUDD. Who is the actual issuer?

Mr. NELSON. The Treasury Department pays them. It issues the checks on the basis of the information we provide and the checks go out on the first of the month.

#### FEDERAL EMPLOYEES GROUP LIFE INSURANCE

Mr. RUDD. We have had a large number of forms in the last few weeks throughout government regarding to group life insurance. The questions I have deal with where a person does not wish to participate, he still has to fill this form out, and you still have to process it.

It seems to me that if a person does not wish to take insurance that we should not impose it on them.

Mr. NELSON. The law requires us to do it that way. Prior to passage last year of the law on the Federal Employees Group Life Insurance, I think every feature of the program was studied, and the Congress decided to continue this feature.

It is usually in comparison with the private sector. I really feel that it is almost a necessary part of our program. We have the responsibility for the life insurance program and the fund, but we do not have direct control over the 1,100 agencies in the Federal Government and the 1,100 personnel offices there, so we and the

law assume the individual is covered by the program unless he expressly files a written waiver that he is not.

If we worked it the other way, it would promote a lot of difficulties. Ten thousand employees die every year, something like 400 a day. Even in the process of setting up a program like this, there would be a lot of questions as to whether people were entitled to insurance or not. So we assume that the individual is entitled to insurance unless we have written documentation that he is not.

We think that this is safer for the employee and protects the fund against unwarranted claims. We really have no choice.

Mr. RUDD. You have no choice; it has to be done that way?

Mr. NELSON. Yes, sir.

Mr. RUDD. It would be interesting to know how many man hours it takes to process those new forms government-wide, for you to do that, and I don't suppose you have a handle on that?

Mr. NELSON. I am not sure what would be involved. I could draw together some figures in terms of the number of forms that were distributed.

Mr. RUDD. Inasmuch as there isn't anything we can do about it, it isn't really too important, except to try to devise more efficient ways to carry it out.

Mr. NELSON. It usually happens just once, because it is a new program. Normally the only thing that is required in the process of entering government service is that the individual be given an opportunity to decline membership in the program. It usually happens just once, but this is really a whole new program and it is the biggest change in the program since it was created in 1954. We really had to start over again from scratch.

We don't anticipate doing that again for a great number of years, and we recognize it has produced paperwork. We think it is a very unusual circumstance.

Mr. RUDD. I appreciate your responses.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Devine, will you provide for the committee the rules under which government employees may retire?

Mr. DEVINE. Certainly, we will be happy to do that.

[The information follows:]

#### CIVIL SERVICE RETIREMENT RULES

Except under special circumstances, which I will enumerate shortly, government employees may retire when they have met certain age and service requirements. These are:

- (a) age 62 with 5 years of service; or
- (b) age 60 with 20 years of service; or
- (c) age 55 with 30 years of service.

In addition, an employee retiring before age 62 must have been subject to the retirement system for one of the last two years. All employees must complete an Application for Retirement.

The special circumstances I mentioned are four: major reduction in force; certain occupations; employee disability; and discontinued service. During a major reduction in force (as determined by the Office of Personnel Management), an employee may voluntarily elect to retire at age 50 with 20 years of service or at any age with 25 years of service. The annuity is reduced by one-sixth of 1 percent for each full month the employee is under age 55. These same provisions apply to employees whose retirement is involuntary due to job abolishment or a reduction in force.

Certain occupations—law enforcements, firefighting, and air traffic control—are also eligible for early optional retirement. Law enforcement officers and firefighters may retire at age 50 with 20 years of service. Air traffic controllers may retire at

age 50 with 20 years of service in air traffic control or at any age with 25 years of service in air traffic control.

If an employee is determined to be medically disabled (by OPM) for the position he or she occupies, or any other position of the same grade or class, and has completed at least five years of civilian service, he or she is eligible for a Disability retirement.

#### REDUCTIONS IN FORCE

Mr. ROYBAL. Will you tell the committee what is a RIF employee?

Mr. DEVINE. What is a RIF employee? Presumably, that is an employee who has been displaced as a result of a reduction in force procedure.

Mr. ROYBAL. I think you told the committee that at least 90 percent of the employees scheduled to be reduced will be taken care of by attrition.

The remaining 10 percent will be RIF employees; is that correct?

Mr. DEVINE. I think it is going to be much less than 10 percent. That is the best estimate we can get. Again, not necessarily all of them will be dropped from government employment. That is, they may go into different agencies or other jobs in the same agency. I would like to say, especially if there is anyone from the press here, we are not talking about 10 percent of the RIFed people losing their jobs.

Mr. ROYBAL. Yes, but we are talking about the rights of displaced personnel.

Do they have any rights after so many years of government employment, a reduction taking place?

What rights do they have for continued employment within the governmental structure?

Mr. DEVINE. The whole reduction in force procedure is based upon certain factors mandated by law, including veteran's preference and the amount of time a person serves with the government.

The longer an employee serves the government, the less the chance he or she will be removed. The way a reduction in force works is that within the area or unit that is going through a reduction in force, the agency starts at the highest levels, GS-15 for example. There is what is called a bumping process through veterans preference and seniority in which people "bump" others down the line. Those that are RIFed, as it is called, go from GS-15 through jobs at 14, 13, 12, 11, 10, 9, down to GS-1 of those people with less time and retention standing. So the RIF procedure itself, as it was developed by Congress, specifically protects employees who have been with the government a long time.

The whole procedure is set up to do that, so we are not talking about getting rid of long-time Federal employees, except under some very unusual circumstances where a whole agency might be abolished.

#### EQUAL EMPLOYMENT OPPORTUNITY DATA

Mr. ROYBAL. Good. Now, last year OPM and EEOC were working out procedures which allow OPM to have access to equal opportunity budget data submitted to the EEOC by agencies.

Have you reached a working agreement with EEOC allowing you access to that data?

Mr. DEVINE. I will have to let someone comment on it fully. I have had a report that says that we are working together on this.

I am not sure how far we have gotten towards a conclusion.

Mr. SCHROER. We have a working arrangement now with EEOC on affirmative employment action plans required by EEOC and which in turn impact on our Federal Equal Employment Program. We have a close working relationship there, and we have worked out procedures that reduce the impact on the agencies and, at the same time, accomplish the goals of both agencies.

The specific question you ask about budgets, I cannot comment on, because I am not familiar with that.

Mr. ROYBAL. Well, is it possible to get that information for the record?

Mr. SCHROER. Certainly, we will include it in the record.

[The information follows:]

#### INFORMATION SHARING BETWEEN EEOC AND OPM

EEOC has permitted OPM staff on request to review agency affirmative action submissions. This means that we do have access to budget data. Generally, however, OPM's concern is limited to information on agency Federal Equal Opportunity Recruitment Programs (FEORP). For our January 1981 report to Congress on FEORP implementation, we asked agencies to estimate the amount of resources they had allocated to the program. We had some concerns about the data that were reported and so we indicated that "during the next reporting period, OPM will attempt to obtain more complete cost data and to ensure that all reported costs are attributable to FEORP."

Within the past month, OPM staff have met with officials from the Office of Management and Budget regarding the Special Analysis of Civil Rights Activities, which is included as part of the President's budget. At the meeting, it was agreed that if agency budget submissions for this special analysis were to include coverage of FEORP, consistent with OPM's program needs, we could eliminate a duplicative reporting requirement. We have since begun to work with EEOC, the lead agency for collection of the Special Analysis data in the employment area, and expect agreement on a specific data collection proposal within the next month.

Mr. ROYBAL. My last question, a recent news article reminded women that Federal women employees who became eligible for retirement after December 1, 1982 will lose all or part of the benefits they get as a surviving spouse of their husbands Social Security benefits. It is an offset procedure under which the annuity women would be used to offset part or all of their benefits under Social Security as a surviving spouse.

What is the situation with regard to this?

Mr. DEVINE. Gary, could you comment on that?

Mr. NELSON. I am not aware of anything that affects our payments to surviving spouses or to women employees. Is it perhaps a change in Social Security that takes account of Federal retirement benefits?

Mr. GUNNELS. Off the record.

[A discussion was held off the record.]

Mr. ROYBAL. Back on the record.

We appreciate if you would submit that matter, the answer to that question for the record.

[The information follows:]

#### CIVIL SERVICE RETIREMENT/SOCIAL SECURITY OFFSET

The Social Security Amendments of 1977 require that benefits payable to the spouse of a Social Security wage earner be reduced by the amount of any Government retirement benefit earned by the spouse. The amendment does not apply to

individuals who were already receiving a retirement benefit based on Government service covered by Social Security. Nor does it apply to individuals who become eligible for such retirement before December of 1982 if they would have been eligible to receive benefits as a dependent or a survivor under the Social Security law in effect as of January 1, 1977. The delay until 1982 will primarily affect female employees and annuitants and the few dependent husbands and widowers who would have qualified for Social Security under the 1977 law.

The 1977 amendment was intended to place the same restrictions on Government employees as were already in place for those employed subject to Social Security. In those cases where both husband and wife have earned benefits through employment covered by Social Security, the Social Security Act requires an "offset". Each spouse receives in full the benefits each has earned as a worker, but each receives benefits to which entitled as a spouse only to the extent that the spouse benefit exceeds the worker benefit. However, no such offset was required in the past where one spouse was employed in a position not covered by Social Security (most often this would be a Government position) and one spouse was employed subject to Social Security. The spouse without title to Social Security as a worker could receive full Social Security benefits as the spouse of a covered worker, in addition to his or her own pension. Under the 1977 amendment, people receiving Government retirement benefits will now be treated in the same way as workers covered by Social Security; as spouses, they will receive benefits from Social Security only to the extent that these exceed their own earned retirement benefits.

#### PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Mr. ROYBAL. We will now go on to Payment to Civil Service Retirement and Disability Fund.

Is there an opening statement you would wish to make at this time?

Mr. NELSON. For the Payment to Civil Service Retirement Disability Fund, we are asking for \$13.9 billion for 1982. That consists of two parts. One, the current definite authorization of \$3.3 billion which represents the 30-year payments that finance the liability created by changes in the law since 1969, when new or liberalized benefits were introduced.

We appeared before this committee about two weeks ago and discussed an item on this as part of the 1981 supplemental.

The second part is under our permanent indefinite authorization of \$10.6 billion, which represents interest on our unfunded liability, and credit for military service. These are funds that are transferred to the fund from the Treasury.

This total of \$13.9 billion is approximately \$200 million less than what was requested in President Carter's budget. The reduction is due to revised assumptions about inflation. From what we have seen, the revised assumptions which project lower inflation seem to be accurate. Some changes that we have made with respect to early retirement and disability retirements will be reflected as savings to the Fund.

The income to the Fund, this \$14 billion, approximately, is part of the total income to the Fund of about \$30 billion for 1982. The other part of that, and indeed the larger part of that, is contributions from individuals and agencies and interest earned by the Fund itself.

This \$30 billion would be in comparison to outlays to the Fund for 1982 of approximately \$20 billion. We expect the fund to grow by \$10 billion by 1982.

Mr. ROYBAL. In view of the fact that the Social Security Program and the Civil Service Retirement Programs are currently receiving careful scrutiny, will you explain how the requirements under this

appropriation are all calculated and what the effect would be if the request is denied?

Mr. NELSON. The requirements under this are calculated for the unfunded liability, which is approximately \$180 billion, and the interest on that is calculated at 5 percent, and that leads to \$9 billion.

The second is the credit for military service under the Civil Service system. That is time for which they made no contributions to the Fund, and those transfers from Treasury are designed to make up that difference. That is \$1.6 billion, and it is a calculation that we make annually.

The third is the 30-year amortization for new provisions in the law, and most of that is for past pay raises. We make a calculation as to what is the effect on future retirement outlays, we use a high three calculation to determine the annuities, and calculate the number of payments necessary to amortize those costs over a 30-year period.

The retirement is earned after the individual has received the pay raise and can continue for some period of time, thereby creating the need to amortize new unfunded liability.

Without those appropriations, there would continue to be money in the Fund for a few years. After around five years, Mr. Chairman, there would probably not be enough money in the Fund to pay retirement benefits. It would present to the government a very real problem in terms of meeting its obligations to people in terms of their annuities.

Mr. ROYBAL. You use the word "probably" would not be enough funds. Are we definite about it?

Mr. NELSON. We are definite there will not be enough funds. My estimate in the "probable" was related to the specific period of time in which that would occur, because that depends an awful lot on things that happen in the future in terms of pay raises and interest rates and cost of living adjustments.

#### REQUIREMENTS FOR RETIREMENT

Mr. ROYBAL. Now, what are the current requirements for retirement?

Mr. NELSON. People can qualify for retirement through their periods of service. There are several different ways in which that can happen.

At age 55, after 30 years of service, individuals are eligible to retire.

The second is at age 60, I believe, after 20 years of service. Finally, people who have five years of covered service can begin receiving annuities at age 62.

Those are optional retirements.

People who involuntarily leave the government, and that would include people who are fired or otherwise whose jobs are abolished, are eligible to retire at a slightly earlier age, at age 50 with 20 years of service and at any age with 25 years of service.

Mr. ROYBAL. Supposing that a man retired or women retired at age 55 with 30 years of service, what percentage of his salary would he receive?

Mr. NELSON. Fifty-six percent of his high three salaries, and that would be probably about a little bit less than 55 percent of the final salary.

#### DISABILITY RETIREMENTS

Mr. ROYBAL. Supposing again that a person 55 with only ten years of service became disabled; what kind of provision is made?

Mr. NELSON. The disability provisions would give individuals credit for the ten years that they had already served, and any length of service necessary to take them to age 60. This person of 55 would get credit for five additional years of service for a total of 15 years of service, and he or she would begin receiving payments immediately at age 55 under disability.

Mr. ROYBAL. But based on 15 years of service?

Mr. NELSON. Based on 15 years of service, Mr. Chairman.

Mr. ROYBAL. That would be quite a reduction from the 55 percent.

Mr. NELSON. That is right. The reason it is less is because the individual did not begin working for the Federal Government until age 45. If the individual had in fact 30 years of service, he would get the full amount of the annuity he was entitled to.

Disability retirees must do at least as well as optional retirees and many of the younger ones do considerably better.

Mr. ROYBAL. Is there much of an effort on the part of employees to, once they reach 30 years of service, age 55, to look around for means and ways of getting disability compensation?

Mr. NELSON. Well, of course, once they have 30 years of service at age 55 they don't need disability retirement. We have found we do receive a large number of applications for disability retirement from people who are eligible for optional retirement and we are doing everything we can to discourage that.

It is a lengthy adjudication process involving medical evidence and all. We don't need the work and we don't think it provides them any extra dollars.

Mr. ROYBAL. You said a little while ago that in some instances they get full retirement, so my question is, is there any increased benefit to the person who served 30 years, is 55 years of age, and is eligible for retirement; does he get more than the person who is not eligible for disability retirement?

Mr. NELSON. No, sir; he does not get any more from us than that. Many people think there are some tax advantages, but those, I think, tend to be overrated. The IRS looks at evidence independent of our own determination.

Mr. ROYBAL. Sure, because sometimes there are rumors started that that does happen, that the ripping off the government, and it is good to have on the record just what the situation really is.

#### FINANCIAL STATUS OF RETIREMENT FUND

Now, what is the financial status of the Fund at the moment?

Mr. NELSON. At the end of this fiscal year, we expect the Fund to have \$83 billion in assets, and to grow by \$10 billion during 1982, provided that the funds that we have requested are approved.

Mr. ROYBAL. What about the amount of the unfunded liability?

Mr. NELSON. The amount of the unfunded liability calculated under static assumptions is about \$180 billion for 1982, and we have an unfunded liability because the money paid into the Fund under the funding formula is paid in after the liability is incurred. Therefore, there is a time lag.

During that time lag, it is measured as an unfunded liability, but under our simulations, it seems that there is always enough money in the Fund in the future to pay the benefits under a variety of economic assumptions.

Mr. ROYBAL. Assume the present manner and the level of funding continues; will the unfunded liability be liquidated in the foreseeable future?

Mr. NELSON. No, sir; I believe that one of the facts of life under our present funding formula is that there is an unfunded liability, and it will grow over time.

Mr. ROYBAL. Well, what is the income from your investments and how and where do you invest?

Mr. NELSON. Indeed, it is not the responsibility of this agency to invest the funds. The Treasury Department does it for us. They invest it in Treasury issues and government securities, as is the case with almost all trust funds of the Federal Government, and they earn interest. The interest is I believe \$7 billion for 1982, and that is our estimate based on projections of future interest rates.

Mr. ROYBAL. It is still a sizable amount.

Mr. DEVINE. I might say that interest on the long term unfunded liability is very substantial, and we carry it forward.

I could get you the exact amount if no one else knows, but it seems to me it is in the \$9 billion area for fiscal year 1982.

Mr. NELSON. Yes, sir; the numbers I gave you were static assumptions that assumed no inflation, and I gave you those numbers because that is what the law says that we should use for requesting funds.

If you put in inflation rates, then our unfunded liability right now is \$450 billion.

Mr. ROYBAL. Any questions, Mr. Gunnels?

Mr. GUNNELS. This thing is confusing. I wonder if it would be possible for you to develop some tables, some analyses, so that the people who will read this record can understand it.

I know it is complex but we don't want the technicalities. It is going to be debated on the Floor. It is already being debated in the media. People across the country are concerned. Tell us what the Fund is, what happens to those people, how this money here is calculated.

If I were Mr. Stockman, from what you have said, Gary, I think I would say, "Hey, there is several billion I could pick up."

Let's tell him why he can or why he shouldn't do that, because it is basic to the security of the government financing.

Mr. NELSON. We would be delighted to do that.

[The information follows:]

#### CIVIL SERVICE RETIREMENT FUND

The Civil Service Retirement and Disability Fund is the aggregate total of income paid into the fund less benefit costs incurred for benefits payable within any fiscal year. As of the end of 1982, the Fund is expected to be \$93.1 billion. The current method of funding is discussed below. The funding formula does not cover the cost

of total future benefits. Those additional liabilities are known as the "unfunded liability" which is calculated by taking the difference between (1) the present value of all future benefits payable from the Fund for employees, former employees, annuitants, and their survivors and (2) the present value of employee/employer contributions plus the present value of the 30 year amortization payments together with the Fund balance.

#### CURRENT METHOD OF FUNDING THE CIVIL SERVICE RETIREMENT FUND (STATIC BASIS)

The current method of funding the system was incorporated into the Civil Service Retirement Act, Title V, Sec. 83 with Public Law 91-93, Civil Service Retirement Amendment, effective October 20, 1969. The financing covers (1) static normal costs for employees shared 50/50 with their respective employing agencies; (2) payments from the General Revenues to cover disbursements for annuity payments attributable to credit for military service; (3) 30 year amortization of any new liability created by increases in pay or the passage of legislation for new or liberalized benefits and/or extensions of coverage and (4) an annual interest payment (5 percent) from General Revenues on current unfunded liability as valued by the Board of Actuaries. Public Law 93-349, Civil Service Retirement Fund, Postal Service Payments, effective July 12, 1974, charged Postal Service with financial accountability for liberalizations due to their actions through an end of year payment. A discussion of each of these funding provisions is presented below.

#### *Postal Service payments*

USPS payments are based on salary increases which are applied to postal employees under the terms of their labor contracts. The payments are computed by the Postal Service using data supplied by OPM and the static funding assumptions discussed below. The payment is made on an annual basis, at the end of each fiscal year, and will be recomputed upon any USPS liberalization, generally following their contract cycle.

#### *Payments under the Retirement Act of 1969*

1. The Agency and Employee share of retirement costs is 7 percent each except for firefighters and other liberalized similar programs which are 7½ percent. This closely approximates the static normal cost of the benefits. Static normal cost is defined as the present value of future benefits based on non-dynamic actuarial assumptions (i.e., no inflation or salary increases) less the Fund's assets divided by the present value of payroll. Actual interest rates (at 6 percent currently) are taken into account in determining the Fund's assets. The September 30, 1977, valuation of the C.S. Retirement Fund by the Board of Actuaries calculated the normal cost under our statutory static method at 13.73 percent.

2. In order not to place the burden for creditable military service (for which there are no contributions) on all employees, the 1969 amendments allowed for an annual transfer at the end of the year from General Revenues to the C.S. Retirement Fund to cover that share of annuity disbursements during the year that were based on military service. The share is determined by measuring actual credit on a sample of current annuitants using separate averages for annuitants and survivors and applying the results against actual payments during the year. As of 1980, the percentage that military credits were of total annuity outlays were 7.8 percent for employee annuitants and 6.6 percent for survivors.

3. The 30-year amortization payments were established in 1969 so future legislation would not impact adversely on the C.S. Retirement Fund by increasing unfunded liability. The payment is calculated by determining the added liability and dividing by the present value of a dollar paid annually as an annuity certain at 5 percent for thirty years. As of the end of 1980, the amount of liability being amortized was \$48.7 billion. [NOTE: The amortization is an annuity certain because the Federal government is obligated by law to make its payments. Thus the Valuation's mortality assumptions do not affect the 30-year amortization payments.]

4. The annual interest payment was a way of recognizing the amount of the unfunded liability which had accrued by 1969. It also recognized that the unfunded liability continues to grow, despite the payments discussed above. The growth in the unfunded liability is caused by: The impact of cost-of-living annuity (COLA) increases (these were specifically exempt from the 30-year amortization discussed above); and legislation which is considered too insignificant to amortize, i.e., it adds less than \$1 million to the unfunded liability.

In addition to the payments for the 30-year amortizations, the interest on the unfunded liability, and the payment for military service, the Government Payment to the Civil Service Retirement Disability Fund includes funding for benefits under Special Acts. The two programs involved are annuities for persons who were em-

ployed on the construction of the Panama Canal, or their widows; and widows of former employees of the Lighthouse Service. The fiscal year 1982 appropriation for the Government Payment of \$13,941.4 million consists of \$.9 million for Special Acts, \$3,296.7 million for 30 year payments, \$1,586.9 million for military service, and \$9,056.9 million for interest on the unfunded liability.

Without the appropriated payment of \$13.9 billion in fiscal year 1982, current obligations would begin to eat into the \$83.6 billion Fund available at the beginning of the year by \$4.2 billion. This erosion of the Fund would compound each year with the increase in benefits due to COLA, the increase in the number of annuitants, and by the loss of interest income which would have been earned on the appropriation payment and an uneroded Fund. The entire Fund, which has accumulated over 60 years, could be consumed in as little as 10 years in the absence of appropriations such as the one requested today.

#### EARLY-OUT RETIREMENTS

Mr. GUNNELS. One other thing, Mr. Chairman. Has the administration given any consideration to what I believe you call early-out programs, letting people retire earlier than they normally could because otherwise you are going to have too many RIFs?

Mr. DEVINE. Yes, this has been discussed within the administration. Our view is that because of the kinds of problems that we have talked about with the solvency of the retirement fund, and our heavy fiduciary responsibility in this area, we should not simply pass along costs to the retirement fund.

In a recent Federal Personnel Manual Bulletin, which we have sent out to the agencies, we have required them to calculate the costs in submitting their requests for early-out authority. We may come to you and ask that we be allowed actually to have them incur the cost. At least we have required them to say what the costs to the government are to the Retirement Fund for using early-out authorities.

I think at a minimum, if they have to take into consideration the costs they are putting in, at least some thought will go into the process.

We have also tightened up our requirements for early-out authorities in general, so we are very much aware of this problem. Early-out is a tool that management should have available to them. But, I think that they should consider the full cost effect of what they are doing and not just the immediate cost to the agency. That is the problem now.

Mr. GUNNELS. Do you have authority to delegate that to any agency or does that take legislation?

Mr. DEVINE. Well, we have the authority to ask them to consider that in their decision process.

We would need legislative authority to require them to make a contribution out of current funds into the Retirement Fund.

Mr. RAMSAY. The law does require that the Office of Personnel Management, however, approve agency requests for use of the early-out authority.

#### SOCIAL SECURITY COVERAGE FOR GOVERNMENT EMPLOYEES

Mr. GUNNELS. One final question on that: Have you been requested to testify on this proposition of combining Civil Service Retirement and Social Security coverage for government employees?

Mr. DEVINE. We have not been asked to testify on this. This is obviously something very much on our minds.

We have received some requests. Congressman Derwinski sent a letter to Dave Stockman at OMB. I just received a reply from that in which Director Stockman said that OPM will take the lead role on dealing with these questions, so it is something that we have to give some serious thought to.

We are going to have to consider the importance of the retirement system to Federal employees. It is a good retirement system, and many people choose government service because of it. I am absolutely dedicated to the proposition that Social Security not be the exclusive pension system for the Federal Government.

As I said in my confirmation hearing, I prefer that they not be integrated. But, we have to take into account government-wide concerns and not just employee concerns. The solution has to be something that is good for the common interest as well. I intend to protect the rights of the civil servants to that fund.

We are certainly not going to gut the fund simply to help out Social Security. That would only be a short-term solution and, as you just heard, our system has a very significant unfunded liability, too.

We have not exactly correlated the systems yet, but it may be that Social Security is just buying bigger problems for itself in terms of unfunded liabilities. This is something that we are going to look at very closely before any final decisions are made.

Mr. GUNNELS. Well, I thought that the Social Security System was not set up as a retirement system in the first place. It was a supplemental income system; whereas the Civil Service is a retirement system and, of course, the employees pay in different amounts to the two systems.

The military now, they have both of their systems completely separate. One is a noncontributory, their own, and the other, of course, is Social Security.

The unions that are coming in to see the committee are quite concerned that there would be a raid on the Civil Service Fund if government employees were required to be combined under the Social Security.

Mr. DEVINE. It is easy for them to look at the situation, especially under the static assumptions, and think they are buying into something that is easy to raid. But, when you look at more realistic assumptions of inflation, there is not much to raid.

We have a real problem with the unfunded liability. It is predicted to grow within the retirement system even assuming we get a request for contributions in it.

Mr. GUNNELS. It would be helpful if you would keep the committee informed of the developments.

Mr. DEVINE. This is something I am sure you will be very concerned about. It has tremendous impact and is something that is not going to be done quickly within the administration. I am sure Congress will look very closely at the recommendations, too.

Mr. ROYBAL. Thank you, Mr. Devine.

GOVERNMENT PAYMENT FOR ANNUITANT, EMPLOYEES HEALTH  
BENEFITS

We will now go into the Government Payments for Annuitant, Employees Health Benefits.

Mr. NELSON. Yes, sir. We expect that the revenues for Employee Health Benefits Fund for 1982 will be about \$4.8 billion. That consists primarily of two parts: The government contribution, which is about 60 percent of that, and the employee contribution, which is 40 percent.

These are funds collected from individuals and collected from agencies out of separate appropriated funds.

There is a payment of a little over \$800 million that is paid into this fund from the Government Payment's Appropriation for the government's share of the health benefits cost for annuitants.

Mr. ROYBAL. Will you please go into detail as to what the purpose of this fund really is?

Mr. NELSON. Yes, sir; the purpose of this fund is to serve as a financing mechanism for the Federal Employees Health Benefits Program. We offer 120 different plans to Federal employees.

We have contracts with each of these plans. About 20 of these are insurance plans that are available to most employees government-wide. The other 100 are comprehensive plans, health maintenance organizations that are typically available in precise geographic areas in particular cities, for instance.

The money is paid from the agencies to this fund and then is paid out to the carriers for the claims, as the claims are incurred. This protects the government, of course, because the funds collected on premiums are retained by the government until there are claims made on the program itself.

Mr. ROYBAL. Now, are the obligations from this fund automatic; how do they work?

Mr. NELSON. I would let my budget officer correct me when I make a mistake on this.

The requests we have, I believe, are for the government contribution for annuitants, which is what our agency pays, \$825 million. The balance, I believe, is in other agencies' appropriations and does not require action by this committee.

Mr. ROYBAL. It does not?

Mr. NELSON. It does not; is that correct?

Mr. CONLEY. That is correct. Each agency, in the salaries and benefits that it budgets, takes care of its share of employee health benefits.

Mr. ROYBAL. Your budget request for 1982 is \$35,137,000 more than 1981. Why has that become necessary?

Mr. DEVINE. That is the net increase over last year, from \$757 million to \$792 million.

We have to look for the precise figures, but I am sure the answer is, as the number of annuitants and employees grows, the costs of meeting the claims grow, especially as the ratio of retired to employed increases.

One would expect more health plans for an older population than for a younger one, but I don't have the specific facts on that. We will certainly try to get them for you.

I am sure we can show that.

Mr. ROYBAL. Supply that for the record.  
[The information follows:]

INCREASE IN APPROPRIATIONS FOR GOVERNMENT PAYMENT FOR ANNUITANTS,  
EMPLOYEES HEALTH BENEFITS

The increase of \$35,137,000 in the budget request for fiscal year 1982 reflects a projected increase of 3 percent (approximately 41,000) in the number of annuitants to be enrolled in the program by the end of fiscal year 1982. The budget request also assumes a rate increase of approximately 10 percent. The actual increase will be a product of negotiations currently scheduled to be complete in June 30, 1981.

Mr. ROYBAL. What is the financial status of the fund?

Mr. SCHROER. That is essentially a revolving fund, and it is in good shape. There is no unfunded liability in this fund.

Mr. ROYBAL. Will you still provide something for the record?

Mr. DEVINE. Essentially, this is based on the insurance company estimates of what the claims will be the next year.

Mr. CONLEY. There are some small reserves kept year by year to cover any contingencies, but other than that it is essentially a flow-through.

Mr. NELSON. Assets, contingency held reserves in the fund, are around \$639 million and the disbursements are around \$4.5 billion. So there is only a small reserve that is kept in the fund. It is really a financing mechanism for the plan rather than a repository of assets.

Mr. SCHROER. We will give you a brief statement for the record on the financial status of the fund and how it works.

[The information follows:]

FEDERAL EMPLOYEES HEALTH BENEFITS FUND

The fund is financed by (1) withholdings from active employees and annuitants [\$1.8 billion]; (2) agency contributions for active employees, appropriated to agencies [\$1.4 billion]; and (3) Government contributions for annuitants appropriated to the Office of Personnel Management [\$824 million]. Funds advanced to carriers but not used to pay claims in the current period are carried forward as special reserves for use in subsequent periods. The contingency reserves [\$528 million] are retained by the Office of Personnel Management and paid to carriers, as necessary, to defray future rate increases or to provide increased benefits.

Health benefits rates are determined by negotiation. The subscription rate is designed to cover program costs to which 1 percent is added for administrative expense, and 3 percent is added for contingency reserve held by the Office of Personnel Management (OPM) for each carrier. The OPM is authorized to transfer unused administrative reserve funds to the contingency reserve. OPM generally uses only one quarter of the 1 percent allotted for administrative expenses.

The government contribution for fiscal year 1981 range from a high of 75 percent of premium (93.75 percent for Postal Service) to a low of 45 percent. The average contribution is 64 percent.

The current financial status of the fund is:

	Fiscal year—		
	1980 actual	1981 estimate	1982 estimate
Total assets.....	\$1,021,744	\$1,114,951	\$1,231,434
Total liabilities.....	308,387	364,210	412,794
Trust equity.....	713,357	750,741	818,640

EFFECT OF NOT APPROPRIATING INCREASE FOR GOVERNMENT  
PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

Mr. ROYBAL. The last question is, what would happen if Congress decided not to grant the \$35 million increase?

Mr. DEVINE. I think you would have a lot of upset Federal employees because we wouldn't be able to pay the claims. We would probably also be breaking a contract with the insurance companies, although presumably we could break that. Since this is basically a revolving fund on obligations that are built up, presumably we could start building up an unfunded liability. But, I don't think we would want to do that with the fund.

Mr. CONLEY. By law, sir, the weighted average of the six largest plans is the government's contribution, so in effect we would not be making the government's contribution of the formula for the retired employees. There would be no one contributing their share, since they have no agency currently paying in anything. There would be no payment whatsoever for retired personnel.

Mr. ROYBAL. There are a lot of unhappy employees now as a result of cutbacks in other departments, so that would add to yours, but it is a situation that really indicates that you could not absorb anything like that?

Mr. DEVINE. No. Again, this is a fund that operates on a year by year basis. I suppose there is a balance which we could eat into, but we would be violating good insurance principles. Social Security's problems started just this kind of way, at least in the retirement fund.

I just spoke with the Chairman of the Retired Government Employees about this at another hearing over on the Senate side. He was telling me that in the fifties in order to save money OMB suggested taking so many millions out of the unfunded liability of the retirement system. Part of the problem we have today results from the kind of short-term, quick-fix thing that was done then.

I think it would be a big mistake to get into that same situation in a fund that is balanced without significant liability.

Mr. ROYBAL. Mr. Gunnels?

Mr. GUNNELS. Do you have any idea how many Federal employees are retired and drawing annuities under which this pays benefits?

Mr. NELSON. We have 1.9 million people projected for 1982 to be on the annuity rolls, either employee annuitants or survivors. Of that number, 1,274,000 are covered by this Health Benefits Program.

Mr. GUNNELS. Of course, U.S. senior citizens, such as myself, are going to require more of that.

Mr. NELSON. It is very important to the employees that they can carry the health benefits program into retirement. To go off as an individual and contract separately for health insurance is extremely expensive and very uncertain for someone who is in poor health.

Mr. GUNNELS. Thank you, Mr. Chairman.

INTERGOVERNMENTAL PERSONNEL ASSISTANCE

Mr. ROYBAL. We will now go into Intergovernmental Personnel Assistance.

Mr. DEVINE. The Intergovernmental Personnel Assistance Program is about ten years old now. The idea of the program was to encourage states to undertake activities that they normally might not consider. The Federal Government would give them a financial incentive to consider such activities.

We have ten years of experience with that program, and it has done many good things.

I have looked at several products of the program, and in many cases excellent academic research has resulted.

Systems have been instituted in several State and local governments. I think that regardless of whether one agrees with the original Act, the purpose of the Act certainly can be said to have been achieved after a ten-year period of encouragement. After all, how long do you encourage people?

It makes sense, after ten years of funding this program, to say that we have now done our job. It is up to the States and local governments, if they think these projects are worthwhile, to continue them. So our recommendation is to phase out this program in this and the next fiscal year, and by the end of 1982 basically to zero out this account.

Mr. ROYBAL. This is to phase it out by 1982?

Mr. DEVINE. By the end of 1982.

Mr. ROYBAL. Because the administration has not requested any funds?

Mr. DEVINE. No new funds are requested for 1982; but there is a carryover from fiscal year 1981?

Mr. BECKMAN. There is \$14.4 million available in 1981. Those grants can be awarded right up through September 30 of this calendar year, Mr. Chairman.

Most grants run six months or even up to a 12-month period to achieve the objective of the project, and that means cash will be made available to cover the Federal share of that activity in 1982. Our current estimate is that we can close out almost all of the projects between May and September of 1982.

Mr. ROYBAL. All right.

Now, with regard to the grants, what proportion went to State governments and what proportion to local governments?

Mr. BECKMAN. By statute it is required that at least 50 percent of the benefits go to local governments. As a practical matter, 44 of the States have developed State-wide programs made up of 10 to 20 projects per State, and more than half of those have a local impact. The rest are for State personnel services.

Mr. ROYBAL. Do Indian tribal governments qualify for funds?

Mr. DEVINE. Indian tribal governments do qualify for funds.

We are assessing that part of the program. I think a much stronger argument can be made that there is a continuing Federal responsibility to Indian tribes which have a special relationship to the national government. That relationship is very unlike the Federal relationship to State and local governments.

If we internally decide that this is a worthwhile program, and we are reviewing this, we will continue to provide reimbursable technical assistance.

That part of the program may be moved into a different part of OPM. I think a much stronger argument can be made that there is a continuing interest in this area.

Mr. ROYBAL. What amount of money was given to the Indian tribal governments in 1981, and what do you expect will be given by the time this program is phased out and probably this section transferred to another jurisdiction?

Mr. BECKMAN. We will have to provide the specific amounts awarded to the Indian tribal governments for the record.

[The information follows:]

#### IPA ASSISTANCE TO INDIAN TRIBAL GOVERNMENTS

IPA funds granted to Indian tribal governments in fiscal year 1980 amounted to approximately \$400,000 of the \$20 million dollar level. A list of projects follows. In addition, reimbursable technical assistance provided to Indian tribal governments amounted to \$458,000 in fiscal year 1980.

## FY 1980 IPA Grants Projects Benefitting

## Indian Tribal Governments

Tribe/Organization	Project	IPA Funds	Cost
California Office of Economic Opportunity	California Indian Management Training Program	\$33,263	\$78,894
California Tribal Chairmen's Association	Tribal Training Institute	50,599	124,947
Confederated Salish and Kootenai Tribes (Montana)	Personnel Technician Training	15,840	33,555
Confederated Tribes of Warm Springs (Oregon)	Mid-Management Training for the Warm Springs, Wasco and Northern Paiute Tribes	15,000	30,000
Covelo Indian Community Council (California)	Personnel Systems Development	8,300	38,064
Fond Du Lac Reservation Business Committee (Minnesota)	Intergovernmental and Management Training	10,000	21,205
Hualapai Tribe (Arizona)	Personnel Management Office	21,118	21,228
Inter-Tribal Council of California, Inc.	Intergovernmental Affairs Training Seminar for California Tribal Officials	16,415	32,854
Inter-Tribal Council of California, Inc.	Leadership Training School	8,148	16,809
Jicarilla Apache (New Mexico)	Training Needs Assessment Survey	7,148	14,296
Karok Tribe (California)	Management Training for Tribal Staff and Governing Body Members	22,225	44,450
Kickapoo Tribe of Kansas	Administration and Management Improvement	18,000	36,000
Kuskokwin Native Association (Alaska)	Self-Determination Local Government Training	19,936	50,054
Michigan Department of Civil Service Michigan Indian Tribes	Tribal-State Personnel Management Training Program	14,145	31,811
Michigan Department of Civil Service Saginaw Chippewa Indian Community	Tribal Management and Personnel Program	13,875	30,793
Navajo Nation (Arizona)	Instructional Budget Manual and Training	5,000	86,905
Santa Clara Pueblo (New Mexico)	Personnel System Development	9,128	20,654
Seminole Tribe of Florida	Organizational Development and Team Building	11,578	23,156
Six Sandoval Indian Pueblos, Inc. (New Mexico)	Personnel Management Improvement	12,045	24,090
United Houma Natiaoa, Inc. (Louisiana)	Managerial Training for Houma Indians	3,000	6,000
United Tribes of Kansas and Southeast Nebraska, Inc. (Kansas)	Personnel Management Program for the Iowa, Potawatomi, and Sac and Fox Tribes	24,000	48,000
Ute Indian Tribe (Utah)	Employment Study	9,000	19,100
Washoe Tribe of Nevada and California (Nevada)	Personnel Management and Organization Project	5,846	11,692
Wisconsin Department of Employment Relations/Oneida Tribe	Personnel Management System for the Oneida Tribe	16,720	37,530
Wisconsin Department of Employment Relations/ Wisconsin Indian Tribes	Training and Technical Assistance for Tribal Governments	25,678	55,612
Total	25 Projects in 14 States	\$397,007	\$937,699

Mr. ROYBAL. What would happen if you were unable to get any funds under this circumstance to the Indian Tribal Governments?

Mr. BECKMAN. Let me speak to one aspect of that.

The major source of OPM assistance to Indian tribal governments has not been funded directly through the Intergovernmental Personnel Act, but through programs administered by the Department of Interior and Department of Health and Human Services.

We are maintaining some major management assistance efforts, such as intern programs for tribal governments. They are primarily funded through other Federal appropriations, and in effect the reference made by the Director for reimbursement for those activities is the most significant assistance that is underway. Within our current ceilings and priorities we hope to be able to continue much of that work.

Mr. ROYBAL. To go back to the States, who determines what States will receive these grants and on what basis is that determination made?

Mr. DEVINE. Norm can talk to that, but it is basically on a formula.

Mr. BECKMAN. It is provided for by the basic statute, and it is based on two variables. The population of the State and the number of State and local public employees in the State.

We actually did provide at our own discretion a floor of no less than \$90,000, no matter what the population is. That goes up to \$1,514,000 in the State of California, which is the most populated State and one with a large number of State and local employees.

#### USES OF IPA GRANT FUNDS

Mr. ROYBAL. After these grants have been made available to the Indian tribal governments and to the States, what are these funds primarily used for?

Mr. BECKMAN. They have been used for a range of personnel management and management improvement and productivity projects. To take last year's statistics, there were 641 actual projects, and about a third of those went for training and employee development activities. Training was provided in a whole range of management skills which ranged from elected officials at the State and local level to clerical workers who were learning new techniques, say, in word processing, labor management improvement, and equal employment opportunity approaches.

Productivity projects have been a special priority with us: the employment of automated data systems to reduce the cost of personnel management, recruitment selection, classification questions, and basic personnel management improvement activities.

Mr. ROYBAL. Those seem to be very basic functions that the States and governments are performing, and still this is going to be phased out by 1982?

Aren't those functions important at all?

Mr. DEVINE. Well, they are certainly important functions, no question about that. To me the question is where is the proper locus of that activity? It seems to me that it is the responsibility of State and local governments to run their own personnel systems.

I would probably have had some argument about doing this in the first place. But, accepting the argument that it should be done,

I think a ten-year period of encouragement to upgrade personnel systems is certainly long enough time for the Federal Government to lead the State and local governments to the conclusion.

If we have not been able to convince them in ten years that these are important activities, what makes us think we will be able to convince them in another ten?

#### BENEFITS OF GRANT PROGRAM

Mr. ROYBAL. I am looking at the fact that this has been under operation for a long time, that some benefit must have been derived from this.

Mr. DEVINE. No question that benefits have resulted from this. When you make grants available and you undertake appropriate oversight, as I believe OPM has done, there is no question that you make some gains.

My argument against the program continuation is that those gains, if they are real, and we think they are real, should be able to sell themselves through the appropriations process at the State and local governments.

Mr. ROYBAL. Well, do you have any statistics as to the number of people trained or some other indicators to positive accomplishments?

Mr. BECKMAN. Yes, there are very large numbers of people who receive short-term training. I believe we have provided this for the record in the past to this committee. Over 100,000 people each year have gotten some training benefit and in 1981, it will be close to that also.

We have a record of all of the 6,000 or so projects that have been funded over these ten years. The best training and other projects have been picked up by us and published and distributed, so that they are available to all State and local governments.

Even after this program winds down we have a computer retrieval capability both in Washington and in the regions, so that State and local governments interested in a particular aspect can find out the results of those projects, summaries of what was accomplished and where to go for more information.

That will be an ongoing service.

Mr. ROYBAL. IPA has repeatedly been cited as a program which helps State and local governments and minorities.

What efforts do you plan to undertake to ensure that the kinds of successful programs we have seen through IPA can continue?

Mr. BECKMAN. That has been a priority for us, to stress new recruitment selection methods and upward mobility activities, and we have put out explicit publications citing the best practices throughout the country with the use of IPA funds.

The extent to which State and local governments move in and take over those responsibilities will reflect the success of the program. This has never been a support program. It has always been a policy not to continually finance an activity in a particular jurisdiction, but to demonstrate an activity.

We do have some evidence that State and local governments will continue these kinds of activities, especially at the State level, and some organizations will be set up to work with local governments.

We have some indication already that those activities will be maintained and carried on in individual States.

Mr. ROYBAL. In this instance would the grants be made available to the States? The States would have control of training, affirmative action and whatever is involved with it.

In the discontinuation of this grant and without the ability of the State to institute their own program, wouldn't that deprive them, those individuals serviced by this program in the past to continue to receive such service?

Mr. DEVINE. Well, this would not be a major amount in funding an overall affirmative action or equal employment or upward mobility program within the State.

The grants are addressed to how to do it rather than actually financing the activity within the State.

Mr. ROYBAL. I understand that, but the thing is it is some help to the States to be able to receive a grant for that specific purpose, and I am looking at the inability of the State to do it or maybe the State not wanting to do it, which is another matter, but in States with large minority groups, I would think that such a grant would be most welcome, and that in most instances they would not be able to continue this program.

Mr. BECKMAN. I do want to clarify one impression on the relative emphasis given by State and local governments to various aspects of personnel management.

Last year's statistics showed that only 3 percent of the projects dealt predominantly with affirmative action. It is not the predominant use by any manner.

#### ROLE OF FEDERAL GOVERNMENT

Mr. ROYBAL. It is still a helpful situation, and it must have had some merit all these years and all of a sudden we now find it has no merit at all.

Mr. DEVINE. To me, again, it isn't a question of having merit. The question is, does the Federal Government treat State and local governments as if they are grown up or as if they are wards of the Federal Government?

I think that if this isn't an area that the Federal Government can get out of, and if that is not part of what the electorate was talking about, I don't know when or where we will cut back.

I see that the impact on affirmative action is minimal, 3 percent.

Mr. ROYBAL. What do you mean that the electorate was talking about?

Mr. DEVINE. The electorate was telling us that the Federal Government has gotten a little bit out of its normal range of activities, what people expect the Government to do. We have gotten too involved in the private sector, in running and regulating the private sector and running and regulating State and local government.

Mr. ROYBAL. Well, do you think the electorate meant that Federal functions should be completely transferred to the States?

Mr. DEVINE. No. I don't think they meant it should be completely transferred.

Mr. ROYBAL. The assumption that there was a specific program in the minds of the electorate at the time they went to the polls is something that does not exist?

Mr. DEVINE. It is not specific. My point was if this kind of program cannot be turned back to the States after ten years of trying to convince the States that this is the kind of thing that they should be doing, then we will never turn back anything.

Mr. ROYBAL. Well, this may be so. There is a funding limitation of \$20 million and it is not the entire budget of the Federal Government, and there are some areas where something like this can be done; but as a general practice I don't think that everything should be transferred to the States and I don't think that is what the electorate really wants.

Mr. DEVINE. I am sure we disagree on the exact amount of the transfer.

Mr. ROYBAL. Yes; now, I think you answered the question with regard to alternative funding for the States.

If this program were to be discontinued, there will be no other programs under your jurisdiction that will be—

Mr. DEVINE. The only other program will be the general block grants that the administration has proposed to send back, and certainly the States could exercise the use of part of the block grant return money for those purposes.

Mr. ROYBAL. Will it be in the amount equal to that being spent by the program at the present time?

Mr. DEVINE. Again, it is going to be followed into a broad block without traditional categories, so it is difficult to answer that question.

Mr. ROYBAL. I would like to thank you, Mr. Devine and your colleagues, for your testimony.

Mr. Gunnels, do you have any final questions?

Mr. GUNNELS. No questions, Mr. Chairman.

Mr. ROYBAL. Since there are no further questions, the committee will recess until two o'clock this afternoon.

We thank you very much for your testimony.

Mr. DEVINE. Thank you.

Mr. ROYBAL. The committee is recessed until this afternoon.

## CIVIL SERVICE REFORM ACT

Mr. Miller: On page three of the statement, you say that you plan to "stress implementing the incentives and other management tools provided by the Civil Service Reform Act." Will you amplify this please and explain where we stand now in implementation of this Act?

Mr. Devine: The incentives provided by the Civil Service Reform Act (CSRA) include the establishment of the Senior Executive Service (SES), merit pay systems, and performance appraisal systems. All three of these systems encourage strong linkages between the performance of federal employees and appropriate rewards and sanctions. Because of the great potential these systems have in improving federal productivity, I am placing a high priority on OPM's role in ensuring successful implementation.

## Senior Executive Service Implementation

Most major provisions of the SES have been implemented. Specifically, the following required activities have already occurred:

- \*the first biennial allocations of SES positions to agencies were completed in June 1979. (Second round scheduled for completion in October 1980.)
- \*Executive Resource Boards, agency boards handling SES staffing, are in place and operating.
- \*Qualifications Review Boards which review the managerial qualifications of prospective SES candidates have been established and are operating.
- \*SES performance appraisal systems are in place.
- \*Performance Review Boards which review SES appraisals and recommend performance awards have been established.
- \*the first Presidential rank awards were presented in September 1980.
- \*all agencies have OPM approved executive development plans.

The only provisions remaining to be implemented are SES sabbaticals and regulations covering reduction in force procedures for SES members.

## Merit Pay Implementation

Merit pay systems are being implemented now. Eight agencies (none a large agency) implemented merit pay for all or part of their employees in 1980. Government-wide, merit pay employees (GS 13-15 supervisors and managers) are now in the appraisal period of the process, with the first merit pay awards being given in October.

## Performance Appraisal Implementation

As of April 7, OPM has approved 56% of expected non-SES/non-merit pay performance appraisal plans, covering 88% of Federal employees. Agencies are now working to meet the October 1, 1981 deadline for implementation of CSRA performance appraisal systems. Most agencies are currently engaged in developing critical elements and performance standards for their employees. Once these performance appraisal systems are operating, supervisors will be able to take advantage of the new procedures provided by CSRA for demoting or removing poor performers.

## IMPLEMENTATION OF PERFORMANCE APPRAISALS

Mr. Miller. What problems and strengths do you foresee in implementation of the performance appraisal systems? What have the dry runs you cite on page three revealed?

Mr. Devine. I will address the strengths and the problems, and then the experience with dry runs.

After all departments and agencies covered under CSRA have installed new performance appraisal systems, they will enter into a new phase in which they must try to make the systems work. The strengths of new performance appraisal are manifold, including: (1) it provides the tool with which managers can evaluate the work of employees against objective standards developed on their performance rather than on traits as was under the previous performance evaluation system; (2) it provides a process in which managers and employees will communicate more frequently and effectively on issues related to performance; (3) it will maintain closer links between performance by individual employees and the goals and priorities of the organization; (4) it requires that personnel decisions be made on performance of employees and that performance be the key to decisions such as pay increase, promotion, training, counselling, reassignment and the appropriate corrective measures for unacceptable performance; (5) it will enable employees to know what is expected of them and encourage them to achieve what is expected; and (6) it will provide incentives for employees to work collectively toward the goals and objectives of the organization.

The President has said that we will make the Federal Government work. I believe performance appraisal holds the key to making the Government work more effectively and productively.

Now some anticipated problems. Installation of new performance appraisal systems does not guarantee that it will work. The departments and agencies must take initiatives to ensure that the systems run smoothly and effectively. Experience with performance appraisal in the private sector suggests that it takes a few years before the appraisal system will have become an effective management tool. Initial signs in Federal agencies from their implementation indicate that it will take time and effort for the appraisal systems in the Federal government to become fully operational. We will make every effort to encourage agencies to devote attention and resources to making the performance appraisal systems work. We will also maintain a rigorous technical assistance program which includes issuing guidance, providing technical assistance, facilitating communication among agencies on their experience, and conducting workshops to discuss related issues and problems.

The new performance appraisal systems will require fundamental changes in the way in which agency personnel systems are managed. For example, performance awards for SES must be based on performance appraisal. So must merit pay decisions be based on appraisal. Also, development of elements and standards has been a very time consuming process, and the elements and standards must be revised periodically in accordance with the evolving priorities and goals of the agency. Managers must take performance appraisal seriously and devote considerable attention and resources to appraisal. Another area deserving attention is the quality of the performance appraisal systems -- how best to make sure that the systems are designed and maintained with the highest quality. Finally, it would be necessary (under CSRA) to assess the effect of performance appraisal on employee attitudes toward work, on productivity of agency programs, on the quality of public service, and on the overall efficiency of the Government.

These issues are very much in our minds. OPM will maintain a rigorous oversight program to ensure that the CSRA provisions on performance appraisal are observed by agencies. We will continue to monitor the agencies in order to detect problems at an early stage for timely intervention.

Last year, eight agencies officially operated the performance appraisal system and some of them had first made dry runs. The operation of the systems in these agencies was rather successful, to which I think their experience in dry runs contributed significantly.

OPM has encouraged all departments and agencies to make pre-testing and dry runs before they officially implement the performance appraisal and merit pay systems. I am convinced that the pre-testing and dry runs are crucial to making necessary adjustments in the systems so that they will operate effectively.

## IMPLEMENTATION OF MERIT PAY SYSTEM

- Mr. Miller: What problems and strengths do you foresee in implementation of the merit pay systems?
- Mr. Devine: While the problems and strengths in merit pay implementation may not appear until after the majority of agencies convert in October 1981, OPM has two major concerns based on the experience of the first eight agencies that converted in 1980. The key person for merit pay in an agency will be the merit pay fund manager(s). Success for merit pay will depend on the extent that this same person or group is involved in setting standards, appraising performance and determining pay increases. Separating these functions will generate problems of lack of management oversight, inflation in performance ratings, and possibly harmful competition. OPM's other major concern is the quality of the standards established by management. High quality standards provide a strong and defensible basis for a fair and objective merit pay adjustment. Easy, unclear or minimal standards will mitigate the effect of merit pay.

Speaking to the foreseeable strengths, OPM feels that the merit pay plans approved to date have adequate bases for making pay distinctions relative to performance and for providing meaningful differences between various levels of performance. While a great variety of plans are now available, OPM feels that the management flexibility provided by merit pay has many possibilities still to be explored and refined over the next few years.

- Mr. Miller: What have the dry runs you cite on page three revealed?
- Mr. Devine: Dry runs have provided agencies with some experience of how their plans will operate before any personnel or pay actions have to be processed. Many benefits have accrued. These are
- final determinations as to the manageable size of a merit pay fund regarding the numbers of employees in each fund or pool;

- revisions in the standards set to more accurately reflect the expected range of employee performance
- modifications in the reward structure of merit pay plans in order to provide a meaningful difference in pay adjustment while targeting full comparability for fully satisfactory employees
- introduction of review levels, boards or panels to exercise a management oversight function;
- provision of merit pay experience to front line management;
- avoidance of surprises;
- provision of a basis for orientation and training
- the beginnings of an agency's internal evaluation of the systems involved; and, finally,
- a smooth transition to a pay system which is different in concept and in the management approach needed to ensure success.

While OPM has encouraged agencies to conduct a full range of their own dry runs, OPM has also taken steps to develop the computer capability to simulate a majority of the merit pay plans and has made this capability available for agency use. Many agencies have used this tool and conducted dry runs. More are expected between April and August of 1981 as agencies make final preparations for conversion to a merit pay system.

## FEDERAL PAY REFORM

Mr. Miller. You discuss federal pay reform on page five of the statement. What time table do you foresee in making the changes cited and what will they accomplish?

Mr. Devine. On March 31, 1981 a legislative proposal was introduced in the Senate (S. 838) entitled the Federal Pay Comparability Reform Act of 1981. This legislative proposal includes a timetable for implementation of its provisions. It provides that the amendments shall be implemented at such times and in such phases as the President may determine, but shall be fully effective not later than three years after the date of the bill's enactment. OPM expects to complete the necessary changes within this timetable. In recent years it has become increasingly apparent that Federal pay, benefits and other conditions of employment, taken together, provide a compensation package for Federal employees superior to that received by their non-Federal counterparts ( a list of previous studies is attached). Benefits, which were a minor portion of compensation at the time that the comparability principle was initiated for fixing Federal employees' pay, have grown rapidly in value in both the Federal and non-Federal sectors during recent years. Because of the significance of benefits, the comparability of Federal pay with that of the non-Federal sector cannot be accurately determined without considering the value of benefits. Likewise, there are certain conditions of employment that must also be considered in order to make a fair comparison. Federal employment conditions include job security, promotion potential, and the portability of employee benefits among Federal Government organizations. The value of these conditions of Federal employment has been estimated to impact on comparability to the extent that the combined value of Federal pay and benefits is comparable to that of the non-Federal sector when Federal employees receive 94% of the pay and benefits received by their non-Federal counterparts. The legislative proposal contains provisions which will correct this situation.

The legislative proposal would expand the universe of compensation surveys to cover the entire non-Federal sector by including state and local governments. When the pay comparability concept was adopted in 1962, state and local governments were excluded from the survey universe primarily for the following two reasons: first, their salaries were thought to lack the economic characteristics found in the salaries paid by private enterprise, and second, it was believed their salaries would be far outweighed by data from the private enterprise sector. However, since the introduction of the comparability concept the total number of state and local government employees has increased substantially. Concomitantly their compensation practices have evolved to include those economic characteristics typically found in private enterprise. State and local governments are now major employment competitors with the Federal Government as is private enterprise. By increasing the coverage of the blue-and white-collar compensation surveys the results of the surveys will reflect the proportionate influence of pay, benefits, and conditions of employment for each of the major segments of the non-Federal sector. The inclusion of state and local governments in the compensation comparability process will broaden the base for measuring comparability to the entire non-Federal labor market in which the Federal Government must operate.

The legislative proposal would provide, as part of the Federal pay fixing process for the General Schedule system, that the rates of basic pay could vary by locality to more closely approximate the pay rates applicable in the local labor market. Non-Federal employers, Federal agency officials, and numerous Federal and non-Federal studies have concluded that the use of a single nationwide General Schedule pay system results in the Federal Government overpaying its employees in some areas of the country and underpaying its employees in other areas of the country. By implementing locality pay, the rate of basic pay for most General Schedule employees would vary from area to area in keeping with the relationship of non-Federal pay rates in each area to the average nationwide non-Federal rates of pay, as determined in surveys conducted by the Bureau of Labor Statistics (BLS).

Studies, reports and previously drafted proposed legislation that address problems relevant to comparability include the following:

- The Comptroller General's Report to the Congress titled Improvements Needed in the Survey on Non-Federal Salaries Used As Basis for Adjusting Federal White Collar Salaries, dated May 11, 1973.
- The Civil Service Commission's pay research projects, conducted from 1973 to 1975, in response to the concerns of the General Accounting Office and other criticisms of the pay comparability process.
- The Comptroller General's report titled Improving the Pay Determination Process for Federal Blue-Collar Employees, dated June 3, 1975.
- The Comptroller General's report to the Congress titled Need for a Comparability Policy for Both Pay and Benefits of Federal Civilian Employees, dated July 1, 1975.
- The Comptroller General's report titled Federal White Collar Pay Systems Need Fundamental Changes, dated October 30, 1975.
- The Report of the President's Panel on Federal Compensation, established by President Ford on June 12, 1975, as announced in his 1976 Budget Message. The panel, headed by Vice President Rockefeller, with a charge from the President to make policy recommendations that were fair and equitable to both Federal employees and the public, made a comprehensive review of the major Federal employees compensation systems which included consideration of the views of all interested parties. The panel's report was submitted to the President on December 2, 1975.
- The Federal Personnel Management Project, authorized by President Carter, made studies and recommendations regarding the improvement of the quality and effectiveness of the Federal Civil Service. The project report was issued in December 1977.
- The Comptroller General's Report to the Congress titled Federal Compensation Comparability: Need for Congressional Action, dated July 21, 1978.
- A draft bill "To amend titles 5 and 37, United States Code, to extend the pay comparability concept to a total compensation comparability concept encompassing both pay and benefits, and for other purposes." Transmitted to Congress on June 6, 1979.
- The Comptroller General's report titled Wages for Federal Blue-Collar Employees Are Being Determined According to The Law, but Improvements are Needed, dated October 29, 1979.

- The Comptroller General's report titled Determining Federal Compensation: Changes Needed to Make the Process More Equitable and Creditable, dated November 13, 1979.
- The Comptroller General's report titled Problems in Developing and Implementing a Total Compensation Plan for Federal Employees, dated December 5, 1980.
- America's New Beginning: A Program for Economic Recovery, Part III, President's Budget Reform Plan, p. 8-5, transmitted to the Congress by President Reagan on February 18, 1981.

## RETIREMENT RATES FOR EXECUTIVE LEVEL V EMPLOYEES

Mr. Miller. We understand that the retirement rate for career employees at Executive Level V pay ceiling has increased from 17.6% of those eligible to retire to 57.1% in the twelve months ending March 1980. Is this a result of pay caps and the low morale in the government work force?

Mr. Devine. I believe the pay caps have been a very important factor affecting the retirement rates. The December 1980 report of the quadrennial Commission on Executive, Legislative, and Judicial Salaries, for example, found a direct correlation between the lack of increase in pay for top career employees because of the pay caps and the dramatic rise in the retirement rates of these employees. The Commission noted that since March 1969 because of the pay caps the purchasing power of the salaries of top government officials has declined significantly. Although I have found Federal executives greatly dedicated to their work, undoubtedly this decline has had serious impact on morale and has affected willingness of executives to stay with Government. A survey that OPM made of executives who had left the Federal service between July 1979 and September 1980 found that two-thirds of the executives retiring during the period cited possibility of a continued ceiling on executive salaries as one of the main reasons for their leaving the Government.

## PROFESSIONAL AND ADMINISTRATIVE CAREER EXAMINATION

Mr. Miller. Recently, a consent decree was signed to require the phasing out of the Professional and Administrative Career Examination (PACE) and replacing it with a test which would ensure that the number of minorities which pass the test is proportional to the number taking it. What position does OPM take on this?

Mr. Devine. In order to avoid the burden of time and expense of contested litigation in the *Luevano et. al. v Campbell* lawsuit and to reaffirm the Federal policy of a representative workforce (Title 5, section 7201 "Garcia Amendment") the plaintiffs and the defendant, the Office of Personnel Management (OPM), through its attorneys in the Department of Justice, agreed to work toward an out of court settlement through a consent decree. The consent decree was filed with the U.S. District Court on January 19, 1981, (Civil Action No. 79-0271); that consent decree was amended by joint motion on February 24, 1981. Comments on the amended consent decree are being accepted until May 1, 1981. A final decision on the consent decree is expected by the end of May. If approved by the court, it will be effective within 60 days after the date approval is given.

The consent decree requires that OPM discontinue the use of the PACE on a nationwide basis no later than 3 years after the effective date of the consent decree. The decree also requires that alternative examinations be developed for each occupation under PACE coverage and that they be tailored to unique job requirements for a particular occupation. Agencies may continue to use the PACE during the conversion period.

Nothing in the consent decree requires agencies using these alternatives to ensure that the number of minorities which are eligible (pass) the examination (with or without a written test) is proportional to the number taking it.

The consent decree does require that the alternative examinations be in accordance with Title VII and the Uniform Guidelines on Employee Selection Procedures. Under Title VII an employer who utilizes a hiring test which has adverse impact on minorities must be able to demonstrate that the test is a valid predictor of successful performance on the job. The Uniform Guidelines (entered into by EEOC, Justice, Labor and OPM) in August of 1978 provide guidance on what constitutes sufficient validation to meet Title VII requirements.

The Department of Justice is the legal representative for questions on the meaning and implications of the consent decree. Requests for further information on the answer to this question should be directed to the Department's Acting Attorney General of the Civil Division.

OFFICE OF PERSONNEL MANAGEMENT

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**AMENDED  
BUDGET ESTIMATE**

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FISCAL YEAR 1982

**GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE HEALTH BENEFITS**  
 (All Amounts in Thousands of Dollars)

ANALYSIS OF CHANGES IN REQUIREMENTS

ACTIVITY	FY 1981 PROGRAM COSTS	TOTAL OPERATING COSTS
2. Compensation	PROGRAM CHANGES	\$726,242
	Decrease: Decreased government contributions for Retired Employees Health Benefits Program	-3,567
	Increase: Increased premium rates and greater annuitant participation in Federal Employees Health Benefits Program	110,386
	FY 1982 ESTIMATED COST	\$833,061

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE HEALTH BENEFITS

ACTIVITY 2 - Compensation

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Employee Health Benefits	\$654,120,000	\$713,560,000	\$823,946,000
Retired Employees Health Benefits	<u>9,929,000</u>	<u>12,682,000</u>	<u>9,115,000</u>
Total Operating Costs	\$664,049,000	\$726,242,000	\$833,061,000

This appropriation funds the Government's share of health benefit costs for annuitants and survivors who no longer have an agency to contribute the Government's share. The Office of Personnel Management requests the appropriation necessary to pay this contribution to the Employees Health Benefits Fund and the Retired Employees Health Benefits Fund. These trust revolving funds are available for: (1) the payment of subscription charges to approved carriers for the cost of health benefits protection; (2) contributions for qualified retired employees and survivors who carry private health insurance; and (3) the payment of expenses incurred by the Office of Personnel Management in the administration of these programs.

Public Law 93-246, signed January 31, 1974, provides for government contributions to enrollees in the Employees Health Benefits program equal to 60 percent of the unweighted average of the high option premiums of six large plans. The requested increase of \$110,386,000 is necessary to provide for the growing number of enrollees and the estimated impact of premium increases effective in January 1981.

This fund also provides financing for the Government's share of health benefit costs for annuitants and survivors covered under the Retired Employees Health Benefits program. Public Law 96-156, signed 12/27/79, provides for increased government contributions toward the subscription charge for health coverage for those annuitants who retired prior to July 1, 1960. Participants in the Government sponsored Uniform Plan will be encouraged to enroll in the Federal Employees Health Benefit Program. The net impact of the increased contribution for those enrolled with private insurance carrier, and the transfer of uniform plan enrollees will result in reduced contributions of \$3,567,000.

OFFICE OF PERSONNEL MANAGEMENT  
AMENDED BUDGET

This document provides detailed information by account in support of the FY 1982 budget revisions presented to Congress by President Reagan on March 10, 1981. This information amends former President Carter's original budget submission to Congress and the justification developed by OPM in support of that submission.

## OFFICE OF PERSONNEL MANAGEMENT

FY 1962 Summary of Budget Estimates by Budget Activity and Fund  
(all dollar amounts in thousands)

	Budget Estimates		Full-Time	
	Request Pending	Proposed Amendment	Request Pending	Revised Request
<b>Operating Cost by Activity</b>				
1. Federal Staffing Services	101,686	-2,032	3,009	-155
2. Compensation	15,052,959	-228,342	1,529	-4
3. Workforce Management	75,765	-3,938	1,131	-114
4. State and Local	31,714	-21,964	213	-213
5. Other Services	14,078	-98	320	-14
<b>Total Operating Cost</b>	15,276,202	-256,374	6,202	-500
<b>Change in Selected Resources</b>	-1,296	-7,139		
<b>Total Obligations</b>	15,274,906	-263,513	6,202	-500
<b>Obligations by Fund Sources</b>				
Salaries and Expenses	129,500	-9,700	3,406	-328
Reimbursements to S & E	54,652	-1,707	1,620	-48
Government Payment for Annuitants, EHB	833,061	---	---	---
Payment to Civil Service Retirement and Disability Fund	14,169,743	-228,342	---	---
Intergovernmental Personnel Assistance	20,070	-20,070	---	---
Revolving Fund	67,880	-3,694	1,176	-124
				3,078
				1,572
				---
				---
				---
				1,052

OFFICE OF PERSONNEL MANAGEMENT  
 FY 1982 Summary of Budget Authority and Outlays  
 (in thousands of dollars)

Account	Function	Budget Authority		Outlays			
		Request Pending	Proposed Amendment Revised Request	Request Pending	Proposed Amendment Revised Request		
<b>Federal Funds</b>							
<b>General and special funds:</b>							
Salaries and expenses.....	805	129,500	-9,700	119,800	128,852	-9,700	119,152
Supplemental now requested, civilian pay raises.....		--	--	--	150	--	150
Limitation payable under trans- fers from trust funds.....	805	(43,641)	(---)	(43,641)	--	--	--
Supplemental now requested, civilian pay raises.....		(---)	(---)	(---)	--	--	--
Government payment for annuitants, employees health benefits.....	551	792,754	--	792,754	833,061	--	833,061
Payment to civil service retire- ment and disability fund.....	805	3,297,670	--	3,297,670	3,297,670	--	3,297,670
Supplemental under existing legislation.....		--	--	--	--	--	--
Permanent, indefinite authorization.....		10,672,073	-228,342	10,643,731	10,672,073	-228,342	10,643,731
Intergovernmental personnel assistance.....	806	20,000	-20,000	--	21,541	-12,931	8,610
<b>Intragovernmental funds:</b>							
Revolving fund.....	805	--	--	--	-3,100	--	-3,100

FY 1982 Summary of Budget Authority and Outlays (continued)  
 (in thousands of dollars)

Account	Function	Budget Authority			Outlays		
		Request Pending	Proposed Amendment	Revised Request	Request Pending	Proposed Amendment	Revised Request
Supplemental under existing legislation.....		---	---	---	---	---	---
Subtotal.....		15,111,997	-258,042	14,853,955	15,150,247	-250,973	14,899,274
Deductions for offsetting receipts:							
Proprietary receipts from the public.....	800	-1,134	---	-1,134	-1,134	---	-1,134
Subtotal federal funds.....		15,110,863	-258,042	14,852,821	15,149,113	-250,973	14,898,140
<b>Trust Funds:</b>							
Civil service retirement and disability fund.....	602	30,295,731	-188,640	30,107,091	20,559,875	-376,869	20,183,006
Supplemental under existing legislation.....		---	---	---	---	---	---
Employees health benefits fund.....	551	---	---	---	-134,467	---	-134,467
Employees life insurance fund.....	602	---	---	---	-549,250	---	-549,250
Retired employees health benefits fund.....	551	---	---	---	---	---	---
Subtotal.....		30,295,731	-188,640	30,107,091	19,876,158	-376,869	19,499,289
Deductions for offsetting receipts:							
Intrafund transactions.....	602	-9,700	---	-9,700	-9,700	---	-9,700
Subtotal trust funds.....		30,286,031	-188,640	30,097,391	19,866,458	-376,869	19,489,589

FY 1982 Summary of Budget Authority and Outlays (continued)  
(in thousands of dollars)

Account	Function	Budget Authority			Outlays		
		Request Pending	Proposed Amendment	Revised Request	Request Pending	Proposed Amendment	Revised Request
Interfund transactions.....	602	-23,529	---	-23,529	-23,529	---	-23,529
	805	-14,169,743 <sup>1/</sup>	228,342	-13,941,401	-14,169,743	228,342	-13,941,401
Total, Office of Personnel Management.....		31,203,622	-218,340	30,985,282	20,822,299	-399,500	20,422,799

Functions:

- 551 - Health care services
- 602 - Federal employee retirement and disability
- 800 - General government
- 805 - Central personnel management
- 806 - Other general government

<sup>1/</sup> Includes FY 1981 Supplemental Request for \$513,007.

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Case 100  
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Case 210

**STANDARD FORM 300**  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-101

OFFICE OF PERSONNEL MANAGEMENT  
APPROPRIATION LANGUAGE

Identification code		19 81 actual	19 81 estimate	19 81 estimate
Budget Appendix Page	Heading	1982 Request Pending	1982 Proposed Amendments	1982 Revised Request
I-V113	Salaries and expenses	\$129,500,000	-\$ 9,700,000	\$119,800,000
I-V116	Intergovernmental Personnel Assistance	\$ 20,000,000	-\$20,000,000	---

GPO: 1971 O-442-317

(Mono cast: 21.0)

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STANDARD FORM 306  
July 1968, Bureau of the Budget  
Circular No. A-11, Revised.  
506.103

## OFFICE OF PERSONNEL MANAGEMENT

A-11-35

## CONSOLIDATED SCHEDULE OF PERMANENT POSITIONS

## DETAIL OF PERMANENT POSITIONS

	19 82	19 82	19 82
	actual	estimate	estimate
	Request pending	Proposed amendment	Revised request
Executive level II .....	1	---	1
Executive level III .....	1	---	1
Executive level V .....	1	---	1
Subtotal .....	3	---	3
ES-6 .....	1	---	1
ES-5 .....	6	---	6
ES-4 .....	51	---	51
ES-3 .....	2	---	2
ES-2 .....	14	---	14
ES-1 .....	8	---	8
Subtotal .....	82	---	82
GS/GM-15 .....	191	-19	172
GS/GM-14 .....	339	-33	306
GS/GM-13 .....	667	-65	602
GS-12 .....	728	-71	657
GS-11 .....	544	-53	491
GS-10 .....	6	---	6
GS-9 .....	306	-30	276
GS-8 .....	44	-4	40
GS-7 .....	505	-50	455
GS-6 .....	322	-32	290
GS-5 .....	1,044	-102	942
GS-4 .....	843	-82	761
GS-3 .....	533	-52	481
GS-2 .....	72	-7	65
GS-1 .....	6	---	6
Subtotal .....	6,150	-600	5,550
Ungraded .....	67	---	67
Total permanent position <sup>1/</sup> .....	6,302	-600	5,702
Unfilled positions, end of year .....	-100	-100	---
Total permanent employment, end of year .....	6,202	-500	5,702
<sup>1/</sup> Worker-Trainees Opportunity Program positions included above	(2)	(-2)	---
			7
	(Mono cast: 16.3)	(Mono cast: 4.9)	(Mono cast: 4)

GPO : 1974-541-330/2527

OFFICE OF PERSONNEL MANAGEMENT

AMENDED BUDGET ESTIMATE FOR FISCAL YEAR 1982

SALARIES AND EXPENSES

NARRATIVE JUSTIFICATION

	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Full-Time Permanent Positions	3,406	-328	3,078
Total Operating Cost	\$129,500,000	-\$9,700,000	\$119,800,000

The OPM is presenting an amended budget request for its Salaries and expenses appropriation totaling \$119,800,000 for FY 1982. This amended budget supports the Administration's proposals to reduce the size of the Federal budget through the reduction of Federal overhead and personnel costs. This reduction will affect the OPM in a number of program areas:

- The reduction in the size of the Federal government and the issuing of lower personnel ceilings for many agencies will result in reduced demand on the OPM for assistance in staffing Federal jobs.
- The OPM has amended its request for funding of the Intergovernmental Personnel Assistance grant program as explained elsewhere in this document. This will result in reductions in funds needed to review, award, and administer the grant program and in OPM technical assistance to State and local and Indian tribal governments.
- The OPM will reduce its efforts in research of public management policies and systems and in productivity improvement methods.
- While the OPM is reducing its overall consulting services program, it will still assist agencies in reorganizing a smaller and more efficient government around tested personnel management procedures.

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Case 23

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
SALARIES AND EXPENSES  
Program and Financing (in thousands of dollars)

Identification code	19 82 actual	19 82 estimate	19 82 estimate
24-0100-0-1-805			
	Request Pending	Proposed Amendment	Revised Request
<u>Program by activities:</u>			
Operating costs funded:			
Direct program:			
1. Federal staffing services.....	70,243	-557	69,686
2. Compensation .....	6,356	---	6,356
3. Workforce management .....	38,802	-2,319	36,483
4. State and local .....	7,964	-6,824	1,140
5. Other services .....	6,135	---	6,135
Total, direct program.....	129,500	-9,700	119,800
Reimbursable program:			
1. Federal staffing services .....	1,108	---	1,108
2. Compensation.....	43,799	---	43,799
3. Workforce management .....	289	---	289
4. State and local .....	1,609	-1,609	---
5. Other services .....	7,847	-98	7,749
Total, reimbursable programs.	54,652	-1,707	52,945
10.00 Total, program costs, funded- obligations.....	184,152	-11,407	172,745
<u>Financing:</u>			
Offsetting collections from:			
11.00 Federal Funds.....	-10,286	1,582	-8,704
13.00 Trust funds.....	-43,641	---	-43,641
14.00 Non-Federal sources.....	- 125	125	---
15.00 Off-budget Federal entities.....	- 600	---	-600
40.00 Budget authority.....	129,500	-9,700	119,800
	(Memo cast: 21.8)	(Memo cast: 9)	(Memo cast: 4.9)

GPO: 1971 O - 442-37



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Form 225

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
SALARIES AND EXPENSES

Identification code	1982 actual	1982 estimate	1982 estimate
24-0100-0-1-805			
Direct obligations:	Pending <u>Request</u>	Proposed <u>Amendment</u>	Revised <u>Request</u>
Personnel compensation:			
11.1 Permanent positions.....	75,089	-5,322	69,767
11.3 Positions other than permanent..	5,594	-800	4,794
11.5 Other personnel compensation....	1,014	---	1,014
11.8 Special personnel services payments.....	186	---	186
Total personnel compensation..	81,883	-6,122	75,761
12.1 Personnel benefits:civilian.....	8,311	-678	7,633
21.0 Travel and transportation of persons.....	2,427	-243	2,184
22.0 Transportation of things.....	397	---	397
23.1 Standard level user charges.....	14,089	-200	13,889
23.2 Communications, utilities, and other rent.....	10,943	-143	10,800
24.0 Printing and reproduction.....	3,318	-114	3,204
25.0 Other services.....	5,631	-2,100	3,531
26.0 Supplies and materials.....	1,535	-44	1,491
31.0 Equipment.....	966	-56	910
99.0 Subtotal, direct obligations...	129,500	-9,700	119,800
(Memo cast: 21.8)	(Memo cast: 8)	(Memo cast: 8)	(Memo cast: 4.9) 11

A-11-39

Type size:  
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Case 200

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
SALARIES AND EXPENSES

Identification code	19 82 actual	19 82 estimate	19 82 estimate
24-0100-0-1-805			
	<u>Pending Request</u>	<u>Proposed Amendment</u>	<u>Revised Request</u>
Reimbursable obligations:			
Personnel compensation:			
11.1 Permanent positions.....	32,908	-956	31,952
11.3 Positions other than permanent..	2,393	-293	2,100
11.5 Other personnel compensation....	1,744	-6	1,738
11.8 Special personal services payments.....	21	-2	19
Total personnel compensation..	37,066	-1,257	35,809
12.1 Personnel benefits:civilian.....	3,261	-77	3,184
21.0 Travel and transportation of persons.....	1,077	-137	940
22.0 Transportation of things.....	308	---	308
23.1 Standard level user charges.....	2,589	---	2,589
23.2 Communications, utilities, and other rent.....	4,110	-15	4,095
24.0 Printing and reproduction.....	2,321	-13	2,308
25.0 Other services.....	2,931	-208	2,723
26.0 Supplies and materials.....	651	---	651
31.0 Equipment.....	338	---	338
99.0 Subtotal, reimbursable obligations.....	54,652	-1,707	52,945
99.9 Total obligations.....	184,152	-11,407	172,745
(Memo cast: 21.0)	(Memo cast: 0)	(Memo cast: 0)	(Memo cast: 4.9)

12

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Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-101

OFFICE OF PERSONNEL MANAGEMENT  
SALARIES AND EXPENSES  
PERSONNEL SUMMARY

Identification code	1982	1982	1982
24-0100-1-1-805			
	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Direct:			
Total number of permanent positions .....	3,406	-328	3,078
Total compensable workyears:			
Full-time equivalent employment ...	3,846	-393	3,453
Full-time equivalent of overtime and holiday hours .....	39	---	39
Average ES salary .....	\$50,113	---	\$50,113
Average GS grade .....	8.13	---	8.13
Average GS salary .....	\$21,947	---	\$21,947
Reimbursable:			
Total number of permanent positions .....	1,620	-48	1,572
Total compensable workyears:			
Full-time equivalent employment ...	1,804	-65	1,739
Full-time equivalent of overtime and holiday hours .....	83	---	83
Average ES salary .....	\$50,113	---	\$50,113
Average GS grade .....	8.13	---	8.13
Average GS salary .....	\$21,947	---	\$21,947
	(Memo cast: 21.5)	(Memo cast: 6)	(Memo cast: 4.9)

OFFICE OF PERSONNEL MANAGEMENT  
 AMENDED BUDGET ESTIMATE FOR FISCAL YEAR 1982  
 REIMBURSEMENTS TO SALARIES AND EXPENSES

NARRATIVE JUSTIFICATION

	<u>Request Pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Full-Time Permanent Positions	1,620	-48	1,572
Total Operating Cost	\$54,652,000	-\$1,707,000	\$52,945,000

The OPM is presenting an amendment to the level of reimbursable activities planned for FY 1982. The reductions would occur in the areas of technical assistance to State and local governments and in administrative services provided other accounts.

NOTE

The detailed budget estimates for "Reimbursements to Salaries and Expenses" are included in the "Salaries and Expenses" section of this justification.

OFFICE OF PERSONNEL MANAGEMENT

AMENDED BUDGET ESTIMATE FOR FISCAL YEAR 1982

PAYMENT TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND

NARRATIVE JUSTIFICATION

	Request <u>pending</u>	Proposed <u>amendment</u>	Revised <u>request</u>
Current Appropriation	\$3,297,670,000	---	\$3,297,670,000
Permanent Indefinite Authorization	\$10,872,073,000	-\$228,342,000	\$10,643,731,000

The OPM is presenting an amended budget request for the permanent indefinite authorization for the Payment to the Civil Service Retirement and Disability Fund totaling \$10,643,731,000 for FY 1982. This amended budget request is based on the revised economic assumptions of February 8, 1981 and savings anticipated from improvements in the administration of disability retirement applications and from closer monitoring of the early out retirement provisions of the Civil Service Reform Act.

Note: In addition to the detailed estimates provided for the Payment to the Civil Service Retirement Disability Fund, revised estimates are also provided for the Civil Service Retirement and Disability Fund itself.



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Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND  
(Proposed for later transmittal, proposed legislation)

Identification code 24-0200-2-1-805	19 82 actual	19 82 estimate	19 82 estimate
	Request Pending	Proposed Amendment	Revised Request
Program by activities; 10.00 Government share of retirement costs-obligations (object class 12.1).....	-712,274	+143,441	-568,833
Financing: 40.00 Budget authority.....	-712,274	+143,441	-568,833
Relation of obligations to outlays:			
71.00 Obligations incurred, net.....	-712,274	+143,441	-568,833
90.00 Outlays.....	-712,274	+143,441	-568,833

UNITED STATES GOVERNMENT

(Memo cast: 21.5)

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Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
CIVIL SERVICE RETIREMENT AND DISABILITY FUND  
(Proposed for later transmittal, proposed legislation)

Identification code	19 82 actual	19 82 estimate	19 82 estimate
24-8135-2-7-602	Request Pending	Proposed Amendment	Revised Request
Program by activities:			
10.00 Payment to beneficiaries (costs -obligations) (object class 42.0).....	-615,116	+119,256	-495,860
Financing:			
21.40 Unobligated balance available, start of year: U.S. securities (par).....	-107,695	19,997	-87,698
24.40 Unobligated balance available, end of year: U.S. securities (par).....	24,343	1,680	26,023
40.00 Budget authority (appropriation) (permanent, indefinite).....	-698,468	+140,933	-557,535
Relation of obligations to outlays:			
71.00 Obligations incurred, net.....	-615,116	+119,256	-495,860
72.40 Obligated balance, start of year: U.S. securities (par).	-107,695	19,997	-87,698
74.40 Obligated balance, end of year: U.S. securities (par).....	88,857	-15301	73,556
90.00 Outlays.....	-633,954	+123,952	-510,002
(Mono cast: 21.5)	(Mono cast: 5)	(Mono cast: 5)	(Mono cast: 4.9)

OFFICE OF PERSONNEL MANAGEMENT

AMENDED BUDGET ESTIMATE FOR FISCAL YEAR 1982

INTERGOVERNMENTAL PERSONNEL ASSISTANCE

NARRATIVE JUSTIFICATION

	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Full-Time Permanent Positions	---	---	---
Total Operating Cost	\$21,541,000	-\$12,931,000	\$8,610,000

Consistent with the Administration's overall effort to reduce the number of categorical grant programs, the OPM is not requesting funding of the Intergovernmental Personnel Assistance grant program for FY 1982. The OPM will continue to award previously appropriated funds up to September 30, 1981 and will continue to make disbursements of funds until the end of FY 1982. All activity in this account is scheduled to cease at that time.

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STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
300-104

FOLLOW ON RECISSION PROPOSAL

A-11-39B

OFFICE OF PERSONNEL MANAGEMENT  
INTERGOVERNMENTAL PERSONNEL ASSISTANCE  
Program and Financing (in thousands of dollars)

Identification code	19 82	19 82	19 82
	actual	estimate	estimate
24-0300-0-1-806			
	<u>Request Pending</u>	<u>Proposed Amendment</u>	<u>Revised Request</u>
<u>Program by activities:</u>			
Grant assistance to State and local governments (program costs, funded).	21,541	-12,931	8,610
Change in selected resources, (unperformed contracts).....	-1,471	-7,139	-8,610
10.00 Total obligations(object class 41.0).....	20,070	-20,070	---
<u>Financing:</u>			
21.40 Unobligated balance available, start of year.....	-220	220	---
24.40 Unobligated balance available, end of year.....	150	-150	---
40.01 Budget authority(appropriation).	20,000	-20,000	---
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net.....	20,070	-20,070	---
72.40 Obligated balance, start of year.	12,246	-3,636	8,610
74.40 Obligated balance, end of year..	-10,775	10,775	---
90.00 Outlays.....	21,541	-12,931	8,610
			22
(Memo cast: 21.8)	(Memo cast: 8)	(Memo cast: 8)	(Memo cast: 4.8)

GPO: 1961 O - 462-217

OFFICE OF PERSONNEL MANAGEMENT

AMENDED BUDGET ESTIMATE FOR FISCAL YEAR 1982

REVOLVING FUND

NARRATIVE JUSTIFICATION

	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Full-Time Permanent Positions	1,176	-124	1,052
Total Operating Cost	\$67,705,000	-\$3,694,000	\$64,011,000

The OPM is presenting an amended budget request for the Revolving Fund totaling \$64,011,000 for FY 1982. The reduction reflects anticipated decreases in the demand for full field security investigations for Federal employees and in the demand for employee training and technical assistance due to the reduced funds and personnel ceilings of Federal agencies. In addition, reimbursable technical assistance provided to State and local governments through this fund has been eliminated.

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Red underscores  
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STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

A-11-39B

OFFICE OF PERSONNEL MANAGEMENT  
REVOLVING FUND

Program and Financing (in thousands of dollars)

Identification code	19 82 actual	19 82 estimate	19 82 estimate
24-4571-0-A-805			
	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
<b>Program by activities:</b>			
Operating costs, funded:			
1. Federal staffing services .....	30,245	-1,475	28,770
3. Workforce management .....	36,514	-1,619	34,895
4. State and local .....	600	-600	---
5. Other services .....	96	---	96
Total operating costs, funded .....	67,455	-3,694	63,761
Capital investment, funded:			
1. Federal staffing services ....	90	---	90
3. Workforce management .....	160	---	160
	250	---	250
Total program costs, funded .....	67,705	-3,694	64,011
Change in selected resources (undelivered and unfunded orders)..	175	---	175
10.00 Total obligations .....	67,880	-3,694	64,186
<b>Financing:</b>			
Offsetting collections from:			
11.00 Federal funds: Sales and services .....	-66,425	3,964	-62,731
11.00 Changes in unfilled customer orders.....	25	---	25
14.00 Non-Federal sources.....	-2,000	---	-2,000
21.98 Unobligated balance available, start of year.....	-6,795	---	-6,795
24.98 Unobligated balance available, end of year.....	7,315	---	7,315
39.00 Budget authority.....	---	---	---
			24
(Memo cont: 21.8)	(Memo cont: 2)	(Memo cont: 4)	(Memo cont: 4.9)

GPO: 1971 O 445-377

Type size:  
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Case 210

**STANDARD FORM 300**  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

A-11-398 (cont.)

OFFICE OF PERSONNEL MANAGEMENT  
REVOLVING FUND  
Program and Financing (in thousands of dollars)

Identification code	19 82	19 82	19 82
	actual	estimate	estimate
24-4571-0-4-805			
	<u>Request</u>	<u>Proposed</u>	<u>Revised</u>
	<u>pending</u>	<u>amendment</u>	<u>request</u>
Relation of obligations to outlays:			
71.00 Obligations incurred, net.....	-520	---	-520
72.10 Receivables in excess of obligations, start of year.....	-10,126	---	-10,126
74.10 Receivables in excess of obligations, end of year.....	7,546	---	7,546
90.00 Outlays.....	-3,100	---	-3,100
	(Memo cast: 3)	(Memo cast: 3)	(Memo cast: 4.9)

GPO: 1971 O - 442-37

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Case 135  
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STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

OFFICE OF PERSONNEL MANAGEMENT  
REVOLVING FUND  
Revenue and Expense (in thousands of dollars)

Identification code 24-4571-0-4-805	19 82	19 82	19 82
	actual	estimate	estimate
	Request pending	Proposed amendment	Revised Request
Operating income:			
Federal staffing services program:			
Revenue.....	33,385	-1,475	31,910
Expense.....	30,685	-1,475	29,210
Net operating income, Federal staffing services program.....	2,700	---	2,700
Workforce management program:			
Revenue.....	34,354	-1,619	32,735
Expense.....	36,254	-1,619	34,635
Net operating income, workforce management program.....	-1,900	---	-1,900
State and local program:			
Revenue.....	600	-600	---
Expense.....	600	-600	---
Net operating income, State and local program.....	---	---	---
Other Services:			
Revenue.....	96	---	96
Expense.....	96	---	96
Net operating income, other services.....	---	---	---
Net operating income.....	800	---	800
Non-operating loss: Loss from disposal of equipment.....	---	---	---
Net income.....	800	---	800
(Memo cast: 21.8)	(Memo cast: 5)	(Memo cast: 5)	(Memo cast: 4.9)

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Case 100  
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Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

A-11-39B

OFFICE OF PERSONNEL MANAGEMENT  
REVOLVING FUND  
Financial Condition (in thousands of dollars)

Identification code 24-4571-0-4-805	19 82	19 82	19 82
	actual	estimate	estimate
	Request <u>pending</u>	Proposed <u>amendment</u>	Revised <u>request</u>
<b>Assets:</b>			
Fund balance with Treasury.....	-231	---	-231
Accounts receivable.....	13,520	---	13,520
Advances made.....	500	---	500
Work in process.....	6,500	---	6,500
Real property and equipment, (net)...	1,050	---	1,050
<b>Total assets</b> .....	<b>21,339</b>	<b>---</b>	<b>21,339</b>
<b>Liabilities:</b>			
Accounts payable and funded accrued liabilities.....	6,774	---	6,774
Advances received.....	3,800	---	3,800
<b>Total liabilities</b> .....	<b>10,574</b>	<b>---</b>	<b>10,574</b>
<b>Government equity:</b>			
Unexpended balances:			
Unobligated balance.....	7,315	---	7,315
Undelivered orders.....	2,400	---	2,400
Invested capital.....	1,050	---	1,050
<b>Total Government equity</b> .....	<b>10,765</b>	<b>---</b>	<b>10,765</b>
<b>Analysis of changes in Government equity:</b>			
Paid in capital.....	5,610	---	5,610
<b>Retained income or deficit(-):</b>			
Opening balance.....	4,355	---	4,355
Transactions:			
Net operating income or loss(-).....	800	---	800
Net non-operating income or loss(-)...	---	---	---
Closing balance.....	5,155	---	5,155
<b>Total Government equity (end of year)...</b>	<b>10,765</b>	<b>---</b>	<b>10,765</b>

(Mono cast: 21.5)

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GPO : 1971 O - 442-317

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Case 110  
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STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

A-11-39B

OFFICE OF PERSONNEL MANAGEMENT  
REVOLVING FUND  
Object Classification (in thousands of dollars)

Identification code	19 actual 82	19 estimate 82	19 estimate 82
24-4571-0-4-805			
Personnel compensation:	Request pending	Proposed amendment	Revised request
11.1 Permanent positions.....	32,300	-2,850	29,450
11.3 Positions other than permanent..	2,106	-150	1,956
11.5 Other personnel compensation....	2,212	---	2,212
11.8 Special personal services payments.....	3,992	---	3,992
Total personnel compensation....	40,610	-3,000	37,610
Personnel benefits:			
12.1 Civilian.....	3,373	-250	3,123
13.0 Benefits for former personnel....	7	---	7
21.0 Travel and transportation of persons.....	4,159	-59	4,100
22.0 Transportation of things.....	113	---	113
23.1 Standard level user charges.....	3,681	-81	3,600
23.2 Communications, utilities and other rent.....	2,364	-50	2,314
24.0 Printing and reproduction.....	1,920	-40	1,880
25.0 Other services.....	9,342	-177	9,165
26.0 Supplies and materials.....	1,787	-37	1,750
31.0 Equipment.....	311	---	311
42.0 Insurance claims and indemnities..	13	---	13
93.9 Total costs.....	67,680	-3,694	63,986
94.0 Change in selected resources.....	200	---	200
99.0 Total obligations.....	67,880	-3,694	64,186
	(Memo cost: 21.8)	(Memo cost: 3)	(Memo cost: 4.9)

GPO : 1971 O - 442-317

STANDARD FORM 300  
 Type size: 8 point 22 lines  
 Case 150  
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 No 210

A-11-34A

OFFICE OF PERSONNEL MANAGEMENT  
 REVOLVING FUND  
 PERSONNEL SUMMARY

Identification code	1982	1982	1982
24-4571-0-4-805			
	<u>Request pending</u>	<u>Proposed amendment</u>	<u>Revised request</u>
Total number of permanent positions ...	1,176	-124	1,052
Total compensable workyears:			
Full-time equivalent employment .....	1,503	-143	1,360
Full-time equivalent of overtime and holiday hours .....	22	---	22
Average ES salary .....	\$50,113	---	\$50,113
Average GS grade .....	8.13	---	8.13
Average GS salary .....	\$21,947	---	\$21,947

GPO: 1981 O - 44-317

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29  
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OFFICE OF PERSONNEL MANAGEMENT  
 COMPARATIVE SUMMARY STATEMENT  
**GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE HEALTH BENEFITS**  
 (All Dollar Amounts in Thousands)

	FY 1980 ACTUAL		FY 1981 PROGRAM		FY 1982 ESTIMATE	
	FULL-TIME PERMANENT POSITIONS	AMOUNT	FULL-TIME PERMANENT POSITIONS	AMOUNT	FULL-TIME PERMANENT POSITIONS	AMOUNT
<b>OPERATING COST BY ACTIVITY:</b>						
1. Federal Staffing Services	---	\$664,049	---	\$726,242	---	\$833,061
2. Compensation						
3. Workforce Management						
4. State and Local						
5. Other Services						
<b>TOTAL OPERATING COST</b>	---	\$664,049	---	\$726,242	---	\$833,061
Change in Selected Resources		- 2,512		---		---
<b>TOTAL OBLIGATIONS</b>	---	\$661,537	---	\$726,242	---	\$833,061

**GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE HEALTH BENEFITS**  
 (All Amounts in Thousands of Dollars)

ACTIVITY	FY 1981 PROGRAM COSTS	TOTAL OPERATING COSTS
2. Compensation	<p style="text-align: center;">PROGRAM CHANGES</p> <p>Decrease: Decreased government contributions for Retired Employees Health Benefits Program</p> <p>Increase: Increased premium rates and greater annuitant participation in Federal Employees Health Benefits Program</p>	<p style="text-align: center;">-3,567</p> <p style="text-align: center;">110,386</p>
	FY 1982 ESTIMATED COST	\$833,061

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE HEALTH BENEFITS

ACTIVITY 2 - Compensation

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Employee Health Benefits	\$654,120,000	\$713,560,000	\$823,946,000
Retired Employees Health Benefits	<u>9,929,000</u>	<u>12,682,000</u>	<u>9,115,000</u>
Total Operating Costs	\$664,049,000	\$726,242,000	\$833,061,000

This appropriation funds the Government's share of health benefit costs for annuitants and survivors who no longer have an agency to contribute the Government's share. The Office of Personnel Management requests the appropriation necessary to pay this contribution to the Employees Health Benefits Fund and the Retired Employees Health Benefits Fund. These trust revolving funds are available for: (1) the payment of subscription charges to approved carriers for the cost of health benefits protection; (2) contributions for qualified retired employees and survivors who carry private health insurance; and (3) the payment of expenses incurred by the Office of Personnel Management in the administration of these programs.

Public Law 93-246, signed January 31, 1974, provides for government contributions to enrollees in the Employees Health Benefits program equal to 60 percent of the unweighted average of the high option premiums of six large plans. The requested increase of \$110,386,000 is necessary to provide for the growing number of enrollees and the estimated impact of premium increases effective in January 1981.

This fund also provides financing for the Government's share of health benefit costs for annuitants and survivors covered under the Retired Employees Health Benefits program. Public Law 96-156, signed 12/27/79, provides for increased government contributions toward the subscription charge for health coverage for those annuitants who retired prior to July 1, 1960. Participants in the Government sponsored Uniform Plan will be encouraged to enroll in the Federal Employees Health Benefit Program. The net impact of the increased contribution for those enrolled with private insurance carrier, and the transfer of uniform plan enrollees will result in reduced contributions of \$3,567,000.



WEDNESDAY, APRIL 1, 1981.

## MERIT SYSTEMS PROTECTION BOARD

### WITNESSES

RUTH T. PROKOP, CHAIRWOMAN  
RICHARD REDENIUS, MANAGING DIRECTOR  
JAY W. MORAVA, DIRECTOR, OFFICE OF ADMINISTRATION  
EUGENE HILL, DIRECTOR, BUDGET AND FINANCE DIVISION

Mr. ROYBAL. The committee will come to order.

The committee will now hear the budget request for 1981 of the Merit Systems Protection Board, Salaries and Expenses.

You may proceed in any way that you may desire.

Ms. PROKOP. Fine; thank you, Mr. Chairman and members of the committee.

As always, I have looked forward to meeting with the subcommittee to discuss the budgetary requirements of the Merit Systems Protection Board, this time, for fiscal year 1982.

In light of the current concern of the Congress, the administration, and the public for fiscal restraint, I have reviewed carefully what the needs of the Board are for the coming year and how they might best be met in a responsible fashion.

Before presenting that budgetary information, however, I would like to review for you briefly the responsibilities of the Board under the Civil Service Reform Act and how we have met them over the past year.

### BOARD RESPONSIBILITIES

As you know, Mr. Chairman, the responsibility of the Board, which demands by far the greatest portion of our staff and fiscal resources, is the adjudication of Federal employee appeals from agency personnel actions.

By law, the Board must provide a full panoply of procedural rights in adjudicating these appeals, including a hearing, if requested.

The Board is required by law not only to adjudicate employee appeals fairly and thoroughly, but also to process them in an expeditious manner. To meet that requirement the Board established a 120-day time limit for the processing of appeals by its 11 field offices.

### CASE PROCESSING

I am pleased to report to the committee that in the first two years of our operations the Board processed 94 percent of its cases within that self-imposed time limit. This is a particularly impressive achievement in light of the fact that case receipts jumped from 3672 in calendar 1979 to 6330 in calendar 1980, a 72 percent work-

load increase between the first and second year of the Board's operations.

Our experience in the first five months of fiscal year 1981 shows case receipts of 2895, a 48 percent increase over the comparable period the previous year. As should be apparent, continued fair and expeditious processing of cases is a challenge of the first magnitude.

We will be assisted in 1981 in meeting our challenge by the implementation of a fully-automated case-tracking and reporting system, and the Board is very grateful for the assistance in meeting the demands of this ever-increasing workload.

While processing of employee appeals draws heavily on our resources, the Board is also required by the Reform Act to conduct special studies of the Federal merit systems and to review the significant actions of the Office of Personnel Management.

#### OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

The Board's Office of Merit Systems Review and Studies is charged with carrying out these responsibilities.

In fiscal year 1980 that office began its first review of significant OPM activities and will report on them early this summer. Eleven special studies are currently underway; they include a study of the issue of reprisal, reprisal against Federal employees for reporting fraud, waste and mismanagement.

We have five others relating to the Senior Executive Service, three relating to merit pay, an analysis of Board decisions, and one on the impact of the Reform Act on agency personnel programs.

I will be happy to give you some further information on these "works in progress" if you wish. In September 1980, the Office of Merit Systems Review and Studies made public its first findings on the extent and effects of sexual harassment in the Federal workplace; a final report on the results of this significant study is forthcoming.

Under the Reform Act, the Board also reviews regulations of the Office of Personnel Management to determine whether they require the commission of practices violating the Reform Act. To date, the Board has initiated six such reviews and has established a regulatory framework for their processing.

#### CASES BROUGHT BY SPECIAL COUNSEL

Finally, the Reform Act requires that the Board adjudicate a variety of cases brought by the Office of Special Counsel, such as allegations of prohibited personnel practices. In fiscal year 1980, the Board received 50 such cases, including 40 requests for stays of personnel action.

Mr. Chairman, you have before you the Board's original projection for the cost of carrying out its legally mandated reform program during fiscal 1982. That request is for \$17.4 million and 422 positions. In my view, that is a realistic estimate of the cost of doing business in the coming year.

## OMB'S BUDGET PROPOSAL FOR THE BOARD

As you are aware, of course, the administration has embarked upon an unprecedented effort to trim costs throughout the Federal Government. As a part of that effort, the Office of Management and Budget has submitted revised fiscal year 1982 budget proposals.

I can assure you that the Merit Systems Protection Board was not spared from this revision process. OMB's current estimate of fiscal year 1982 funding for the Board is \$15.037 million and 340 positions. This estimate represents a 14 percent reduction in funding and a 20 percent reduction in personnel from our good-faith estimates of last September.

It represents the "bare bones" minimum that is needed to carry on the essential operations of the Board.

As I have often reminded this subcommittee, the Board possesses a statutory concurrent budget authority which enables it to submit directly to the Congress a budgetary request which differs from that recommended by the administration.

I have also stated here, however, that the Board will not exercise this unique budgetary authority to request unreasonable levels of funding.

## BOARD CONCURS WITH OMB PROPOSAL

Mr. Chairman, I have considered long and hard whether the Board can carry out its responsibilities within the revised funding and personnel ceilings set by OMB for fiscal year 1982. I believe that with significant belt-tightening throughout the agency, the Board can function responsibly within those ceilings.

By accepting these lower figures, of course, the Board will be forced to tighten program expenditures and find additional means to increase productivity. Curtailment of travel may be necessary and reprogramming of staff between Board offices will undoubtedly be required.

In fact, the recent administration hiring freeze has already required the Board to redistribute some of its staff within headquarters to keep apace with the caseload of employee appeals from field office decisions.

Similarly, our Office of Personnel has established an emergency secretarial pool to be assigned to headquarters functions which may temporarily lack adequate support. In short, Mr. Chairman, while acceptance of the OMB revisions will push us to our limit, we are already developing the means to function within them. The Board is committed to do what it can to aid in the effort to reduce Federal expenditures.

## REDUCTIONS IN FORCE MAY INCREASE APPEALS

I must emphasize, however, that one aspect of the administration's economy effort may dramatically increase the workload of the Board in the coming months, and it would be an increase that we could not bear within the OMB ceiling.

Reduced Federal employment is one device which the administration is employing to cut the costs of government. As a result, there is a possibility of reductions-in-force to achieve lower employment levels.

To the extent that such RIFs are conducted, there will inevitably follow an increase in the workload of the Merit Systems Protection Board, which is charged with processing employee appeals from agency RIFs.

Furthermore, many Federal agencies have limited experience with the complex procedures which the conduct of a RIF entails. If these agencies make significant errors in carrying out the RIF process, the volume of RIF appeals coming to the Board may be even greater.

In light of the austere fiscal conditions which the OMB ceilings will impose on the Board, we would be unable, in the absence of supplemental funding, to handle the increased caseload associated with widespread RIFs.

It should be apparent, however, that the cost of enabling the Board to process this increased caseload would be quite small compared to the savings which could result from decreased Federal employment levels. I am not a Cassandra, but I would be remiss if I failed to point out this difficult problem which the Board could face.

This caveat aside, I will reiterate that the Board believes it can live within the revised OMB funding and personnel limits for fiscal year 1981.

To do so, of course, will require us to absorb pay increases and other increased costs resulting from inflation in an already lean budget. However, we are prepared to accomplish our mission in a minimally acceptable way with the decreased funding and personnel which OMB recommends.

That concludes my statement, Mr. Chairman, and I will be pleased to respond to any questions which the subcommittee may have.

[The statement of Ms. Prokop follows:]

STATEMENT BY RUTH T. PROKOP, CHAIRWOMAN, MERIT SYSTEMS PROTECTION BOARD

Mr. Chairman and Members of the Subcommittee, as always, I have looked forward to meeting with the Subcommittee to discuss the budgetary requirements of the Merit Systems Protection Board—this time, for fiscal year 1982. In light of the current concern of the Congress, the Administration, and the public for fiscal restraint, I have reviewed carefully what the needs of the Board are for the coming year and how they might best be met in a responsible fashion.

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The Board is required by law not only to adjudicate employee appeals fairly and thoroughly, but also to process them in an expeditious manner. To meet that requirement, the Board established a 120-day time limit for the processing of appeals by its eleven field offices. I am pleased to report to the committee that in the first two years of our operations, the Board processed 94 percent of its cases within that self-imposed time limit. This is a particularly impressive achievement in light of the fact that case receipts jumped from 3,672 in calendar 1979 to 6,330 in calendar 1980—a 72-percent workload increase between the first and second year of the Board's operations. Our experience in the first five months of fiscal year 1981 shows case receipts of 2,895, a 48-percent increase over the comparable period the previous year. As should be apparent, continued fair and expeditious processing of cases is a challenge of the first magnitude. We will be assisted in 1981 in meeting

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in carrying out the RIF process, the volume of RIF appeals coming to the Board may be even greater.

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That concludes my statement, Mr. Chairman, and I will be pleased to respond to any questions which the Subcommittee may have.

Mr. ROYBAL. Now, in order to be specific as to amounts and by virtue of the fact that you have stated that you have "by-pass" authority and can come directly to the Congress for your budget request, are you requesting the amount provided in the Reagan budget?

Ms. PROKOP. Yes.

Mr. ROYBAL. That is exactly the amount recommended in the Reagan budget?

Ms. PROKOP. Exactly.

Mr. ROYBAL. That then calls for an increase of \$37,000 in your 1982 budget over 1981.

Ms. PROKOP. I believe that is correct.

#### IMPACT OF FURTHER REDUCTIONS

Mr. ROYBAL. Would you like to comment then on the committee recommendations with regard to the \$13.8 million in cuts?

Ms. PROKOP. Yes; I will.

It is my understanding, and I presume you have it in front of you, that Congresswoman Schroeder recommended to the full committee a cut of the Board's budget back to \$13.8 million.

That figure was accepted by the full committee.

I would like to comment on the impact of the 13.8. I think it can be summarized in two words, devastating and uneconomical.

Let me tell you what it would cause the Board to do in real dollar terms. It would cause the Board to abolish its merit studies and review function which now has 19 people.

It would totally obliterate the Office of General Counsel, and would require approximately the firing or RIFing of 20 presiding officials and 5 support staff.

I believe that would be a devastating cut to the Board.

It would result in backlogged cases and we estimate that within a one-year period it would bring us within 1,400 backlogged cases within the first year.

Mr. ROYBAL. The truth of the matter is that we just got this letter with this information, therefore, we are not entirely familiar with it, but my understanding is that the committee has recommended that the budget of the Merit Systems Protection Board be reduced to \$13.8 million, and that those cuts come out of the Merit System Review and Studies, and out of the General Counsel's office.

Ms. PROKOP. Right.

Mr. ROYBAL. Now, if that reduction comes or is taken from those areas recommended by the Post Office Committee, what precisely would be the effect of such a reduction?

Will you again go over that?

Ms. PROKOP. OK; let me first state that that is not the extent of the cuts that have to be made. The cuts are much deeper and would require more than even the abolition of those two units.

As I mentioned before, it would require the abolition of the Office of Merit Systems Review and Studies, and the total abolition of the Office of General Counsel. In addition it would require approximately a 25 percent cut in our field offices among our presiding officials.

Within a one-year period, we could anticipate a backlog of 1,400 cases in the field office alone. The impact of the Merit Studies is very simply that that would be one of the statutory functions that would be abolished. We simply could not perform it if the people were not there to perform it. Thirdly, as to the Office of General Counsel, the abolition of that office, that is really not quite as simple a proposition.

I can give you the impact of that.

Last year that office prepared 102 litigation reports for the Department of Justice to defend the Board on a number of cases, and prepared and filed on our own motion 225 cases in Federal District Court, 42 of our own pleadings and briefings filed. So I would anticipate that responsibility would be shifted to the Department of Justice.

The work would have to be done somewhere, and that includes the accumulation and compilation of the records to transfer to the court. I presume we would have to ask the Department of Justice to take over these responsibilities, including all of the clerical activities, if the cuts were accepted.

I think that perhaps describes the three levels of where we anticipate such cuts would have to occur.

#### CURRENT STUDIES

Mr. ROYBAL. I would like to make some inquiries with regard to the studies that you are now conducting, and those that are underway.

It is my understanding that there are 11 special studies, and that they include a study of the issue of reprisal.

Now, there are also five other studies relating to the Senior Executive Service, and three relating to merit pay.

Ms. PROKOP. Right.

Mr. ROYBAL. Why do we have to have five studies relating to Senior Executive Service and three relating to merit pay? Is it necessary to have five and three or can one thorough study be sufficient?

Ms. PROKOP. That is an excellent question.

They are actually parts of one major study. They are done in terms of timing to release the data. It is part of an overall study of the SES, but will be released as soon as the work is done. It is five parts of one major comprehensive look at the SES.

Mr. ROYBAL. It is one study in five different sections?

Ms. PROKOP. Five different sections and different release times. We will be reporting on one next week through testimony before the Civil Service Committee.

They were quite anxious to have some of the information early.

Mr. ROYBAL. Have the studies with regard to the Senior Executive Service been completed?

Ms. PROKOP. Our first one will be completed either late Friday or first thing Monday of this week or early next week; yes.

The only study that has actually been completed was the study on sexual harassment that Chairman Hanley requested last year and we testified before his Committee.

#### SEXUAL HARASSMENT STUDY

Mr. ROYBAL. Tell us something about that study.

Ms. PROKOP. The sexual harassment study?

Okay; let me first state why we did the study, and what the basic findings were.

The study was conducted as a result of hearings that Chairman Hanley held last year on the subject of sexual harassment.

He asked us to look into the nature of sexual harassment. He had a lot of complaints in front of his committee from Federal employees but he didn't feel that he had accurate data on which to make a judgmental call of whether we needed additional legislation or whether it was something that could be corrected by existing authorities.

Mr. ROYBAL. Did all those complaints come from women?

Ms. PROKOP. No, sir; as I understand it, Chairman Hanley's complaints came from women but as we got into the study we found a significantly high number of complaints from males, which was a surprising factor that emerged during the study.

The study resulted in a thick document, and I did testify to the basic findings last fall. We did this in response to assisting the committee, assisting OPM and the EEOC, as to what extra steps were necessary to stop sexual harassment in the Federal workplace.

Mr. ROYBAL. What are the nature of the complaints that you get from people?

Ms. PROKOP. It ranged from suggestive comments all the way up to assault, attempted rape, so it was the full range of complaints. We found one out of every four women that responded to the study had been subjected to sexual harassment.

Mr. ROYBAL. Were there any complaints from women that indicated that their lack of response to any advance resulted in either demotion or lack of promotion?

Ms. PROKOP. Yes, sir; there were. It was not as extraordinary a number as we thought. In fact, we found another trend running through it, that oftentimes they just didn't report it or didn't say anything to anyone, and had no way to judge the impact of their refusal.

That was a very common theme running throughout the responses.

Mr. ROYBAL. Will you make available to the committee the final reports, particularly those that would be ready this coming Friday?

Ms. PROKOP. We will indeed.

Mr. ROYBAL. And if possible make available any of those that will be completed within the next six weeks.

Ms. PROKOP. Yes, sir; we will. We will be able to provide the sexual harassment, the first SES study, and our reprisal study, which should be of interest to this committee.

It goes into the issue of how often Federal employees have observed fraud and mismanagement in the past year and whether they reported it. We anticipate that it will be a very significant study and it will be available next week. We will provide those to you also.

[The information follows:]



MERIT SYSTEMS PROTECTION BOARD  
Washington, D.C. 20419

April 2, 1981

## AN MSPB SPECIAL STUDY ON THE SENIOR EXECUTIVE SERVICE

### Background

The Merit Systems Protection Board was established under the CSRA to perform a number of functions including the conduct of special studies to determine if a civil service free of prohibited personnel practices is being maintained. The Office of Merit Systems Review and Studies has responsibility for conducting the studies.

Last year the Office of Merit Systems Review and Studies (MSRS) began a series of specific initiatives for delving into a wide range of timely and pertinent issues. A series of Nielsen-style panels were developed to assist the office in its responsibility to discover the nature and extent of problems with the merit systems and to furnish accurate and balanced reports to the President, the Congress, and the public. Federal employees who were randomly selected from central computer personnel files have been asked to voluntarily serve on these panels for twelve to eighteen months and respond to regular inquiries from MSRS.

In November, 1980, MSRS distributed a comprehensive survey to selected members of the Senior Executive Service. Questionnaires were sent to approximately 1,500 senior executives employed by the Federal government at that time. Nearly 1,000 executives completed and returned the questionnaires. The composition of respondents closely paralleled the composition of the Senior Executive Service.

Over the course of the following weeks, the Board will release preliminary findings as soon as each segment of the analysis is complete. The first findings reveal the attitudes and experiences of Senior Executive Service members concerning the Performance Appraisal System and Bonus Systems.

In a companion study, the Office of Merit Systems Review and Studies has just completed an investigation of how the protections accorded career members of the Senior Executive Service have worked during the change in Administration. This latter study was conducted through intensive interviews with 100 career SES members during the third and fourth weeks in March of this year.

SELECTED FINDINGS  
FROM MSPB'S FIRST QUESTIONNAIRE SURVEY OF SES MEMBERS

PERFORMANCE APPRAISAL SYSTEMS AND BONUS SYSTEMS

- Nearly all SES participants in the survey said that performance standards had been established for their current position.
- The survey revealed no evidence that performance standards are being arbitrarily imposed. Virtually all of those with performance standards had participated in their development.
- SES respondents said they have a good understanding of their performance standards and believed their standards to be fair.
- Many SES members reported misgivings about the inflexibility of the standards. Nearly one-third of executives feel that they exercise only limited control over the factors that will ultimately determine their rating. Furthermore, one executive in four is not confident that his or her supervisor will take the effect of external influences into account in appraising performance.
- Despite these apprehensions, practically everyone in the survey had had an appraisal under the new system and found the appraisal process fair.
- Some SES members reported disillusionment with the rating experience. Slightly over a third of those rated felt the experience had not been very helpful. A small number (7%) said that it actually did more harm than good. Many executives did not feel their performance ratings had had any effect on personnel decisions which might benefit them.
- Eight out of ten individuals responding to the survey felt there were insufficient incentives in SES to retain highly competent executives.
- Over one employee in four indicated it was unlikely that they would be working for the Federal government two years from now, if they have their own way. Another 20% said there is an even chance that they will leave Federal employment within two years.
- The study reveals a pattern which indicates that SES positions may actually be becoming less attractive to potential candidates than one might expect. Overall, only about three in ten GS-13 to GS-15 employees say they are willing to join the SES if a job they would like were offered to them.

- Among those already in the SES, many seem to be having second thoughts about having joined. One in ten of current SES members surveyed said they would seriously consider leaving the SES to accept a GS-15 position in the same kind of work if the opportunity arose. Another 15% said they were not sure, but might consider it.
- The majority of executives do not believe a real opportunity for monetary reward exists. In spite of the fact that 7 out of 10 SES members indicated their supervisors rated their performance highly, less than 3 out of 10 felt it is likely they would receive a bonus during the next 12 months. Another good indication of the frustration with compensation matters in the SES can be seen in attitudes related to the award of bonuses.
- Many executives see favoritism in the way bonuses have been awarded. One-third of executives believe that bonuses do not go to the best performers. One-half see bonuses going disproportionately to executives at the top of the agency. An almost equal percentage (45%) report one or more instances<sup>1/</sup> in the last twelve months where they believe bonuses were given to "management favorites" with sufficient basis in actual performance.
- Despite many criticisms about their current situation, 91% of executives say they are satisfied with their own jobs--the work itself. Over half feel that top management appreciates their work. By a wide margin SES members also believe their work serves the public interest and has a positive impact.
- The findings of this study strongly suggest that non-pay benefits alone will not continue to be sufficient to attract and retain a committed executive work force.

**SUMMARY OF FINDINGS FROM 100 INTENSIVE INTERVIEWS  
CONDUCTED BY MSPB TO REVIEW  
PROTECTIONS DURING 120-DAY MORATORIUM**

- The study produced no evidence that as of mid-March SES members have been pressured to vacate their positions through resignation, retirement, or reassignment during the last three months. No one in the survey group reported being involuntarily detailed to other positions.

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<sup>1/</sup> It is important to keep in mind that several Executives could be reporting the same incident.

- In no instances did any of the executives in the survey recount any direct observations or first-hand experiences of pressure being brought upon a colleague to vacate a position.
- The study revealed no significant evidence that the 120-day moratorium on appraisals was being violated.
- Federal respondents expressed a concern that politically-motivated actions would follow the 120-day moratorium period. However, these concerns were the result of rumors, or general speculation about the effect of proposed program cutbacks in the agency.
- About one in five career SES members felt they did not have adequate information about the protections available to them. An equal percentage believed the protections were inadequate.
- The concerns of senior executives come from their knowledge of new flexibilities provided by the Reform Act, and from speculation in the newspapers or speculation among executives themselves about what could possibly happen. But with agency heads and many top ranking executives only recently in place or yet to take office, and with the 120-day moratorium periods still in effect, it is too soon to tell just how the change in Administrations will ultimately affect career executives.

Mr. ROYBAL. Mr. Miller?

EFFECT OF REDUCTIONS ON CASE PROCESSING

Mr. MILLER. We are happy to have you here, Ms. Prokop, and we know you have a big responsibility.

I have just a few questions here which I picked up from your statement. Let's assume that the budget would be \$15.037 million.

Under that budget and with the increase in workload, do you still feel that you would be able to meet that 120-day limit, or do you feel there would be a slippage because of the lack of employees and dollars?

Ms. PROKOP. I think that was the thing that troubled me the most, as I was examining whether we could live inside the \$15,037,000, and basically what the budget of 15.037 means for the Board is that we would have approximately 19 fewer employees than we have now but we would be able to accomplish that reduction through the attrition process.

But I think there is a difference now, Congressman, between the time I came to you two years ago and today, we can now absorb a little more of a cut. We have had some very good things happen to us. The case processing system is now in effect, thus making our job easier.

I brought in new staff all across the field, and I have had a 30 to 60 percent change across the field with new and higher qualifications. I did require everyone to be an attorney who was deciding cases, so that should permit them to decide more cases. We have had a number of Board decisions that permit our field offices to follow these precedential decisions and should hopefully make their job easier.

It is tight, but we are in a much better position today to try to achieve those kinds of cost savings than we were two years ago when we did not have those important management order changes in place.

If I believed today that I could not make the 120-day limit, I don't think I could support the Reagan budget, but I am willing to try and to try hard and we, for once, have the people and facilities in place that perhaps we can accomplish it.

Mr. MILLER. Apparently that is what you mean by the statement on page 4 where you say by accepting those lower figures the Board would be forced to tighten program expenditures and find additional means to increase productivity.

Ms. PROKOP. Absolutely.

It only makes good sense that you all were very patient to sit here and listen to me about the lack of adequate case tracking systems, when you have got to go looking through about ten or 13 boxes and now you have it on a case tracking system which is easy to achieve.

We are really beginning to see some of the benefits of your earlier investment.

## PROHIBITED PERSONNEL PRACTICES

Mr. MILLER. In another area, you say the Reform Act requires the Board to adjudicate cases brought by the Office of Special Counsel, such as allegations of prohibited personnel practices.

That seems to cover a mountainside of avenues. Can you explain to us the allegations of prohibited personnel practices? What you mean by that?

Ms. PROKOP. I did use a very broad term so I would not have to bore the subcommittee with the details, but let me give you a typical prohibited personnel practice.

Under the Reform Act, there are 11 prohibited personnel practices. Some of the language is very broad as to precisely what a prohibited practice might be.

The most typical one that we see is where, let me use a typical case, where a whistle-blower has brought to the attention of the Special Counsel or to someone inside the agency mismanagement or waste of funds.

Once management learns about that and is not willing to accept it and to change it, they retaliate against the employee that reports the waste on mismanagement and something occurs to that employee, such as a transfer to upper Washington State from Washington, D.C.

That is the most typical of prohibited personnel practices that comes before the Board.

It can come before the Board in terms of discrimination or other issues. There are 11 of them set forth in the statute.

Mr. MILLER. Could you provide those 11 for our record.

Ms. PROKOP. We certainly will.

Mr. MILLER. That would be good for us to have.

[The information follows:]

As set forth under 5 U.S.C. 2302(b), the Board is responsible for the adjudication of cases brought by the Office of Special Counsel involving allegations of prohibited personnel practices. Section 2302(b) states in full:

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

"(1) discriminate for or against any employee or applicant for employment—

"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

"(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

"(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

"(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

"(B) an evaluation of the character, loyalty, or suitability of such individual;

"(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any em-

ployee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

"(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

"(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

"(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

"(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

"(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

"(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

"(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

Mr. MILLER. I understand some of the kinds of problems that we get involved in, and we are expected to be an umpire. Do you find that a lot of conflict of interest and personality problems use up some of that \$15 million? Do you find you are standing in between the employee and the management in a personality problem?

Ms. PROKOP. Absolutely. I would be remiss not to say that a large number of cases occur in that category. Any time you deal with human beings in trying to negotiate or arbitrate job situations, you are going to find a number of those types of cases.

I think the problem is how to distinguish between them before they get into the system and take up too much of the time and the resources.

At the same time, we have had a number of cases, an overwhelming number, where there are legitimate differences of opinion that need to be worked out by a hearing examiner.

Mr. MILLER. I can understand those, but if 50 percent of the cases are really personality problems, attempting to identify those ahead of time before they get into the system, makes a lot of sense.

Are any studies being made to identify them ahead of time so we do not have to spend the dollars and have a smoother operation. This makes better government, if we can find the cause of the problem and if that problem is there ahead of time?

Ms. PROKOP. I can appreciate that. The Congress would need to amend the statute first, because I have a statutory requirement that anyone who files with the Board and requests a hearing is entitled by statute to that hearing, and I must conduct a hearing in accordance with the statute.

I think we are looking through our merit system review study to types of cost savings that could come out and then we could recommend changes to Congress.

I think there are some changes in the Civil Service Reform Act, not major ones but minor ones, that could really tighten this up a great deal and yet serve the legitimate interests of the employees.

There is plenty of room for improvement, and we are looking at some of these areas and I would hope we will have some recommendations for the Congress.

Mr. MILLER. Very good.

Thank you.

Mr. ROYBAL. Mr. Rudd?

#### SPECIAL COUNSEL LAWSUIT

Mr. RUDD. Mr. Chairman, I was somewhat concerned with the testimony given by the head of the Office of Special Counsel about the case that has been instituted against your agency for a dispute involving control over that office's employees.

What is the background on that suit?

Ms. PROKOP. I am really quite delighted to have this opportunity to clarify some of the misperceptions that have surrounded this lawsuit.

First, let me state that this case is nothing more than an issue of statutory interpretation—where does the Civil Service Reform Act and a host of statutes place the responsibility for certain acts and where does it place the accountability.

It was the judgment of the Board that the Civil Service Reform Act was not clear on those issues and that as long as it was not clarified it would continue to hamper the effect of operations of both the Board and the Office of Special Counsel.

I firmly believe that it is only fair that public officials, whether that be the Office of Special Counsel or the three Board Members, clearly understand who is responsible for what and who is accountable for what statutory duties.

We presented our interpretation of the statute to the Court. The Office of Special Counsel presented its interpretation to the Court.

I feel very strongly that this was not only a proper course of action but will resolve statutory issues which were causing a great deal of concern. I think these issues represent a very legitimate

concern on the part of the Office of Special Counsel and the Board, as to really who was responsible for what and who was accountable for what.

Under the terms of the statute, all people were trying to fairly execute their statutory responsibilities.

I was trying to describe the nature of the lawsuit but I will be happy, if it would be helpful to you, to go through my perception of what brought it about.

Mr. RUDD. Go right ahead.

Ms. PROKOP. Okay.

To understand the general nature of the lawsuit, we have to look backwards to the authorized level of the special counsel in fiscal year 1980. They were authorized to hire 140 employees.

As of February 28, 1980, they had 61 employees on board. Then, on March 14, then-President Carter, imposed a freeze which was retroactive back to February 29.

At that time it was the position of the Office of Special Counsel that they were not subject to the freeze imposed by the Office of Management and Budget.

It was my understanding that at some point in the month of March the Office of Management and Budget did inform the Special Counsel that their interpretation was different, and that they did not consider them exempt.

Following on April 16 of 1980, then President Carter recommended a rescission of \$1 million in the Office of Special Counsel's budget.

On May 1 it is my understanding that the Senate Committee Appropriations staff also informed the Office of Special Counsel that they did not consider them to be exempt from the presidential freeze.

At a later point on June 23 there was a recommended rescission from the Senate Appropriations Committee of \$2 million, that is, \$1 million over what was recommended by President Carter.

That rescission of \$2 million took them from a budget posture of \$4.5 million to \$2.5 million. That was then signed by the President on July 8.

Now, what occurred between this period of February 1980 and to the time the President signed the \$2 million rescission on July 8 was that the Office of Special Counsel staff had increased from 61 to 119 employees, so it was a combination of the rescission—

Mr. RUDD. To what?

Ms. PROKOP. To 119, so it was a combination, bottom-lining it, of the \$2 million rescission and the buildup from 61 to 119 that caused the difficulties.

It was very clear at that point, Congressman, that with a \$2 million rescission and a staff at that time around 119, that there was clearly going to be a problem of that Anti-Deficiency Act.

Without going into the many machinations that happened in between, there was a point in August where the Special Counsel detailed a number, I believe the number was 60 employees, to the Board.

The Board did pick up the funding of that exercise until the end of the fiscal year.

The cost to the Board of direct and indirect cost was somewhere around \$250,000. Now, I sent to the Congress on I believe August 2 a prospective Anti-Deficiency Report stating that I anticipated the Board going into an anti-deficiency procedure unless certain actions were taken.

I mentioned the detailed actions. Now, as a result of that, some very legitimate questions came up.

Who is accountable and who is responsible for the budgetary impacts?

The issue of who is responsible for the hiring and making the decisions relating to the hiring and who is to be held accountable, for those actions under the Anti-Deficiency Act. It was my reading and at least the reading of a number of people that I was responsible under the Anti-Deficiency Act. I consulted with the Department of Justice and a number of people on that.

It was, I think, and I want to be very clear here, the intention of the individuals was really to follow the statute. We were seeking answers.

Where does the statute place responsibility and where does the statute place accountability?

You can certainly appreciate my concern that if I am going to be held accountable for something I would like also to have the responsibility for the decisions. It is institutional question, and a very legitimate question under the statute.

I must say that when the next hiring by the Special Counsel, occurred on October 2 the Merit System Protection Board did file the lawsuit.

Now, I know that is compressing for you a tremendous period of time.

Mr. RUDD. Not at all. It is very clear.

Ms. PROKOP. We sought answers.

Mr. RUDD. It is very clear what your responsibilities are. How do you perceive the Special Counsel's responsibilities?

Ms. PROKOP. Well, I think I have stated to the Court that I did not perceive that the Congress created two agencies and that it placed budgetary responsibilities in the Chairman of the Board.

That is my reading of the statute; but in fairness, the Office of Special Counsel does not view the statute like that.

Mr. RUDD. What is their purpose then?

Ms. PROKOP. I really cannot speak to their views. I think they feel very strongly that if the Board could control its budget, and I here am trying to state their case as very best I can, perhaps in some manner it could control their investigations. I believe it is a good faith belief.

Mr. RUDD. How do they perceive their responsibilities?

Ms. PROKOP. I think they perceive their responsibilities as being totally responsible for the running of the Office of Special Counsel without the interference of the Merit System Protection Board.

Mr. RUDD. Shouldn't it really dovetail?

Ms. PROKOP. I think you should dovetail, yes.

Mr. RUDD. To have two government agencies suing each other is a terrible thing, really, spending taxpayers' money, throwing it at each other. I am sure that you would be better off not to have something like that.

Ms. PROKOP. I completely concur with you, and may I respond to that, because I think that is a very important consideration.

With great reluctance, I brought that lawsuit. I cannot tell you how reluctantly. However, I did think the minor cost of filing the lawsuit was absolutely minimal compared to what the difficulties were costing us in real dollar terms.

Mr. RUDD. What we are doing in both the legislative and executive branch, is every time we get in a bind we turn it over to the courts which are really not qualified to decide what is going on in those areas. But they have to decide.

It won't be long before we won't have a legislative and an executive branch, because we will turn everything over to the courts.

In July of 1979 President Carter signed Executive Order 12-146 which delegated authority for settling interagency legal disputes to the Attorney General?

Ms. PROKOP. That is right.

Mr. RUDD. The pertinent paragraphs are 1-401 and 1-402 from that Executive Order?

Ms. PROKOP. Yes.

Mr. RUDD. In effect if you get involved in a dispute you say let the Attorney General decide it.

Ms. PROKOP. That Executive Order has two components.

One relates to the executive agencies. By statute we are not an executive agency.

The second is, I believe and it has been, I must tell you, some years since I have read that executive order, but I do believe that—

Mr. RUDD. Let me quote it.

In 401:

Whenever two or more executive agencies are unable to resolve a legal dispute between them, including a question of which has jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General.

402 says that:

Whenever one or two executive agencies whose heads serve at the pleasure of the President are unable to resolve such legal dispute, the agencies shall submit the dispute to the Attorney General prior to the proceeding into any court, except where there is a specific statutory investigation of responsible regulation elsewhere.

And that brings up the question of whether or not this dispute was submitted to the Attorney General.

Ms. PROKOP. I certainly don't want to be argumentative with you at all.

We are not an executive agency. By statute, we are not an executive agency. That executive order did run to an executive agency, like the Department of Labor and HUD, if they had a dispute.

What I was trying to say, there is a body of law that is really quite questionable on independent agencies submitting such disputes to the Attorney General.

Now, at the time that executive order was being considered and the reason I do know a little about it, I was general counsel at the time with the Department of Housing and Urban Development, and did take part in the group that brought this executive order into being.

The issue there was whether you could require two independent agencies, let's take for example, the Securities Exchange Commission and the Federal Trade Commission, to submit to an opinion of the Attorney General. I believe there was agreement, and whether it indeed comes out in that executive order, I am less than sure, but it very carefully distinguishes disputes among executive and independent agencies.

Mr. RUDD. What I think you are saying is that this does not apply to you?

Ms. PROKOP. That particular provision does not, sir.

Mr. RUDD. Is there a reason why it shouldn't apply to you? We talk about legal niceties all day long, but it seems to me it is reasonable that it should apply, if you want it to apply rather than to go to court.

Is there anything that would prevent you from submitting your dispute to the Attorney General?

Ms. PROKOP. Yes, sir; two things.

I have got to come back and say first that we are not an executive agency by statute. It would require a change of the statute to make us an executive agency. There is something very underlying and important in our own statute that would have prevented us going to the Attorney General in this case.

There is a great deal of legislative history in the Civil Service Reform Act which goes to the independence of the Merit System Protection Board from the guidance of the Executive Branch, and specifically from the guidance of the Department of Justice. We examined that very carefully and discussed it, it was one of the alternatives that we discussed and spent a lot of time on.

I would like to have felt secure in going that route.

Mr. RUDD. In your opinion, if you are prevented from going to the Attorney General, or we will say to the Attorney General by law, do you feel that it would be wise for your two agencies to have someone like the Attorney General to settle a dispute rather than going to a court of law or bringing a court action?

Ms. PROKOP. Certainly, it would be economical for everyone if we had an alternative, yes, sir.

Mr. RUDD. You believe that you should have that alternative?

Ms. PROKOP. The question that I would have to address at the same time is whether you wanted to put something like the Merit System Protection Board and the Office of Special Counsel under the direct legal guidance of the Attorney General.

That is a philosophical question that can be resolved on one side or the other, but I do think that there is another side to it.

For example, sir, if you permitted, in some cases which might be very practical, in fact you would want a dispute like this to go to the Attorney General, could they not also give you interpretations on your statute that would take away the independence that Congress sought to insure for this agency?

Mr. RUDD. Do you think it would be possible to form a quasi-legal board or committee made up of the head of the Office of Personnel Management and two other stated people from outside the agency to sit in judgment on such a case to keep you from going to court?

Ms. PROKOP. I think anything short of court would have been an excellent way to resolve it.

I think you have other problems with involving something like the Office of Personnel Management, because again there was an explicit desire of Congress to separate those institutions.

I have no personal problem with it. I just think it has implications that follow and it is a legitimate area of inquiry. I don't think it is permissible under our statute as it is currently written.

#### COST OF SPECIAL COUNSEL SUIT

Mr. RUDD. I thank you for your statement on this, and I think that maybe we should give that some consideration.

For the record, would you please provide an estimate of the cost to the taxpayers of the number of man hours that will be expended if this litigation is continued to resolution by the court?

Ms. PROKOP. May I respond to a portion of it right now?

Mr. RUDD. Yes, of course. But I know that this is vague, and it is going to be hard to do because you don't know how long it will last.

Ms. PROKOP. I can give you a very specific estimate, sir.

The cost to the Merit System Protection Board for this lawsuit to date has been \$4,191. Out of the total Office of General Counsel's allocation of \$965,000, that is less than one-half of one percent of General Counsel's budget.

Presumably, sir, although one cannot predict the future, it could be over very soon. The judge could decide on the pleadings before him now. There might never be another court appearance, or there might be more.

I am a litigator of many years. I could run out all kinds of predictions, but at the posture we are in with Judge Richey right now, there is no way to determine another 25 hours to be charged, if you ran into one more proceeding, or if you got into a full-blown trial you could make certain predictions.

I think that one of the basic issues here is a simple matter of statutory construction, and I can't determine which way Judge Richey will decide he wants to handle this case, but these are all the costs that have been expended thus far.

We are now waiting for his decision.

#### ALTERNATIVES TO FILING LAWSUIT

Mr. ROYBAL. I would like to follow that up for the sake of clarification.

Would it have been possible for you not to file in the Federal Court but to let the GAO and General Counsel of Justice render a decision? Would that have sufficed at that time?

Ms. PROKOP. Mr. Chairman, we examined both of those possibilities. It was in the final analysis our judgment that we could not submit to the Department of Justice under the statutory constraints and without setting precedence that we thought would damage the Board in the future.

It was our judgment that this issue needed to be resolved as fast as possible because while the costs of preparing for such a lawsuit are absolutely miniscule, the indecision and the problems that it was creating were the greatest drain upon the Board. We sought the fastest answer we could get.

We came to Congress in April of last year seeking a legislative resolution of this issue first, and we talked to many people inside the Executive Branch attempting to get a resolution, and we chose what we thought was the fastest way to get a resolution of the issue that would provide some guidance to both institutions here.

Mr. ROYBAL. My understanding is that the Department of Justice feels that the lawsuit should be dismissed.

Have they made a formal motion before the court for dismissal?

Ms. PROKOP. Two things: The Department of Justice chose not to enter this case. They were directed by the judge in January of 1981, somewhere the end of December, first of January, to file a pleading in the case, a statement of interest, I believe it was called.

That was in response to a Motion to Dismiss. The Department of Justice filing came on January 23, 1981, called a Statement of Interest.

It did not address the merits of the issue. It addressed the jurisdictional issue of what is called section 1345 under United States Code and the justiciability issue. It did not approach the merits of the dispute.

I don't want to get technical but for the record at Footnote 1, page 2 and Footnote 1 on page 5 of the Department of Justice filing before the court, they presumed the substantive resolution of the issue. They felt it was an agency and sub-agency.

They did not approach the merits of the issue. They approached purely the jurisdictional issue on the scope of litigating authority that agencies are entitled to. I felt it was a very traditional Justice approach held since the 19th Century. To the best of my knowledge they did not at any time address the merits of the controversy and the two footnotes I referred to suggest that they consider the substantive issue already resolved.

About a year ago the Office of the Solicitor had an opportunity to comment on the merits of this issue and it was their view at that time, (and I will be happy to submit to this committee the Memorandum prepared in the Office of the Solicitor) that it was not an independent agency in any respect, that it was a sub-agency.

So I think that the Department of Justice entered the case under the direction of the court to summarize and address only the issues of the justiciability and the scope of the litigating authority.

Mr. ROYBAL. The main question of mine is when will this be resolved?

Ms. PROKOP. It could be resolved this afternoon while we are sitting here.

I would have thought Judge Richey would have ruled before this time under normal procedure, sir.

Mr. ROYBAL. Instead of this afternoon, it can drag on for months yet?

Ms. PROKOP. It could.

Mr. ROYBAL. All right; that is something that has to be determined and probably will be.

Now, I would like to just very briefly go into this matter of the recommendation made by the authorizing committee with regard to reductions.

Do you have to go on an annual basis to the authorizing committee for authorization for your budget?

Ms. PROKOP. No; we do not.

Mr. ROYBAL. Where does their jurisdiction or how do they get their jurisdiction then?

Ms. PROKOP. Sir, I don't know.

Mr. REDENIUS. As I understand it, the various oversight committees are asked to report on an annual basis to the Budget Committee in terms of significant changes within their cognizance for the upcoming fiscal year, and it is in that context that they have written to the Budget Committee recommending those reductions.

Mr. ROYBAL. Then the Budget Committee can actually recommend to this committee and probably by the second budget resolution they can even set a target that would be mandatory and a reduction take place?

Mr. REDENIUS. That is correct.

Mr. ROYBAL. That is what bothers me with this whole situation, so we do not know exactly where we are at the moment with regard to this recommendation, except that we have received a letter making a recommendation to the subcommittee.

Ms. PROKOP. Right.

Mr. ROYBAL. Have you any indication of any other action being taken by the authorizing committee, that is, any effort being made to get the Budget Committee to take a position on that?

Ms. PROKOP. I know of no such efforts, Congressman.

Mr. ROYBAL. All right; you have testified in answer to my question that if this reduction takes place, I think you used the words, "It will almost be chaos." Is that correct?

Ms. PROKOP. Yes.

That is certainly correct, sir, and I am very concerned about it.

Mr. ROYBAL. I would like to thank you, Ms. Prokop, and your associates, for the testimony you have given this committee.

Are there any other questions from any members of the committee?

Mr. Miller?

Mr. MILLER. No questions, Mr. Chairman.

Mr. ROYBAL. All right.

We thank you again for your testimony.

Ms. PROKOP. Thank you, Mr. Chairman.

Mr. ROYBAL. The Chairwoman will provide for the record a response with regard to equal employment opportunities as it relates to Hispanics and women and the justifications will be inserted in the record immediately following that response.

[The information follows:]

Since the Board's creation in January 1979, affirmative hiring policies and outreach programs have resulted in appreciable gains in the employment of Hispanics and women. While at the end of its first year of operation, 1.7 percent of the workforce were of Hispanic origin, by March 1980 and March 1981, the Board succeeded in raising this figure to 2 percent and 2.5 percent respectively.

Even more encouraging, however, has been the level at which many of these Hispanics have been placed. The Chief Appeals Officer of the Board's Seattle Field Office is a Hispanic, as is the Board's Associate Director of OPM Review, a statutorily required function. In addition, a GS-905-15 General Attorney currently serves as the Hispanic Employment Program Manager and one of only four team leaders in our Office of Appeals is Hispanic.

Women now comprise 57 percent of the Board's staff, compared to 50 percent at the close of 1979, and key positions occupied by women are not limited to the top

two posts at the Board. Additionally, the General Counsel, Deputy General Counsel, Associate General Counsel, Director of Merit Systems Review and Studies, and three Chief Appeals Officers are women.

MERIT SYSTEMS PROTECTION BOARD  
SALARIES AND EXPENSES

For expenses necessary to carry out functions of the Merit Systems Protection Board; pursuant to Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978; including services as authorized by 5 U.S.C. 3109; rental of conference rooms in the District of Columbia and elsewhere; hire of passenger motor vehicles; not to exceed \$1,500 for official reception and representation expenses, \$17,400,000 together with not to exceed \$1,200,000 for current fiscal year administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board, and not more than \$100,000 for advances or reimbursements to applicable funds of the Merit Systems Protection Board. (5 U.S.C. 1205, 1207-1209, 1303, 1305, 15405-1508, 3383, 3592, 5335, 7325, 7521, 7543, 7701-7703, 8347; 28 U.S.C. 2671, 2680; 31 U.C.S. 241; Sec 413 of CSRA of 1978).

Note - The appropriation for this account for 1981 had not been enacted at the time this budget was prepared.

## Obligations by Object

	1981 Expected Appropriation *	1982 Estimate	Increase or Decrease
Total number of permanent positions	388	403	+15
Other positions	19	19	
Total number of all positions	407	422	+15

(In thousands of dollars)

Personnel compensation:			
Permanent positions	\$ 8,354	\$10,459	+\$2,105
Positions other than permanent	361	393	+ 32
Other personnel compensation	175	190	+ 15
Total personnel compensation	8,890	11,042	+ 2,152
Personnel benefits	793	1,011	+ 218
Travel and transportation of persons	305	335	+ 30
Transportation of things	74	74	
Standard level user charge	1,400	1,400	
Communications, utilities, and other rent	700	700	
Printing and reproduction	163	163	
Other services	2,300	2,300	
Supplies and materials	200	200	
Equipment	175	175	
Total obligations by object	\$15,000	\$17,400	+\$2,400

\* The appropriation for this account for 1981 had not been enacted at the time this budget was prepared.

Merit Systems Protection Board

Analysis of Authorized Level for Fiscal Year 1982  
(Dollars in Thousands)

	Perm. Pos.	Amount
1981 Continuing Resolution Level *	388	<u>\$15,000</u>
Estimates, 1982	403	<u>17,400</u>

Digest of Budget Estimates by Activities Fiscal Year 1982

Activity	Appropriation						Increase or Decrease (-) for 1982					
	FY 1980		FY 1981		FY 1982		Total Changes		Program Changes		Other Changes	
	Pos	Amount	Pos	Amount	Pos	Amount	Pos	Amount	Pos	Amount	Pos	Amount
1. Field Operations	141	\$ 4,556	179	\$ 6,064	179	\$ 6,442	-	+\$ 378	-	+\$ 30	-	+\$ 348
2. Appeals	46	1,310	49	1,430	64	1,860	+15	+ 430	+15	+ 221	-	+ 209
3. Merit Systems Review and Studies	15	1,105	40	1,665	40	1,939	-	+ 274	-	-	-	+ 274
4. Legal	35	787	35	965	35	1,164	-	+ 199	-	-	-	+ 199
5. Case Decisions, Program Review	98	4,817	104	4,876	104	5,117	-	+ 241	-	-	-	+ 241
6. October 1, 1981 Pay Raise	-	-	-	-	-	878	-	+ 878	-	-	-	+ 878
Total Appropriation Authorized Level	335	\$12,575	407	\$15,000	422	\$17,400	+15	+\$2,400	+15	+\$251	-	+\$2,149
Permanent Positions Established	(351)		(388)		(403)							

\* The appropriation for the account for 1981 had not been enacted at the time this budget was prepared.

Merit Systems Protection Board

Summary Explanation of Changes Requested for Fiscal Year 1982  
(Dollars in Thousands)

	Activity 1		Activity 2		Activity 3		Activity 4		Activity 5		Oct 1, 80		Total	
	Pos	Amt	Pay Raise	Pos	Amt									
<u>Program Changes:</u>														
<u>Increases</u>														
Transportation of persons....	-	\$ 30	-	-	-	-	-	-	-	-	-	-	-	\$ 30
Appeals.....	-	-	15	\$221	-	-	-	-	-	-	-	-	-	15 221
Total Program Changes..		\$ 30	15	\$221	-	-	-	-	-	-	-	-	-	15 \$ 251
<u>Other Changes:</u>														
Increases necessary to maintain current levels:....														
1. Net cost of within grade increases required by statute.....	-	8	-	15	-	19	-	26	-	33	-	-	-	101
2. Promotions (Grade to Grade).....	-	39	-	11	-	12	-	14	-	6	-	-	-	82
3. Net Cost of Replacement Hires.....	-	167	-	51	-	15	-	77	-	81	-	-	-	391
4. Full cost of 1981 personnel actions.....	-	319	-	208	-	284	-	94	-	238	-	-	-	1,143
5. Full cost of Oct 1980 pay raise.....	-	-	-	-	-	-	-	-	-	-	-	-	878	878
Subtotal, Other Increases.....	-	\$533	-	\$285	-	\$330	-	\$211	-	\$358	-	-	\$878	\$2,595

Merit Systems Protection Board

Summary Explanation of Changes Requested Year 1982  
(Dollars in Thousands)

	Activity 1		Activity 2		Activity 3		Activity 4		Activity 5		Oct 1, 80 Pay Raise		Total		
	Pos	Amt	Amt	Pos	Amt	Pos	Amt								
<u>Reductions, nonrecurring costs and other saving</u>	-	\$185	-	\$76	-	\$56	-	\$12	-	\$117	-	-	-	-	\$446
Savings from attritions ..															
Subtotal reductions, non-recurring costs and other savings.....	-	\$185	-	\$76	-	\$56	-	\$12	-	\$117	-	-	-	-	\$446
Total Other Changes .....		\$348	-	\$209	-	\$274	-	\$199	-	\$241		\$878		-	\$2,145
Total, Increases or Decreases 1982 compared with 1981 Appropriation and proposed authorized level.....	\$378		15	\$430	-	\$274	-	\$199	-	\$241		\$878		15	\$2,400

## Merit Systems Protection Board

## Summary Justification of FY'81 Budget Estimates

## General Statement

The Merit Systems Protection Board is responsible for implementing the provisions of sections 1201 through 1209 of the Civil Service Reform Act of 1978 (P.L. 95-454).

The primary functions of the Board are to (1) hear, adjudicate, or provide for the hearing or adjudication of all matters within the jurisdiction of the Board, (2) order any Federal agency or employee to comply with any order or decision issued by the Board under its authority, and enforce compliance with any such order, (3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the Executive Branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected, and (4) review, under its authority, rules and regulations of the Office of Personnel Management.

Requested obligation authority for FY 1982 is \$17,400,000 and 422 positions, an increase of \$2,400,000 over the FY 1981 expected FY 1981 appropriation level, and an increase in positions of 15. Program changes account for \$251,000 of the increase, while the remaining \$2,149,000 allows for the maintenance of FY 81 operations in FY 82.

A summary, by program, of requested increases follows:

- 1) Field Operations: An increase of \$378,000 has been requested so that the Board may meet its requirements to provide due process protections for all Federal employees against practitioners of prohibited personnel practices. Of the \$378,000 requested a \$30,000 program increase will be used to provide funds associated with the anticipated increase in appellant hearings. The remaining \$348,000 is requested to continue the current level of operations.
- 2) Appeals. In order to continue, as well as to expand efforts to adjudicate growing numbers of appellant appeals this program is requesting an increase of \$430,000. Of this increase \$221,000 will be needed to support the 15 additional positions requested. The remaining \$209,000 is required to maintain in FY 82, FY 81 level of operations.

- 3) Merit Systems Review and Studies. An increase of \$274,000 is requested to maintain the anticipated 1981 level of operations so that effective review and analysis of Federal personnel practices may continue.
- 4) Legal. The requested increase of \$199,000 assures that responsible, competent legal advice will continue to be provided to all operations within the Board. This level of funding is necessary to maintain in FY 82, FY 81 operations.
- 5) Case Decisions, Program Review. An increase in the amount of \$241,000 is being requested in order to continue providing effective managerial, administrative, and appeal related research activities. This funding is required to continue the current level of operations.
- 6) Full Year Cost of October 1, 1980 Pay Raise. An increase of \$878,000 is requested to cover the October 1, 1980 pay raise in FY 1982.

## 1. Merit Systems Protection Board: Field Operations

### Program Purpose:

To issue in a timely manner fair, just, and well-reasoned decisions on appeals filed in the field offices of the Merit Systems Protection Board.

### Program Description:

The Merit Systems Protection Board acts on employee appeals of agency action on two levels: (1) appeals, through Field Operations and (2) the reopening of appeals and final determinations made by the Board. The coordination of the Board's major functions is achieved through the continued guidance, review, and feedback between the field offices and headquarters. This method of operation has effectively reduced the time to reach final administrative decisions on employee appeals to 120 days while continuing to provide adequate due process protections.

The major types of appeals that come before the Board are: (1) Adverse Actions which deal with the disciplining of employees through removal, demotion, or suspension in excess of fourteen (14) days; (2) Reductions-In-Force (RIF) that are not disciplinary in nature but arise as a result of deletions of agency/office functions and/or decreases in spending authority; (3) Mixed, which represent a normal appeal coupled with a discrimination allegation; and (4) Others, such as retirement, re-employment, suitability for employment, and denial of within-grade increases.

### Program Objectives

The major objectives set for this budget year are (1) to manage and supervise eleven (11) field offices, (2) to provide program policy, coordination and evaluation, and (3) to review, process, analyze and adjudicate appeals. Through the achievement of these objectives the Board will be successfully meeting its mandate to protect the rights of the Federal employee.

Program Accomplishments:

Major accomplishments achieved and expected include reaching decisions on the following types of appeals.

* <u>Old Systems Cases</u>	FY 80	FY 81	FY 82
1. Adverse Action	567	200	40
2. RIF	28	10	2
3. Other	118	40	8
4. Retirement	453	160	32
5. Disability Retirement	256	90	18
	<u>1,417</u>	<u>500</u>	<u>100</u>
** <u>New System Cases</u>			
1. Adverse Action	2,209	3,250	3,550
2. RIF	442	650	710
3. Other	1,149	1,560	1,704
4. Retirement	407	428	650
5. Disability Retirement	783	1,460	1,740
6. Mixed	441	650	710
	<u>5,431</u>	<u>7,998</u>	<u>9,064</u>
<u>Total</u>			
1. Adverse Action	2,776	3,450	3,590
2. RIF	470	660	712
3. Other	1,262	1,600	1,712
4. Retirement	860	588	682
5. Disability Retirement	1,039	1,550	1,758
6. Mixed	441	650	710
	<u>6,848</u>	<u>8,498</u>	<u>9,164</u>

\* Cases pending prior to the effective date of the Civil Service Reform Act (P.L. 95-454), January 11, 1979.

\*\* Cases arising under Civil Service Reform Act.

## 2. Merit Systems Protection Board: Appeals

### Program Purpose:

To receive and analyze requests that the Board reconsider cases decided by presiding officials in the Board's Field Offices and for Administrative Law judges to perform complex legal analysis, and render decisions upon assignment or delegation by the Board.

### Program Description:

The responsibilities of this program for cases arising under the Reform Act include: the processing of petitions for review, including the presentation of cases to the Board for decision and the preparation of opinions and orders for issuance by the Board; the processing and analysis of cases reopened by the Board; and the processing of interlocutory appeals certified to the Board by presiding officials. This program also reviews field office decisions to determine whether any basis exists for the Board's reopening of cases on its own motion. In addition, cases arising under the appellate system which existed prior to the implementation of the Reform Act will also be processed.

In order to attain the highest capability necessary to analyze, review, and process appeals pending before the Board, and assure that decisions are well-reasoned, well-written, and issued in a timely manner, efforts have been directed toward: (1) supplying the necessary legal skills and experience for the review and analysis of field office decisions or interlocutory appeals pending before the Board for final disposition; and (2) accelerating productivity in issuing, reviewing, and analyzing cases within the Board's imposed 110 day time frame. Cases of particular complexity and statutorily delegable legal tasks of a related nature are assigned to Administrative Law Judges.

### Program Objectives:

The establishment and realization of the Board's objectives to: (1) review, analyze, and process requests for review including preparing opinions/orders for issuance; (2) review, analyze, and process reopened cases; (3) present cases to the Board for decisions; (4) review decisions of presiding officials; (5) review, analyze, and process interlocutory appeals; (6) adjudicate old system cases; (7) hear and issue decisions on cases assigned by the Board; and (8) rule on discovery motions and issuance of subpoenas, are necessary for the effective implementation of the provisions of the Civil Service Reform Act of 1978.

A major portion of the Board's responsibility to "... hear, adjudicate, or provide for the hearing or adjudication of all matters within the jurisdiction of the Board..." is found in this program area. In order to accomplish the above described major objective this program is requesting an increase of 15 staff years. These additional resources will be used to provide: (1) the Administrative Law Judge with three staff years in order to maintain the ability to respond to the large increase in the volume of complex Reform Act cases and (2) the Office of Appeals with twelve staff years to review, analyze and process requests for review. Decreasing the case backlog at the initial stages of the appeals process has resulted a diminution of our ability to respond to increased requests to review prior decisions.

Program Accomplishments:

Major accomplishments include the actual review of 5,834 decisions of presiding officials. During FY 80 this program reviewed and proposed recommended decisions to the Board on 1,406 appeals under the authority of the Civil Service Reform Act of 1978. Based on the current rate of receipt it is estimated that over 2,155 decisions will be prepared in FY 81 and an additional 3,000 in FY 82. This program also prepared responses to Congressional inquiries, as well as to many other inquiries from appellants, their attorneys or other representatives, and veterans and labor organizations.

### 3. Merit Systems Protection Board: Merit Systems Review and Studies

#### Program Purpose:

To ensure the absence of prohibited personnel practices and comportment with the merit principles in merit systems throughout the Executive Branch.

#### Program Description:

The Merit Systems Protection Board has legislative authority to conduct special studies relating to the Civil Service and to other merit systems in the executive branch, and report to the President and to Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected. The Office of Merit Systems Review and Studies will bear the major responsibility for meeting the requirements of the Civil Service Reform Act of 1978. Efforts will be centered around the following basic approaches: cross-agency surveys, cross-agency topical surveys, quantitative studies, and agency investigations the results of which will provide input into legislative recommendations that address abuses of personnel practices.

#### Program Objectives:

The major objectives of: (1) reviewing Office of Personnel Management regulations; (2) conducting in-depth, single-agency investigations which will reveal the incidence, causes, and patterns of alleged prohibited personnel practices; (3) conducting broad, cross-agency surveys which will provide an index of the relative health of Federal merit systems; (4) conducting quantitative studies for the purpose of developing data bases from which quantifiable measures of agency merit performance may be derived; (5) reviewing significant actions of OPM; (6) conducting cross-agency topical surveys which will be responsive to congressional requests and illuminate current issues in the management of Federal merit systems; and (7) formulating and following up on legislative recommendations aimed at rectifying abuses, dysfunctions, or unintended consequences of Federal merit systems; when accomplished, will provide the necessary data to to effect improvements in the implementation of merit programs throughout the Federal government.

#### Program Accomplishments:

Major program accomplishments include: (1) completion, per request of the Chairman of the House Committee on Post Office and Civil Service, a study of sexual harassment in the Federal workforce; (2) establishment of a series of panels composed of volunteer Federal employees who will be surveyed on salient issues to determine the health of the Federal merit systems; (3) development of questionnaires on issues to be distributed to the volunteer panels once the panels are selected; (4) initiation of an agency-

specific study of certain prohibited personnel practices; (5) release of a study on appellate patterns evolving under Reform Act procedures; and (6) review the significant activities of the Office of Personnel Management (OPM), and, in particular, review the regulations of OPM to determine whether they require the commission of prohibited personnel practices.

## 4. Merit Systems Protection Board: Legal

Program Purpose:

To provide timely, responsive, competent legal advice, counsel and representation in all matters affecting the Board and its operations.

Program Description:

In order to conduct an efficient, effective office of legal advice the functions of this program have been divided into two areas - Trial and Appellate.

1. Trial: Supervises or conducts all Board litigation at the trial level; prepares analysis for the Board of cases brought before it by the Office of the Special Counsel.
2. Appellate: Supervises or conducts all Board litigation at the appellate level; prepares litigation reports in cases arising in the appellate courts and Court of Claims; and analyzes Freedom of Information and Privacy Act requests to the Board.

Program Objectives:

Major fiscal year 1982 objectives are to: (1) prepare legal opinions; (2) prepare original jurisdiction cases; (3) render decisions on the Freedom of Information, Privacy, and Government Sunshine Acts; (4) provide legal review of Board opinions; (5) appear for the Board in Court of Appeals and in the District Court; (6) maintain a docketing and case tracking system; (7) prepare, interpret, and revise Board regulations; (8) review, in cooperation with the Merit Systems Review and Studies program, Office of Personnel Management regulations; (9) prepare litigation reports; (10) conduct liaison with EEOC on mixed cases. The realization of these objectives will assure the provision of quality legal advice to the Board.

Program Accomplishments:

Major accomplishments include:

1. Litigation reports prepared	102
2. Final pleadings	40
3. Major legal memoranda	56
4. Miscellaneous legal advice memos and letters	265
5. Major briefs prepared	2
6. Major Board opinions and orders written	76
7. Recommendations for reopening by the Board and accompanying Board orders.	62

8. Summary comments, testimony and other activities related to specific legislative proposals.	17
9. Responses to Congressional inquiries	1,153
10. Court cases docketed	225

5. Merit Systems Protection Board: Case Decisions Program Review

Program Purpose

To provide general management, supervision, and administration for the Merit Systems Protection Board, as well as to prepare its major opinions and orders.

Program Description:

This program establishes and implements managerial and administrative procedures and services for the Board. Activities include budget and finance, personnel, administrative services, case and correspondence docketing, and legal research and analysis. The recent consolidation of organizational components within the Board has created more direct staff accountability resulting in an increase in the quality of case decisions.

Program Objectives:

Accomplishing objectives such as: (1) overseeing general management control of the Board and its operations; (2) reviewing, revising and writing major opinions; (3) providing for communications with the public and news media; (4) providing a docketing and control system as well as to improve mail/records management; (5) publishing Board opinions; (6) advising on, providing drafts of, and working with OMB and Congress on all legislative issues; and (7) implementing a Consumer Affairs program; will assure the continued efficient operations of the Merit Systems Protection Board.

Program Accomplishments:

Major accomplishments include;

1. Implementation of an automated case tracking system which provides the capability to determine, at any point in time, the status of any appeal or court action involving the Board.
2. The implementation of streamlined procedures for making decisions on backlogged cases.
3. The responsibility of the Board is to hear major cases involving unique questions of law arising under the Civil Service Reform Act. One of the cases recently filed by the Office of Special Counsel resulted in a case decision interpreting major statutory provisions regarding "whistleblowing." The Board also passed upon the legality of certain performance appraisal regulations issued by the Office of Personnel Management. The outcome of these decisions could determine future implementation patterns as Federal agencies attempt to comply with the intent of the Civil Service Reform Act of 1978.

Merit Systems Protection Board

Summary of Employment  
(Number of Positions)

Principal Categories	Actual 1980	Estimated		Increases/Decreases for 1982		
		1981	1982	Total	Program	Other
1. Managerial and administrative direction.....	9	21	21	0	0	0
2. Managerial and administrative support.....	23	15	16	+ 1	+ 1	0
3. Attorneys and Appeals Officer.....	125	162	170	+ 8	+ 8	0
4. Stenos, Typists and Secretaries.....	85	93	97	+ 4	+ 4	0
5. Other Administrative .....	63	94	96	+ 2	+ 2	0
6. Wage Board.....	3	3	3	-	-	-
Subtotal.....	308	388	403	+15	+15	-
Part-time and temporary positions.....	27	19	19	-	-	-
Total positions.....	335	407	422	+15	+15	-

MERIT SYSTEMS PROTECTION BOARD  
 Schedule of Permanent Positions

	1980 Actual	1981 Estimate	1982 Estimate
Executive Level III	1	1	1
Executive Level IV	2	2	2
ES 6	3	3	3
ES 5	1	1	1
ES 4	2	2	2
ES 3	-	-	-
ES 2	-	-	6
ES 1	-	12	6
GS 16	1	2	2
GM 15	42	48	49
GM 14	43	50	52
GM 13	54	62	62
GS 12	24	29	30
GS 11	19	23	25
GS 10	1	1	1
GS 9	10	12	12
GS 8	10	20	20
GS 7	15	29	33
GS 6	18	23	25
GS 5	24	28	29
GS 4	26	28	30
GS 3	7	6	7
GS 2	1	3	2
GS 1	1	-	-
WB	3	3	3
Permanent Positions	308	388	403
Other	27	19	19
Total Positions	335	407	422



## THE CHAIRWOMAN OF THE MERIT SYSTEMS PROTECTION BOARD

Washington, D.C. 20419

September 30, 1980

Honorable Jack Brooks  
Chairman  
Committee on Government Operations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

On June 9, 1980, the Comptroller General submitted his report to the Congress on the "First-Year Activities of the Merit Systems Protection Board and the Office of the Special Counsel." The report contained four recommendations for the Board to consider.

In compliance with 31 U.S.C. 1176, the Merit Systems Protection Board has prepared a statement of actions taken by the Board in response to recommendations #1 and #2 and the Office of the Special Counsel prepared responses to recommendations #3 and #4. A copy of each statement is enclosed.

Sincerely,

Ruth T. Prokop

Enclosure

Statement of the Merit Systems Protection Board in Response to the Comptroller General's Report to Congress on the "First-Year Activities of the Merit Systems Protection Board and the Office of the Special Counsel"

In compliance with 31 U.S.C. §1176, the Merit Systems Protection Board hereby submits a statement of actions taken by the Board and the Office of the Special Counsel in response to the recommendations of the Comptroller General in his report "First-Year Activities of the Merit Systems Protection Board and the Office of the Special Counsel." The Comptroller General had four recommendations.

1. That the Chairperson of the Board and the Special Counsel work more closely together where possible to ensure effective and continuous oversight of Federal merit systems.

This recommendation highlights a recurring and persistent problem faced by the Board and the Office of the Special Counsel. A complicating factor in the development of a closer working relationship between the two has been the ambiguous statutory language in the CSRA which defines that relationship. As a result, the Board, in April 1980, proposed legislation which would clarify the matter by establishing the Office of the Special Counsel as a separate agency, independent from the Merit Systems Protection Board. That legislation is currently pending in the House Committee on Post Office and Civil Service, and the Senate Committee on Governmental Affairs (H.R. 7393 and S. 2795, respectively).

In the interim, however, because of the delicate interplay of the prosecutorial and adjudicatory roles, both the Board and the Office of the Special Counsel have attempted to maintain an "arms-length" relationship in those roles. Any suggestion that either is improperly involved in the distinct function of the other could damage the ability of the Board and the Office of the Special Counsel to effectively pursue their respective responsibilities to protect the Federal merit systems. This concern may somewhat restrict the possibilities of a close relationship. Of course, if clarifying legislation should be enacted, the Board would respond accordingly.

2. That the Chairperson of the Board monitor the effectiveness of field staffing and provide guidance and training to field personnel.

In general, the field offices have received guidance, assistance and training from virtually every organizational element of the Board on a full range of topics from administrative management to case docketing, tracking, and adjudication.

Board members and their immediate staff have visited each of the field offices where they have held a series of meetings and conferences with the staff and other interested parties for the purpose of explaining the functions, policies and procedures of the Board and how these are expected to contribute to achieving our goal of fair and efficient adjudications of appeals. These types of communications have been most effective in educating the Board's field personnel. Specific guidance and training has been provided by the Office of the Deputy Managing Director

which has been assigned direct responsibility for the staffing, training and oversight of the field offices.

The Office of the Deputy Managing Director conducted a series of training conferences both in Washington, D.C. and in various locations throughout the country. On April 4, 1980, two conferences were held in Washington at the Board's headquarters. The first was for newly appointed Administrative Officers and Assistants on April 2 and 3, and a conference for newly selected Chief Appeals Officers was held during April 7, 8 and 9 in Washington prior to their reporting to their respective field offices (see Attachments A - C).

Following this, a series of orientation and briefing visits were made by the Deputy Managing Director and his staff. These on-site visits were conducted during the months of May and June of 1980. The purpose of the orientation and briefing visits was to provide field personnel with an understanding of the organizational structure, and responsibilities of the Board and the relationship between headquarters and field offices, and to advise them of the Board's expectations with respect to the timely processing of cases and the quality of field office decisions. This was the first of a series of three scheduled visits to each of the field offices every year. The second visit scheduled for August/September is currently in progress. During these visits, we will be reviewing, assisting and evaluating field office procedures for handling incoming mail, docketing and processing appeals, maintaining office files and individual appeal files, organizing and performing

support activities and functions, and making work assignments to the support and professional staff. The development of the administrative officer/assistants, the processing of personnel actions and travel vouchers, and the performance of other support services will also be examined, problems identified and further guidance and training provided. The third on-site visit will take place during October and November of this year and will consist of an overall evaluation of how effective field offices are in understanding and carrying out the Board's policy and guidance.

A series of three Regional training conferences also were held for all of the field staff presiding officials. The East Coast Regional Conference was held in Washington, D.C. on July 16, 17 and 18; Mid-West Conference in Dallas, Texas, on July 23, 24 and 25 and the West Coast Conference in Denver, Colorado, on July 29, 30 and 31. The purpose of these training sessions was to provide all presiding officials with basic training in appeals processing, hearing and adjudication and with the Title VII EEO training required in the Civil Service Reform Act Conference Report (p. 140).

A two volume text, entitled "Appeals Procedure Manual", was prepared and issued to all Board presiding officials. This manual provides procedural and operational guidance for MSPB field personnel in carrying out the responsibilities set forth in the Civil Service Reform Act and the MSPB regulations.

The Board has completed the initial phase of the installation in the field offices and at headquarters of an automated case tracking system which links the field offices with the Board's headquarters and allows us to "talk" to each other through daily tracking of the status of each appeal filed with the Board. This system allows, among other things, for early identification of processing problems in any field office and shifting of cases or resources to prevent redundant undue processing delays from occurring.

All the Board's opinions and orders are sent to the field offices on a regular basis with written guidance, as appropriate, to assist presiding officials in adjudicating cases. A regular publication and indexing of all significant Board orders, opinions and decisions will be in place before the end of the year.

Finally, a series of publications have been issued to the field offices on operational and administrative matters concerning the Board's policies and guidance (Attachments D - E).

Through the Office of the Deputy Managing Director, the Board will continue to monitor the effectiveness of field office staffing, evaluate on a regular basis the quality of the work product and provide guidance and training of field office personnel.

3. That the Special Counsel highlight the leadership role and inform and encourage Federal employees to report possible prohibited personnel practices and other abuses.

The Office of the Special Counsel has recently received from the Government Printing Office copies of its pamphlet describing, in non-legalistic terms, the role and functions of the Office of the Special Counsel. A copy of the pamphlet is enclosed. It explains to federal employees how they may contact the Office and how the Office will process their complaints and allegations. The pamphlet, along with posters outlining the jurisdiction of the Office of the Special Counsel, and how and where complaints can be filed, will be distributed to all federal agencies, interested private organizations, such as employee unions, and other public interest groups for distribution. In the future, the Office of the Special Counsel will attempt to reach an agreement with the Office of Personnel Management for distribution of this pamphlet to all new federal employees at the time they report for duty. Also, the Office of the Special Counsel has requested, in its fiscal year 1981 appropriations request, funds and positions to establish a "hotline" to enable employees, applicants for employment and others to report possible prohibited personnel practices and other abuses to the Office of the Special Counsel.

4. That the Special Counsel monitor and emphasize the timely processing of employee complaints and agency investigations and reports on whistleblower allegations.

The Office of the Special Counsel has begun implementing its automated complaint tracking and monitoring system. A mini-computer system and complaint tracking and monitoring

program have recently been installed and will be operational in the near future. This system will be used for identifying systemic patterns of prohibited personnel practices as well as for tracking and monitoring the timely processing of employee complaints and agency investigations. The staff hired has, for the most part, cleared up a case backlog caused by the initial understaffing of the Office, and new complaints are being processed more rapidly. Additionally, Field Offices have been established in San Francisco (with branch offices in Seattle and Los Angeles), Atlanta, Philadelphia (with branch office in Boston), and Dallas. An additional field office in Chicago, as well as branch offices in St. Louis and Denver will be established as quickly as our budget will permit. The establishment of these offices will further reduce the time delay in processing complaints arising in the field.

Many of the observations and recommendations of the Comptroller General confirmed our own evaluations of future and present problems and needs. As the Comptroller General noted, many of the problems encountered during the first year of operations for the Board and the Office of the Special Counsel resulted from a lack of funding, a lack of space, or simply, the trials of establishing a new agency. The Board and the Office of the Special Counsel are aware of these problems, and those that have not yet been remedied remain the object of our continued efforts and attention.

- I. Training Sessions for
  - A. Administrative Officers & Assistants - April 2 & 3  
(Received certificates)
  - B. Chief Appeals Officers Conference - April 7, 8 & 9
- II. Case Tracking Sessions for Support Staff - July 21-22 & 24-25 & 28
- III. Workshop Performance Appraisal Training (including field offices)
  - A. Supervisors - June 4, 5 & 6  
June 25, 26 & 27
  - B. Support Staff - July 15, 17, 18 & 25
- IV. Regional Training Conference for all professionals in the field offices - July 16-18 in Washington, D.C.
  - July 23-25 in Dallas, Texas
  - July 29-31 in Denver, Colorado
- V. Individual Training of Administrative Officers and Administrative Assistants with courses to fit their individual needs as determined by the Chief Appeals Officers - dates of courses varied depending upon the city he/she attended and the time they could be away from the field office.
  - A. Administrative Officers Course
  - B. Budget (Basic) Course
  - C. Correspondence Course - use of FPM
  - D. Personnel Management Course

ATTACHMENT "A"

Schedule of Field Office Visits1. Initial Visits

May 2 - Washington  
 May 5 - Philadelphia  
 May 6, 7 - New York  
 May 9 - Boston  
 May 13, 14 - Atlanta  
 May 15, 16 - Dallas  
 May 19, 20 - Denver (Seattle)  
 May 21, 22 - San Francisco  
 May 28 - Chicago  
 May 29 - St. Louis

2. Evaluation Visits

July 16, 17 - Washington  
 July 22, 23 - New York  
 July 24 - Boston  
 July 29, 30 - Philadelphia  
 Aug. 4, 5 - Atlanta  
 Aug. 6, 7 - Dallas  
 Aug. 11, 12 - Chicago  
 Aug. 13 - St. Louis  
 Aug. 18 - Denver  
 Aug. 19, 20 - San Francisco  
 Aug. 21 - Seattle

3. Office Inspections

Oct. 8, 9 - Washington  
 Oct. 15, 16 - Philadelphia  
 Oct. 21, 22 - New York  
 Oct. 23 - Boston  
 Oct. 27, 28 - Atlanta  
 Oct. 29, 30 - Dallas  
 Nov. 12, 13 - Chicago  
 Nov. 14 - St. Louis  
 Nov. 17 - Denver  
 Nov. 18, 19 - San Francisco  
 Nov. 20 - Seattle

ATTACHMENT "B"

## MERIT SYSTEMS PROTECTION BOARD

## MEMORANDUM

To: Chief Appeals Officers

From: Paul D. Mahoney  
Deputy Managing Director

*William C. Jenkins*  
*for*

JUL 8 1980

SUBJECT: Regional Training Conferences

Attached is the revised agenda for the upcoming series of regional training conferences. The conferences will be held at the locations shown below:

<u>Date</u>	<u>Location</u>	<u>Field Offices</u>
July 16, 17, and 18	National Lawyers Club Federal Bar Building 3d Floor, Taft Room 1815 H Street, N.W. Washington, D.C.	WA, PH, NY, BN
July 23, 24, and 25	Executive Inn 3232 W. Mockingbird Lane Dallas, Texas	AT, DA, SL, CH
July 29, 30, and 31	Quality Inn/Central 1840 Sherman Street Denver, Colorado	SF, SE, DE

For those attending the conference in Washington, there will be a luncheon at the National Lawyers Club on the first day, July 16, 1980. The cost will be \$6.00 plus service charge and sales tax.

Enclosure

ATTACHMENT "C"

## Agenda

## Regional Training Conference for Presiding Officials

First Day

- 8:30 Introduction, Conference Overview, Administrative Details Mr. Mahoney
- 9:00 Underlying Concepts of the Reform Act and the Board's  
Regulations and Training Objectives Mr. Mahoney
- 10:00 BREAK
- 10:15 Appeals Issues Mr. Kane, Mr. Mahoney, Ms. Bradley, Mr. Jenkins
- Jurisdiction
  - Timeliness
  - Hearings
- 12:00 - LUNCH
- 1:00 - Prehearing Motions Mr. Jenkins, Mr. Mahoney,  
Mr. Kane, Ms. Bradley
- Intervention (Amicus curae briefs)
  - Interlocutory Appeals
  - Ex parte communications
  - Sanctions
- 2:45 BREAK
- 3:00 - Burden of Proof Mr. Jenkins, Mr. Kane,  
Mr. Mahoney, Ms. Bradley
- Prohibited Personnel Practices
  - Processing Discrimination Issues
- 5:00 End of First Day

Second Day

8:30 Appeals Issues (continued)

Mr. Kane, Mr. Mahoney,  
Ms. Bradley, Mr. Jenkins

- Credibility Determinations
- Attorney Fees
- Compliance with Decisions
- Processing and Closing the Record in Nonhearing Cases

10:15 BREAK

10:30 - Discovery/Subpenas

Judge McCarthy

- Prehearing Conference
- Continuances
- Typical Problems and Solutions in Conducting Hearings

12:30 LUNCH

1:30 Prohibited Discrimination

Mr. Flanagan, Chief Appeals Officer, WFO  
Mr. Goldstein/Mr. Ralston, NAACP  
Legal Defense and Education Fund

- General Concepts

2:45 BREAK

3:00 Prohibited Discrimination

- Application of General Concept to Issues Arising in Appeals

4:30 Questions and Answers on Prohibited Discrimination Issues

5:00 End of Second Day. Pass out Hypothetical Case.

Third Day

8:30 Discussion of Hypothetical Case

Mr. Mahoney, Mr. Kane,  
Ms. Bradley, Mr. Jenkins

(Note: Hypothetical case will be prepared by DMD and will be used to discuss the various processing problems that arise in appeals which can lead to delays or incorrect decisions. Hypothetical case will be discussed in groups of approximately six presiding officials.)

10:15 BREAK

10:30 Continuation of Group Discussion

12:00 LUNCH

1:00 Decision Writing

Board Member Wertheim

- Common Faults

- Good Practices

- Board's Standard of Quality

2:30 BREAK

2:45 Conference Conclusion

Mr. Mahoney

- Questions and Answers

OPERATIONS  
MEMOS ISSUED TO CHIEF APPEALS OFFICERS

January 1, 1979 -

- January 9, 1979 - Participation of Alleged Discriminating Officials in Appeals in Which Appellants Allege Discrimination
- January 10, 1979 - (Telegram) Policy Determination - "All Adverse Action Cases in Which the Employee Received Notice of the Proposed Action Prior to 1/11/79, are to be Processed Under the Laws in Effect on the Date of the Proposed Notice. The Effective Date of the Action is not Repeat not the Controlling Date for the Determination of Applicable Law."
- January 19, 1979 - MSPB Interim Regulations and Additional OPM Regulations
- January 19, 1979 - OPM Regulations
- January 31, 1979 - Processing Performance Rating Appeals
- February 5, 1979 - Delegations of Authority
- February 16, 1979 - Notification of OPM About Civil Service Issues in New Appeals
- March 1, 1979 - Notice of Right to Request Reconsideration
- March 5, 1979 - Application of Civil Service Reform Act of 1978 and Regulations to Appeals
- March 5, 1979 - Providing Copies of Decisions to OPM
- March 26, 1979 - Expediting the Processing of Appeals
- March 26, 1979 - Notification of Office of Appeals Operations Regarding Sensitive Appeals
- March 28, 1979 - Interim Forms and Closing Paragraphs
- March 29, 1979 - Proposed MSPB Regulations
- April 4, 1979 - Delegation of Authority from EEOC to MSPB Regarding Part 713 Cases
- April 5, 1979 - Delegations of Authority

-2-

- April 9, 1979 - Addendum to Interim Forms
- April 11, 1979 - Appeals Involving Position-Classification, Qualification, and Medical Determinations
- April 19, 1979 - MSPB Bulletin No. 4: Agency Submission of Files and Other Information in Connection with Appeals to the MSPB
- May 29, 1979 - Model Decisions
- May 30, 1979 - Microfilm Records as Evidence
- May 31, 1979 - Appeals Involving Conversions to the Senior Executive Service
- May 31, 1979 - Appeals from HUD Employees Who Were Affected by Actions Taken During Chair Prokop's Tenure as General Counsel of HUD
- June 12, 1979 - Temporary Instructions Concerning Motions for Discovery Orders and Subpenas
- July 12, 1979 - Orders Issued by the Board
- July 26, 1979 - Amendment of Interim Instruction No. 1 of February 1, 1979 (Authorized Functions)
- August 9, 1979 - MSPB Budget Restrictions
- August 10, 1979 - Newly Authorized Functions
- August 30, 1979 - Closing Paragraphs for Decisions on Mixed Cases (MSPB Order No. F1050.1)
- November 7, 1979 - Guidance on Interlocutory Appeals (Order No. 1050.1)
- December 4, 1979 - Enforcement and Application of the Board's Regulations and Policy on the Delayed Submission of Case Files by Agencies (Order No. 1050.2)
- December 20, 1979 - Recent Board Opinions and Orders
- January 28, 1980 - Appeal Files
- January 30, 1980 - Delegations of Authority
- February 8, 1980 - Notice Requirements for Certain Categories of Pending Appeals (Order No. 1050.3)

- February 28, 1980 - Board Opinion and order in the Case of  
Wm. E. Parker v. Def. Logistics Agency
- March 25, 1980 - Essential Ingredients of an Initial  
Decision
- April 14, 1980 - Disability Appeal Decisions
- April 15, 1980 - Processing and Payment of Travel and Court  
Reporting Vouchers
- April 30, 1980 - Board Orders and Opinions
- May 1, 1980 - Issues Before the Board
- May 1, 1980 - Position Descriptions for Attorneys and  
Appeals Officers
- May 2, 1980 - Review of Field Office Decisions for  
Quality
- June 3, 1980 - Recent Board Opinions and Orders
- June 4, 1980 - Comptroller General Decision - An agency  
may not be reimbursed to perform work for  
which it receives appropriations
- June 13, 1980 - Amendment to Closing Paragraphs
- June 18, 1980 - Oral Presentation of Cases on  
June 12, 1980
- June 24, 1980 - Coding Decisions
- June 24, 1980 - Reporting Last Decision Numbers for  
Micro-Fiche

- July 8, 1980 - Hypothetical Case for Regional Training Conference
- July 16, 1980 - Consumer Affairs Regulations
- July 23, 1980 - Board Decision on Attorney Fees

ADMINISTRATIVE  
MEMOS ISSUED TO CHIEF APPEALS OFFICERS

January 1, 1979 -

- January 11, 1979 - Optional Early Retirement
- February 5, 1979 - MSPB Unit at Wilkes-Barre Transcription Center
- February 14, 1979 - Copies of MSPB Interim Regulations
- February 23, 1979 - Conference for Chief Appeals Officers and Chief Clerks - March 6-8, 1979
- March 12, 1979 - Copies of Title 5, United States Code
- March 26, 1979 - Travel Orders and Redlegation of Authority to Approve Travel
- April 3, 1979 - Telephone Listings of Key MSPB Personnel
- April 3, 1979 - Today's News
- April 12, 1979 - Senior Executive Service Pamphlet
- April 12, 1979 - Qualifications of Presiding Officials
- April 19, 1979 - New Publication on "Questions and Answers on the Merit Systems Protection Board"
- April 19, 1979 - Amendment of Subpena Forms
- May 4, 1979 - Issue Paper - Minimum Grade Level of Appeals Officers Assigned to Field Offices
- May 8, 1979 - Issue Paper - Presiding Officials Who Are Not Qualified for the GS-905 Series
- May 10, 1979 - Proposed Critical Elements of Performance for Professional Positions in Field Offices
- May 21, 1979 - Proposals Concerning Occupational Series and Grade Levels of Presiding Officials
- May 22, 1979 - Freeze on Field Office Travel
- June 1, 1979 - Biweekly Report of Sensitive Cases
- June 8, 1979 - Exceptions to Restrictions on Field Office Travel
- June 15, 1979 - Rules of the Civil Procedures for the U.S. District Courts

- June 28, 1979 - Exceptions to Restrictions on Field Office Travel
- July 12, 1979 - Travel Orders
- July 12, 1979 - Issue Paper on the Use of Automated Data Processing in the MSPB
- July 12, 1979 - MSPB Regulations Concerning FOIA, Privacy Act, and Government in the Sunshine Act
- July 19, 1979 - Agency Address List
- August 1, 1979 - Request for Copies of the Board's Regulations
- August 8, 1979 - Amendment to the Rules of the U.S. Court of Claims
- September 26, 1979 - Travel Orders
- November 16, 1979 - Amendments to MSPB Regulations
- November 16, 1979 - Special Report for the General Accounting Office
- November 30, 1979 - Distribution of /field Office Decisions to MSPB/OSC Headquarters
- December 3, 1979 - Coding for AIS
- December 20, 1979 - Vancancy Announcement Administrative Assistant/Administrative Officer
- January 14, 1980 - Calendar Year Report on Cases Over 120 Days

- January 16, 1980 - Annual Report to Congress of Freedom of Information Act Activity
- January 29, 1980 - Filling Administrative Officer/Assistant Positions
- February 1, 1980 - Criteria for Approval of Final Development Plans for Non-Attorney Development and Conversion
- February 27, 1980 - Cases Remanded to the Field Office
- March 6, 1980 - Assignment of Decision Numbers on Subsequent and Collateral Decisions Issued by Field Offices
- March 18, 1980 - Chief Appeals Officers' Conference
- March 18, 1980 - Consumer Affairs Program - MSPB
- March 26, 1980 - Travel Orders
- March 28, 1980 - Chief Appeals Officers' Conference (Agenda)
- March 31, 1980 - Cases Over 120 days
- April 15, 1980 - Processing and Payment and Court Reporting Vouchers
- April 25, 1980 - Furnishing Transmittal Letters to the Office of the Secretary
- April 29, 1980 - Index of Administrative and Operations Memos
- April 30, 1980 - Field Office Visits
- April 30, 1980 - Wells v. Harris Remands

- May 1, 1980 - Proposed agenda for Regional Training Conference for Presiding Officials
- May 1, 1980 - Case Tracking and Word Processing Equipment
- May 28, 1980 - Submission to Federal Register
- June 2, 1980 - Memos to all Office Heads re Organization Changes from Richard Redenius
- June 3, 1980 - Proper Heading for Board Decisions
- June 10, 1980 - Reform Act Cases Over 120 Days in 1980 Calender Year
- June 10, 1980 - Regional Training Conferences
- June 13, 1980 - 120-Day Limit for Processing Appeals
- July 1, 1980 - Delegations of Administrative Authority
- July 8, 1980 - Regional Training Conferences
- July 23, 1980 - Promotion Actions - Documentation and Justification

**For Merit  
and Honesty  
In Government**

**THE ROLE OF THE SPECIAL COUNSEL**

Office of the Special Counsel  
Washington, D.C. 20419

THURSDAY, APRIL 2, 1981.

**THE ADVISORY COMMISSION ON INTERGOVERNMENTAL  
RELATIONS**

**WITNESSES**

**WAYNE F. ANDERSON, EXECUTIVE DIRECTOR**

**F. JOHN SHANNON, ASSISTANT DIRECTOR, TAXATION AND FINANCE**

**CARL W. STENBERG, ASSISTANT DIRECTOR, POLICY IMPLEMENTATION**

**FRANKLIN A. STEINKO, BUDGET AND MANAGEMENT OFFICER**

Mr. ROYBAL. The committee will now come to order.

Mr. Anderson, I would like to welcome you to the committee this afternoon and request that you proceed in any way that you may desire with regard to your budgetary request for fiscal year 1982 and tell us how that budgetary request will affect the functions of the Advisory Commission on Intergovernmental Relations.

Mr. ANDERSON. Thank you very much, Mr. Chairman and members of the committee.

I am Wayne F. Anderson, Executive Director of the Advisory Commission.

Accompanying me are Assistant Directors John Shannon and Carl Stenberg, and our Budget and Management Officer, Franklin Steinko.

Our Chairman has always attended House budget hearings, and this is the first year for many years when that is not true, in that Mayor Beame resigned last week to give President Reagan increased scope in naming a new Chairman, so we are without one at the moment.

I might best give you a very short characterization of my statement.

Mr. ROYBAL. Your written statement will appear in its entirety. [The statement of Mr. Anderson follows:]

**STATEMENT OF WAYNE F. ANDERSON, EXECUTIVE DIRECTOR, ADVISORY COMMISSION  
ON INTERGOVERNMENTAL RELATIONS**

Mr. Chairman and Members of the Committee, my name is Wayne F. Anderson and I am the executive director of the Advisory Commission on Intergovernmental Relations. I am accompanied today by two of the Commission's assistant directors—F. John Shannon and Carl W. Stenberg—and Franklin A. Steinko, our budget and management officer.

It has been an annual tradition that we have greatly valued for our chairman to appear before you, but Mayor Beame resigned as chairman last week so as to provide President Reagan with additional scope in selecting the next chairman. The President has not named his successor as yet.

**ACIR'S PART IN REBALANCING FEDERALISM**

For at least the past five years, your questions have concentrated on the explosive growth in federal grants to state and local governments, and on the accompanying federal regulations. Your questions have afforded ACIR an annual opportunity to describe the continuous work we have done on the federal aid system and, more

recently, on what roles are appropriate for the federal government and which are inappropriate. The federal aid system has been the central fact of intergovernmental life during this period and has dominated our work program.

Since we met with you last year, ACIR has completed its studies on appropriate and inappropriate federal roles. Seven of the projected 11 reports are case studies that probe how the federal role began and grew in seven functional areas, and the other four explore the breakdown of the political, judicial, and fiscal constraints that has allowed explosive growth of federal roles. Our Commission, on June 19 and 20, 1980, adopted a summary conclusion that the federal system is "overloaded" and that it must be "decongested." The Commissioners then adopted six recommendations for decongesting the federal aid system, which envision federalizing certain welfare-type functions; devolving numerous other functions to state and local governments and the private sector; cutting back and unifying the 37 types of crosscutting national policy requirements attached to grants; and promoting certain basic reforms of our political system.

Our federal role reports have received an unprecedented amount of media, governmental, and scholarly attention, and already have formed the basis for a number of Congressional initiatives and the current joint agenda of the National Governors' Association and the National Conference of State Legislatures.

Of greater importance to the outlook for federalism, of course, is the fact that the Presidential election, the condition of our economy, and the widely accepted need for budget cuts have combined to produce a climate that is more conducive to rebalancing federalism than we have known at any previous time in American history.

Our Commission, in recognition of this unprecedented circumstance, adopted a motion which instructs the staff to give the highest priority to assisting all Congressional, Administration, and state and local governments in their efforts to achieve decongestion. Since the Inauguration, we have had numerous such opportunities to assist, and our outlook is that this type of activity will dominate our work program throughout fiscal year 1982 and probably beyond.

Meanwhile, ACIR is proceeding with a number of other research and implementation projects authorized by the Commission. This current work program includes:

Federal Mandates;

Jails: Intergovernmental Dimensions of a Local Problem;

State Severance Taxation of Energy and Mineral Resources;

Interstate Fiscal Capacity Equalization through the Federal Aid System;

Financing Local Governments in the 1980s;

HUD-ACIR State and Local Government Financial Management Improvement Project; and

HUD-ACIR-NAPA State Assistance to Distressed Communities Project.

Our legislative activities in the Congress currently center on the Federal Assistance Improvement Act and bills on a national convocation on federalism, fiscal notes, and a uniform system of payments in lieu of taxes on federal non-open-space real estate.

At the state legislative level, we are being called upon most often for advice concerning legislation on financial management, restraint on mandates, local finance, sorting out functions, and state-local relations commissions.

#### ACIR'S APPROPRIATION REQUEST

ACIR's outlook, then, is that our opportunities and the demands on us from Congressional, Administration, and state-local governments will be significantly beyond normal. We, therefore, believe we could effectively deploy a substantially larger staff to assist in decongesting the system. However, our budget request, once again, reflects our belief that we can produce at least a little more for a little less in real resources. This confidence and agency attitude largely stem from the fact that we have an enviable asset—namely, a highly motivated and competent staff that represents long experience with our intergovernmental assignment.

ACIR's fiscal year 1982 budget request extends our pattern of real budget shrinkage that goes back some nine years. The following facts sustain this statement and characterize our requests:

ACIR's fiscal year 1982 request proposes no increase in full-time permanent staffing levels or program activity over fiscal year 1981, fiscal year 1980, or fiscal year 1979.

Our fiscal year 1982 request would hold ACIR's budget increase to \$168,000 or 9.2 percent. However, \$163,000 of the increase is attributable to costs fixed by Congress and others; \$138,000 of this is due to GSA's 96 percent increase in our rent to \$19.31 per square foot.

ACIR controls only \$213,000 of its budget and requests an increase of only \$5,000 or 2.3 percent in this portion despite much steeper rises in printing costs, a large item for us.

I appreciate this opportunity to present these highlights in support of our budget request and look forward to your questions.

#### DECONGESTING THE FEDERAL SYSTEM

Mr. ANDERSON. Since we met with you last year, we have completed what we call our studies on the Federal role in the Federal system, meaning what roles are appropriate or inappropriate for the Federal Government, and this was a study mandated by the Congress.

Our Commission has diagnosed the intergovernmental system as being overloaded and has called for decongestion through a half dozen different kinds of actions, but most particularly federalization of certain functions, such as welfare and other income redistribution programs and through sending back a number of other functions to State and local governments.

In the latter case we point to those functions where the Federal role is small and those where the Federal aid programs are small and certain other types that we think are first priority candidates for sending back.

We also call for lightening the regulatory burden on State and local governments, and there we are pointing to some 1,200 regulations, about 59 of which are what we call cross-cutting, meaning that they attach to all kinds of Federal aid.

Since our work was completed last year, it has had a great deal of attention in the media and more importantly with State governments. The Governors and the State Legislatures, in large part, have based their joint agendas for federalism on our work.

More important than what I have recited is the fact that what has happened in our country since the election, the condition of our economy, and everything related to the current widespread acceptance of the need for budget cuts has produced a climate that is more likely to bring about change in federalism—Federal, State, and local relations—than we have known in our lifetimes.

In recognition of this fact, our Commission has instructed the staff to put the highest priority it can upon assisting the Congress, the Administration, and State and local governments in trying to bring about this kind of change, and we have had a number of opportunities to do just that in the first several months of this year.

#### OTHER PROJECTS

Beyond the general work to decongest the Federal system or rebalance federalism, as we call it, we are working in a number of other fields: Federal mandates, that is closely related; the intergovernmental dimensions of the jail problem; and Dr. Shannon's section is working on State energy taxation. This is another type of issue which now involves litigation on Montana coal and Louisiana oil taxes. The energy consumer States claim these State energy taxes are going to price them out of competition. We are also working on financing local governments in the 1980s, and certain work for HUD on assisting State and local governments to improve

their financial management and also certain work for HUD on what the States are doing to assist distressed communities.

That is not everything that we are doing, but I will rely on our written statement and your questions to mention others.

#### BUDGET REQUEST

Turning to the money side of our budget, which is very simple, this is about the ninth year when essentially our budget is based on the theory that we can do a little more for a little less.

Our request is for \$1.99 million.

This represents an increase, it is true, of \$168,000, or 9.2 percent, but \$138,000 of that is due to a GSA-imposed rent increase to an incredible figure of \$19.31 per square foot. In 1981, only \$213,000 of our budget is fully within our control, and that portion is up 2.3 percent for 1982, so the overall characterization of our request is that this could be our most loaded and most promising year for contributions to federalism for a little bit less money in real terms.

Mr. ROYBAL. The interesting thing is that GSA does increase your rent and that most of the increase fiscal year 1982 over 1981 is due to that increase.

Do they increase rent every year?

Mr. STEINKO. The rent has increased every year on an escalating factor, but this year we had two occurrences. One, the building that we are in came off of a five-year lease and was up for renewal and, two, GSA is going to what they call fair appraised rental, which is a new system.

They went through it about six years ago, an equity rental system, so you have those two factors that occurred at the same time, and they have imposed a 96-percent increase in our rent payment.

Mr. ROYBAL. What percent?

Mr. STEINKO. A 96-percent increase, from \$144,000 to \$282,000, with no increase in space.

Mr. ROYBAL. And your office is here in Washington, D. C., a city that has rent control?

Mr. STEINKO. Residential rent control.

Mr. ANDERSON. We are in what would charitably be called a second-class building, and \$19 per square foot rents are certainly not unknown but not for buildings like ours.

Mr. ROYBAL. If you were to go into a better class building, what do you think the percentage of increase would be?

Mr. ANDERSON. We have the impression, and do not have knowledge, but we have the impression that the rent and the intrinsic value of the building are not very closely related, and it is their overall system that works against us.

Mr. ROYBAL. The space that you have is adequate for your needs?

Mr. ANDERSON. Yes, sir.

Mr. ROYBAL. You can conduct your studies in the space that you now have and perform your duties?

Mr. ANDERSON. Yes.

#### CURRENT STUDIES

Mr. ROYBAL. What major projects are you currently studying?

Give us some examples of a few of these.

Mr. ANDERSON. We will put all effort that opportunities and demands call for into assisting, now it is mostly the Congress, but also the Administration and others in trying to decongest the aid system.

By that we mean about four kinds of actions, any action to federalize any functions so they are no longer carried out by Federal, State, and local governments; any action to push a function out of Washington; any action to consolidate programs into larger packages that give State and local government more discretion; any action to cut back on regulations; and any actions—and this is a new one with the Reagan Administration—any action to develop what we call revenue or tax turnback approaches which the President promised during his campaign and has certainly mentioned since. Dr. Shannon has been working with the White House on the alternative ways that might be done.

#### CONTRIBUTIONS

Mr. ROYBAL. Are contributions made by State and local government to this effort and what is the amount?

Mr. ANDERSON. Beginning five years ago at the urging of the Congress and OMB, we began soliciting amounts that then ranged from \$1,000 to \$5,000 from each of the States. It is now from \$1,250 to \$5,000. Thirty-nine States have contributed in that period, and we raised the amount collected each year.

Last year 23 States contributed \$61,000 plus \$16,000 in certain other earnings that come from States.

Mr. MILLER. Will the gentleman yield?

Mr. ANDERSON. This year it will be somewhat higher.

Mr. MILLER. On the one point, Indiana and Michigan have contributed \$6,000. Did they throw in an additional thousand for good will?

Mr. ANDERSON. No, sir, Mr. Miller; that comes about because of the differences in their fiscal year and the Federal fiscal year; we sometimes will get two payments from a State in a single year.

#### CONTRACTS

Mr. ROYBAL. Now, how are the contracts awarded, open competitive bid?

Mr. ANDERSON. We award almost no contracts at all. Our work is 95 or 97 percent done by our own staff.

Mr. ROYBAL. All your studies are made by your own staff and you do not contract out?

Mr. ANDERSON. With very minor exceptions. Occasionally a \$3,000 job or a \$6,000 job or when we have had contracts from other agencies, we have had a few that were larger, but our contracting activity is very small.

Mr. ROYBAL. But there is some contracting activity?

Mr. ANDERSON. There is some, and there is a full listing in the budgetary materials.

Mr. STEINKO. The one recurring contract was bid last year and is continually bid and that is for the public opinion survey conducted

by the taxation and finance section which is currently done by Opinion Research Corporation of Princeton, New Jersey.

Mr. ANDERSON. That is about a \$5,000 item.

Mr. ROYBAL. Most of it is done by your own staff and done within the budgetary amounts made available to you?

Mr. ANDERSON. That is correct.

#### MUNICIPAL DISTRESS

Mr. ROYBAL. Now, do you have any studies underway regarding Federal aid to municipalities in financial trouble?

Mr. ANDERSON. We have had any number that were oriented toward distressed communities, and ticking off some, the Congress asked us to look at countercyclical aid which certainly had a distressed community aspect to it, and that was completed two years ago.

We currently for HUD, and I think we are in the second year of that work, we are inventorying everything that States are doing for their distressed communities, and there are some 25 to 30 different types of actions.

We have produced data on the degree of disparity between central cities and suburbs and looked at a number of other Federal aid programs such as, CETA and the community development block grant. If I would go through everything that we have done, I could come up with 50 distressed city aspects.

Mr. ROYBAL. Mr. Miller?

#### THE TRUST FUND

Mr. MILLER. I just have a couple of questions.

Could you explain the trust fund, the contributions in the trust fund, that you have?

You have contributions on page 24 of your document here.

You have the Harry S. Truman Scholarship Foundation on page 30.

Give us a little background, please.

Mr. ANDERSON. I will ask Mr. Steinko to describe the fund.

Mr. STEINKO. The fund was set up by a combination of directives from OMB and the Department of the Treasury for receipt of all funds that were not considered reimbursements for ongoing activities of the Commission.

Most of those are of that type, and are for state contributions, honoraria, printing sales GPO does not handle through its GPO sales, and reimbursable travel on Commission business particularly.

This was to handle funds that were not set aside specifically for ongoing activities.

Mr. ANDERSON. Basically it is for State contributions but the Harry S. Truman Scholarship Foundation, for about four years now, has contracted with ACFR to handle all of the administrative activities, their accounting, travel vouchers, and so forth, and that is a contract amount. It allows us to utilize an employee more fully and save them from having such an employee.

## CONTRACT RESEARCH

Mr. MILLER. In one other area, where you have a reimbursable program to HUD, as an example, what does HUD do for you that would require you to pay them the funds, possibly \$25,000 in one place?

Mr. STEINKO. Those are various contracts for ACIR to do research for HUD. Up until last year we had a consolidated working fund to handle those funds. By directive of OMB, that is now part of our Salaries and Expenses Account, and they have combined it with appropriated moneys.

I had a footnote on the original material stating this, that now year-to-year comparisons due to those reimbursable contracts will be difficult.

Referring to page 32 in particular, it shows that there were several contracts where we had to perform research with HUD, local financial management capacity, scorecard on State performance, market value of Federal property, A-102 compliance and the State Urban Role.

## TECHNICAL ASSISTANCE

Mr. MILLER. The State Urban Role, as an example, if I were somehow wanting information as a State employee or a State official, would I come to you to request your assistance on that information, or just what service could you offer me at the State level?

Mr. ANDERSON. States and localities, every day by mail and by phone, are asking us for information on any subject within inter-governmental relations, and we don't have it all, but we have a very large part of it, and we attempt to give them all the service we can.

Usually it does take the form of information over the phone or through the mail, but sometimes it takes the form of going out to assist them, or testify, or appear before one of their study commissions.

It is a considerable part of our work.

Dr. Stenberg is in charge of it.

Mr. STENBERG. They ask, "What are our neighbors doing which relates to problems that we have"?

We find there is a great deal of interstate inquiry. They want to know what is going on beyond, and we play a very useful role in providing this information, research studies or even just information over the telephone, contact people in neighboring States.

The same type of question is, do you have any suggestions as to legislation that relates to particular problem areas such as one which Dr. Shannon has been working on a great deal.

In that case we oftentimes provide them with copies of State statutes we have in our files and in more than 120 areas we have prepared model legislation based upon what we regard as the best of State experience which we supply to the States. This provides simply the point of departure for those who are interested in seeing again how their neighbors deal with these problems.

Mr. MILLER. The States would not ask an adjoining, or an adjacent State, but you gather statutes from the 50 States and then

when one of the States wants to know something about a statute in another State, they would come to you?

Mr. STENBERG. It works both ways. Sometimes they come to us for either copies of relevant legislation or research. Other times they will just get names from us and make their contact directly.

Mr. MILLER. Do the people of the local political subdivision contact you, to find out how they can get Federal funds for a program?

Mr. ANDERSON. We have that kind of question, not a lot of them, but we publish a listing as OMB does and others do of programs, and their request is for that. Sometimes it is a scholarly interest and sometimes it is a money hunting interest or people will write in and say, "We are hoping to do this in my city; do you know of any Federal program?" and we will answer them.

That is not a large part of our questions.

Mr. MILLER. That is not necessarily selling the programs to make the programs larger.

Mr. ANDERSON. That is not our motive.

Mr. MILLER. Very good.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Rudd?

#### COMMISSION MEMBERSHIP

Mr. RUDD. Mr. Anderson, who makes recommendations for membership to the Advisory Commission on Intergovernmental Relations?

Mr. ANDERSON. For the four categories of State and local members, there are public interest groups that must nominate to the President. The National Governors Association must nominate the Governors and they must nominate two for each slot that is open, the National Conference of State Legislatures for the State Legislators, the National League of Cities and the U.S. Conference of Mayors jointly for the mayors, and the National Association of Counties for the county officials.

The Federal Executive members, the Congressmen, the Senators and the public members are named without nominations.

Mr. RUDD. You said two private sector groups.

Mr. ANDERSON. State and local.

#### A UNIQUE COMMISSION

Mr. RUDD. What projects or studies undertaken by the Commission are so unique that they could not be undertaken by other governmental agencies either on a Federal, State or local level, or for that matter, by private sector organizations such as the Council of State Governments and the American Legislative Exchange Council?

Mr. ANDERSON. I don't think that there are any studies made within the 21 years of our history that could not have been made by the types of organizations that you refer to.

The fact is, though, that prior to the Kestenbaum Commission under President Eisenhower, the amount and quality of research in intergovernmental relations was very puny, and the field was undeveloped, and now we have become a center of confidence and objectivity, and we have produced a body of work which it is widely

agreed has advanced understanding of these most vital elements of American government. So we at least would believe if we were not there doing it, that it would not be progressing at the rate that it has been.

Mr. RUDD. Do you think you, in effect, are a catalyst for getting these things done?

Mr. ANDERSON. We are a catalyst in many ways. One type of product of our work, for example, is that the volume and quality of teaching intergovernmental relations in higher education institutions of our Nation has greatly improved over the 21 years that we have been producing grist for the educational process.

Mr. RUDD. Do you have evidence to back that up?

#### ACADEMIC RELATIONS

Mr. ANDERSON. Yes, in terms of number of courses given, textbooks written, number of students.

Mr. RUDD. I would like to have that for the record as evidence to substantiate what you just told me.

Mr. ANDERSON. We don't have any current quantitative evidence, and that is one of the things we are talking about trying to update, but in the past, yes.

Mr. RUDD. We will get that for the Committee record then.  
[The information follows:]

Mr. ANDERSON. Yes, we have certain types of evidence and will soon have more complete updated evidence.

Back in 1968, ACIR conducted a survey that was published as our March 1969 report titled "Federalism and the Academic Community: A Brief Survey." A copy of this report will be transmitted. The central finding was, "This survey's findings lead to an inescapable conclusion that the field of American State and local government and intergovernmental relations receive second-rate treatment in today's college and university political science curricula."

In effect, that 1968 survey established a base line from which we are now attempting to measure progress since then. In January 1981, we requested 1,000 political scientists to complete a questionnaire on major intergovernmental events and trends and we followed up with a short questionnaire on the teaching of intergovernmental relations at their college or university. Their responses are now being tabulated so we will soon have fresh data on what has happened to teaching in our field.

Until we have this quantified information, our evidence is only impressionistic. It, however, is our strong impression that the number of institutions offering courses in intergovernmental relations and the number of students reached has markedly expanded in recent years. We judge primarily from the number of professors contacting us, the number of student groups being brought to ACIR for short seminars, the number of professor and student requests for our publications, the programming of intergovernmental relations subjects at conferences, and so forth. Furthermore, ACIR's Fellows Program has drawn more applicants from more schools presenting more education in intergovernmental relations year by year.

We will forward the results from our questionnaire when the data is tabulated.



ADVISORY  
COMMISSION ON INTERGOVERNMENTAL RELATIONS

WASHINGTON, DC 20575

January 6, 1981

MEMORANDUM

TO: Selected Political Scientists

FROM: Carl W. Stenberg  
Carol S. Weissert  
Richard L. Cole

RE: Survey of Major Intergovernmental Events and Trends

We are contacting you as an expert on United States domestic policy and politics to assist us in our study of major intergovernmental events since 1960. The past twenty years, as you know, have witnessed major new developments in the American federal system. It is our desire to identify those events and trends which scholars rate as most significant.

Accordingly we are asking you to fill out and return the enclosed ballot and biographical information. The ballot asks you to indicate what you believe to have been the most significant intergovernmental events, intergovernmental trends, and societal events affecting intergovernmental relations of the past two decades. We have enclosed a list of events and trends from which you may make your selections, but you are, of course, encouraged to include any other events or trends which you believe significant. The biographical information will be used for purposes of statistical comparison only.

This survey is a joint effort of the Advisory Commission on Intergovernmental Relations and the Institute of Urban Studies at the University of Texas at Arlington. We believe the results of this study will be of considerable interest to scholars, practitioners, and legislators. We will see to it that the study is widely circulated to public and private groups, and we will be pleased to send you a summary copy of the results as well.

In order that our processing of this information may proceed without delay, we would like to have this material returned within one week of receipt. Thanks very much for your assistance; all responses will remain confidential and we look forward to hearing from you.

## BALLOT

1. INTERGOVERNMENTAL EVENTS: Please select from the attached list on pages 1-2 what you believe to have been the top five intergovernmental events of the past twenty years. Please list the identifying numbers of the events in order of importance so that the number of the event you believe is most important is listed first, the number of the second most important listed second, and so on.

For Internal Purposes

	Column
First most important event: # _____	8-9
Second most important event: # _____	10-11
Third most important event: # _____	12-13
Fourth most important event: # _____	14-15
Fifth most important event: # _____	16-17

2. INTERGOVERNMENTAL TRENDS: Please select from the attached list on page 3 what you believe to have been the top five intergovernmental trends of the past twenty years. Please list the identifying numbers of the trends in order of importance so that the number of the trend you believe is most important is listed first, the number of the second most important listed second, and so on.

First most important trend: # _____	20-21
Second most important trend: # _____	22-23
Third most important trend: # _____	24-25
Fourth most important trend: # _____	26-27
Fifth most important trend: # _____	28-29

3. SOCIETAL EVENTS: Please select from the list on page 4 what you believe to have been the top five societal events effecting intergovernmental relations of the past twenty years. Please list the identifying numbers of the events in order of importance so that the number of the event you believe is most important is listed first the number of the second most important listed second, and so on.

First most important societal event: # _____	32-33
Second most important societal event: # _____	34-35
Third most important societal event: # _____	36-37
Fourth most important societal event: # _____	38-39
Fifth most important societal event: # _____	40-41

## BIOGRAPHICAL INFORMATION

Please place a check or an (X) beside the appropriate response, or provide the appropriate information as requested. This information will be used for statistical comparison only.

1. In what year did you complete your highest earned university degree?  
Year completed highest degree: \_\_\_\_\_ 44-45
2. Is your Ph.D (or highest graduate degree) in political science, or some other discipline?  
1. Political Science: \_\_\_\_\_ 2. Other: \_\_\_\_\_ 46  
If "other," please identify: \_\_\_\_\_ 47
3. How many years of university experience (teaching, research, and administration) have you had?  
Number of years of university experience: \_\_\_\_\_ 43-49
4. Have you ever been employed on a full-time basis ( other than internships, fellowships, or other temporary appointments) with the United States national government?  
1. No: \_\_\_\_\_ 2. Yes: \_\_\_\_\_ 50  
If "yes," Number of years: \_\_\_\_\_ 51-52
5. Have you ever been employed on a full-time basis (other than internships, fellowships, or other temporary appointments) with a state government?  
1. No: \_\_\_\_\_ 2. Yes: \_\_\_\_\_ 53  
If "yes," Number of years: \_\_\_\_\_ 54-55
6. Have you ever been employed on a full-time basis (other than Internships, fellowships, or other temporary appointments) with a local government?  
1. No: \_\_\_\_\_ 2. Yes: \_\_\_\_\_ 56  
If "yes," Number of years: \_\_\_\_\_ 57-58
7. Have you ever worked for any level of government (national, state, or local) on a full-time basis OR part-time basis (including internships, fellowships, or other temporary appointments)?  
1. No: \_\_\_\_\_ 2. Yes: \_\_\_\_\_ 59  
If "yes," which levels: \_\_\_\_\_ 60-61
8. In what state were you born? \_\_\_\_\_ 62-63
9. In what state have you lived most of your life? \_\_\_\_\_ 64-65
10. In what city have you lived most of your life? \_\_\_\_\_ 66-68
11. What is the year of your birth? \_\_\_\_\_ 69-70

Column

12. Would you say that your party affiliation normally is Democrat, Republican, or Independent? 71  
 1. Democrat\_\_\_ 2. Republican\_\_\_ 3. Independent\_\_\_
13. If your party affiliation is primarily "Independent," which party do you find you most often support at the ballot box? 72  
 1. Democrat\_\_\_ 2. Republican\_\_\_
14. For the questions below, please check which term most closely describes your views:
- a. While there has been some effort to return power, funds, and responsibility to states and localities, the federal government remains the senior partner in intergovernmental relations and is likely to further fortify this stronghold position. 73  
 1. Strongly agree\_\_\_ 2. Agree\_\_\_ 3. Disagree\_\_\_  
 4. Strongly disagree\_\_\_ 5. No opinion\_\_\_
- b. Generally, state governments have made great strides in strengthening their planning, management, and fiscal capabilities by adopting many reforms that have been urged for over 50 years. 74  
 1. Strongly agree\_\_\_ 2. Agree\_\_\_ 3. Disagree\_\_\_  
 4. Strongly disagree\_\_\_ 5. No opinion\_\_\_
- c. The problems facing urban America cannot be solved by more federal aid. 75  
 1. Strongly agree\_\_\_ 2. Agree\_\_\_ 3. Disagree\_\_\_  
 4. Strongly disagree\_\_\_ 5. No opinion\_\_\_
- d. The current network of intergovernmental relations has become dangerously overloaded. 76  
 1. Strongly agree\_\_\_ 2. Agree\_\_\_ 3. Disagree\_\_\_  
 4. Strongly disagree\_\_\_ 5. No opinion\_\_\_
15. Would you like a copy of the summary of this study? 77  
 1. Yes\_\_\_ 2. No\_\_\_  
 If "yes," please provide name and mailing address:

Please place the ballot and biographical information in the enclosed self-addressed envelope and mail. No postage is necessary. Thanks very much for your time and cooperation.

MAJOR INTERGOVERNMENTAL EVENTS OF THE PAST 20 YEARS1. Legislative Enactments

1. General Revenue Sharing, 1972
2. Special Revenue Sharing (block grants): CETA, LEAA, CDBG, Title XX
3. The Economic Opportunity Act (War on Poverty), 1964
4. National Environmental Policy Act (NEPA)
5. Medicare/Medicaid
6. 1965 Housing Act Amendments to 701 program for funding Councils of Governments
7. The Civil Rights Acts of 1964, 1966, 1968 and Voting Rights Acts
8. Elementary and Secondary Education Act of 1965
9. Supplemental Security Income (federal assumption of adult welfare programs)
10. Intergovernmental Cooperation Act of 1968
11. Joint Funding Act of 1974
12. Establishment of Federal Paperwork Commission
13. Intergovernmental Personnel Act of 1970
14. The Coastal Zone Management Act
15. Creation of the Advisory Commission on Intergovernmental Relations
16. Creation of Legal Services/Legal Aid for the poor
17. Demonstration Cities and Metropolitan Development Act of 1966 (Model Cities)
18. Creation of regional organizations such as the Appalachian Regional Commission and the Delaware River Basin Commission

2. Judicial Decisions

19. Baker v. Carr, Reynolds v. Simms (reapportionment cases)
20. Serrano v. Priest (first school finance case)
21. NLC v. Usery (overturned federal Fair Labor Standards for state and local employees)
22. Desegregation cases: Green v. New Kent County School Board, Swann v. Charlotte-Mecklenburg Board of Education, Milliken v. Bradley
23. Shapp v. Sloan (upheld right of state legislatures to appropriate federal funds)
24. Hawkins v. Town of Shaw (Fifth Circuit Court ruling that discrimination by local governments in neighborhood service provisions was a violation of 14th Amendment)

3. Executive Actions

25. Establishment of Federal Regional Councils
26. Establishment of HUD
27. Establishment by Nixon of the Domestic Council within the Executive Office of the President
28. Development of OMB Catalog of Federal Domestic Assistance
29. OMB Circular A-95 (requiring regional and metropolitan-wide review of grant proposals)

## MAJOR INTERGOVERNMENTAL EVENTS (con't)

4. Other

30. Passage of California's Proposition 13
31. Defeat of California's Proposition 9
32. Adoption of state Advisory Commissions on Intergovernmental Relations
33. Successful city/county consolidation efforts in such areas as Nashville/Davidson County and Indianapolis/Marion County
34. Publication of Michael Harrington's Other America and its resultant impact on the New Frontier and the Great Society
35. Publication of the books, The Sometimes Government and Storm Over the States
36. Publication of the Kerner Report, 1968 (Report of the National Advisory Commission on Civil Disorders)
37. New York City's fiscal crisis
38. 1979 Peaking of flow of federal aid to states and localities
39. Other (please identify on ballot)
40. Other (please identify on ballot)

MAJOR TRENDS AFFECTING INTERGOVERNMENTAL RELATIONS INTHE PAST TWENTY YEARSNational

- Increased flow of federal dollars to state and local governments
- Increased federal regulation of use of shared revenues
- Increased use by federal government of formulas to target federal aid dollars
- Increase in number and influence of Washington-based public interest groups (International City Management Association, National League of Cities, etc.)
- Use and increased influence of regional governing and coordinating bodies (COG's, substate national organizations, multi-state regional organizations)
- "Broadening" of federal aid thanks largely to general revenue sharing so that it now goes to around 60,000 subnational governments

State

- Increased adoption by states of income tax legislation
  - Increased state aid to local governments
  - Increased adoption by states of state-regulated lottery systems
  - Updated state constitutions
  - Modernization
  - Increased suburbanization and continued loss of population by many inner cities
  - "Back to the City" movement experienced by some metropolitan areas
  - High dependence of local government (particularly cities) on state and federal aid
  - Increasing role of counties in intergovernmental system
  - Emergence of Frostbelt-Sunbelt regional competition and growing tensions between "haves" and "have nots."
  - Strengthened executive branches
  - Strengthened legislative branches
- 
- Increased cooperation with government and growing concern for governmental accountability, manifested in the late 1970's by Proposition 13 and other "tax revolt" activities and responses
  - Increasingly significant role of the courts in intergovernmental areas accompanying a concern for equity in the system
  - Blurring of private and public sector
  - Other (please identify on ballot)
- 
- Other (please identify on ballot)
-

MAJOR SOCIETAL EVENTS AFFECTING THE COURSE OF INTERGOVERNMENTAL RELATIONSTHE PAST 20 YEARS

1. Demographic shifts (increasing proportion of young and elderly segments of the population)
2. Kennedy Assassination
3. Election of Johnson and beginning of the "Great Society"
4. Election of Nixon and resultant "New Federalism"
5. Election of Carter and announcement of the "New Partnership"
6. Vietnam War and inflationary spiral it initiated
7. Environmental movement
8. Recession of 1974-75
9. Recession 1979-80
10. Energy crisis
11. Watergate
12. Rise of the "Sun Belt" states in population and political influence
13. Urban Riots, 1964-68
14. Financial crisis of many large cities including the fiscal default of New York City
15. Other (please identify on ballot)
16. Other (please identify on ballot)



ADVISORY  
 COMMISSION ON INTERGOVERNMENTAL RELATIONS  
 WASHINGTON, D.C. 20575  
 January 6, 1981

MEMORANDUM

TO: Political Science Professors

FROM: Carol S. Weissert  
 Carl W. Stenberg

RE: Yet More Questions

In order to better assess usage of ACIR publications by teachers of political science, we ask you to fill in yet one more set of questions. The answers to the questions below will be used only internally by the Commission and are not part of the ACIR-University of Texas study.

Thanks for your assistance.

1. Do you have a course in your political science department specifically on intergovernmental relations?  
 Yes \_\_\_\_\_ No \_\_\_\_\_
2. Is this course  
 Graduate \_\_\_\_\_ Undergraduate \_\_\_\_\_ Both \_\_\_\_\_
3. What works are used for introductory reading assignments in this (intergovernmental) course?

Author

Title

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4. What ACIR reports, if any, have you found especially useful in intergovernmental or related course?

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5. Are these more useful in:

- a) Preparation of lectures \_\_\_\_\_
- b) Class readings \_\_\_\_\_
- c) Equally useful in both \_\_\_\_\_

6. Are you familiar with ACIR's quarterly magazine, Intergovernmental Perspective?

Yes \_\_\_\_\_ No \_\_\_\_\_

7. If yes, do you find it:

- Very useful \_\_\_\_\_
- Somewhat useful \_\_\_\_\_
- Not particularly useful \_\_\_\_\_

8. Are you familiar with ACIR's In Brief series?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. If yes, do you find it:

- Very useful \_\_\_\_\_
- Somewhat useful \_\_\_\_\_
- Not particularly useful \_\_\_\_\_

10. How could ACIR materials be made more useful to you and your students?

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11. If you are not on ACIR's mailing list and would like to receive our publications please indicate:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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Thanks, once again.

## RESEARCH SELECTION PROCESS

Mr. RUDD. To follow up what my friend and colleague was talking about here a moment ago, who recommends the projects to the Commission and who decides what projects will be undertaken?

Mr. ANDERSON. The Commission itself jealously guards the prerogative of approving projects, whether they are by our own staff or through an outside grant.

The process leading up to their selection is that periodically we review and update our inventory of major intergovernmental problems. They look at this list of maybe 40 or 50 and say we think those eight deserve further study to see if they are the best projects for us. The staff then evaluates each of the eight against what we call research selection criteria, and the Commission finally makes the selection of two or three projects.

Mr. RUDD. Can just anybody come in and recommend? Don't you have some criteria for that?

Mr. ANDERSON. Anyone could come in in any way and tell us, we think this is something you ought to be doing work on, and it will then be in our hopper and we will give it consideration the next time the Commission selects work.

The other way in which our work is selected is by the Congress, work that Congress has mandated.

Mr. RUDD. What percentage of the recommendations that come to you do you accept?

Mr. ANDERSON. It would be very low, because there are at any given time 50 major intergovernmental problems, and there could be a hundred, and we typically work on five to eight a year, so there are many intergovernmental problems we cannot take on.

Mr. RUDD. You deal with the Office of Technical Assistance?

Mr. ANDERSON. I have had only one "comparing notes" contact with OTA in the seven years I have been around.

## COMMISSION FUNDING

Mr. RUDD. In the past Members of Congress have suggested that the Commission's activity be funded by contributions from the States.

What do you have to say about that?

Mr. ANDERSON. They are to the extent of the \$77,000 we raised.

Mr. RUDD. That does not come up to \$1.9 million?

Mr. ANDERSON. It would be impossible in my judgment to fund the current operations funded by the Federal Government through aggregating the 50 States.

Mr. RUDD. If you divided that budget among 50 States, it would be very little from each State.

Mr. ANDERSON. That is right.

Mr. RUDD. Participation from the States and all levels of government, but unfortunately the cities and towns and the National Association of Counties and those sorts of organizations are all dependent upon the Federal Government to start with.

Mr. ANDERSON. Past experience in trying to build State cooperative consortiums proved difficult. In intergovernmental relations, first, the Federal Government is the dominant of the three levels and, second, the dominant or central fact of intergovernmental life

has been the Federal aid and regulation system, and that is the largest part of our work and has been for years, and that is the Federal Government's creation so the Federal Government, if you were to use objective measures as to who ought to be funding what, would be funding the lion's share of our activity.

Mr. RUDD. There is no way the States could get together and fund their very small amount of money if we divided it among 50 States?

Mr. ANDERSON. That is my judgment. To fund our program or the NSF program for State and local government or the HUD program or other research programs that have been funded at the national level would be next to impossible.

Mr. RUDD. Is there no question in your mind of the need for this Commission?

Mr. ANDERSON. No; there isn't, and the State contributions that we seek now are small, I grant you, but they are tangible evidences of state support and we believe the solicitations program should go on.

There are many other kinds of evidence, the continuing interest at all three levels to be on the Commission, all of the ways in which our institutional ego is stroked, the attention that our work receives, and to come to the final test, the results achieved over the years in terms of actual legislation or whole movements in State and local government, that we have developed, continuously fed, and seen progress.

I can give you a long list: the strengthening of State revenue systems, county modernization and, our recent oversight materials listed some 20 major elements of progress at the State and local level where anyone would accept that our work was a paramount generator.

#### TRANSITION TEAM

Mr. RUDD. Did the transition team recommend that this Commission be continued or that it be abolished?

Mr. ANDERSON. We literally had seven different types of transition contact. The major team stayed with us for a full month and did other work out of our offices, and I was given a feel or a characterization for what they found, but not any official word.

Mr. RUDD. You don't know?

Mr. ANDERSON. I don't know for certain. I know that the team leader told me that she or they, I don't know which, had concluded that we were an important vehicle for carrying forward federalism improvements.

Mr. RUDD. You can't tell us whether you were recommended for continuance or abolishment?

Mr. ANDERSON. No; I don't know.

Mr. RUDD. Do you know?

Mr. SHANNON. No; no.

Mr. ANDERSON. C.D. Ward later on—he was head of one of the policy groups in the last weeks, but he was not on our official transition team—we did see his report which was more on what ought to be done in federalism. The thing that he stressed that did relate to us and Mrs. Poundstone did—she was the head of the official transition team—was that the most beneficial thing the

new Administration could do for ACIR would be to provide us with a very influential and otherwise prestigious Chairman.

PERSONAL SERVICE CONTRACTS

Mr. RUDD.

I think you said at the outset that you do not contract work.

Mr. ANDERSON. Very nominal contract work. Those are personal service contract employees, and as you will see, starting down the list, \$1,300 worth of editorial service.

Mr. RUDD. There is \$18,000 here to analyze field studies.

Mr. ANDERSON. You will see several of those \$18,000 items. They are what we call "fellows". We select three or four fellows from among new Masters Degree and PhD degree people, typically one for each of our sections each year, and sometimes we bring them in on personal service contracts or sometimes into permanent positions, but they are employees working under our direction.

Mr. RUDD. How long does it take them to earn that much money?

Mr. ANDERSON. They earn \$18,000 a year?

Mr. RUDD. They are free to do whatever else they want to do, also?

Mr. ANDERSON. No, sir; they are full-time employees.

Mr. RUDD. I am talking about Anne Hastings. Charles Richardson is \$20,000 because he is in his second year.

Mr. ANDERSON. And Neal Cohen, all of those were what we call fellows.

Mr. RUDD. Lewis Kaden and George Break?

Mr. ANDERSON. Congress mandated that we prepare a report on future forces affecting federalism and changes in the system required to meet them, and one of the ways in which we carried out that responsibility was to have those eminent scholars prepare papers on the outlook in the 1980s in their field, one of them legal, one of them economic.

We used their papers plus our own as the basis for a conference to which we brought in about 30 eminent thinkers in the field for a day and a half, and we published conference proceedings including these papers.

Mr. RUDD. When these contract employees are taken on board, they are given one specific assignment, and they work on that until it is completed, presumably in one year. If not, I assume they carry over, and you put them on for another year.

Mr. ANDERSON. No; most of those would be much shorter duration than that, a month, two months, three months.

Mr. RUDD. They are paid that amount of money to complete the study, and when the study is completed they are through?

Mr. ANDERSON. Many of our contracts would specify the time. It is a certain assignment typically for a certain amount of money to be completed by a certain date.

Mr. RUDD. What I am thinking about is not for a specified time, but for the time it takes to do the study.

Mr. ANDERSON. We usually specify that the work is to be completed by a certain date.

Mr. RUDD. You said originally that this was to be done in a year.

## ACIR FELLOWS

Mr. ANDERSON. The fellows.

Mr. RUDD. Charles Richardson, Neal Cohen, for example, I never heard of the gentlemen before, but were there two projects to be completed in one year?

Mr. ANDERSON. They were fellows; they were employees who are brought on as personal service contract employees, on one-year contracts, and the contracts designate their major assignment. They are unlike the others here.

Mr. RUDD. If they completed it in less than a year, they are still considered on board and, if they complete it in less than a year, they can go about their business?

Mr. ANDERSON. We would give them other work. Those particular people, the fellows, are exactly like any other employees we have except they are in a contract slot instead of a permanent slot.

Mr. STENBERG. The fellows program is a highly competitive one for which we receive many applications. For the 1981-1982 program we have more than 150 applications for these three contract slots.

Mr. RUDD. It looks like the writing of a thesis or dissertation or something. For example, "analyze and investigate field studies as may be necessary to complete assigned projects." The other one down here is "assist in developing and implementing programs and procedure for acquainting policymakers with the findings and recommendations of the Commission."

Mr. ANDERSON. It does have that appearance, but they are employees brought into contract slots. We write the contract indicating the major assignment they will have. They will have others, and they will work just like anybody else.

If we have permanent slots we do not bring them on as personal service contractors.

Mr. RUDD. Let me ask you this on those two items. What is the value that you have obtained from the results of those two employments, these studies or whatever they are?

Mr. ANDERSON. You are referring to Mr. Cohen and Mr. Richardson. Mr. Richardson works for Dr. Shannon.

Mr. SHANNON. Do we have the State Revenue Sharing Book?

Mr. RUDD. This is a result of Mr. Richardson's work?

Mr. SHANNON. I guess we don't have it.

Mr. RUDD. It is something like this?

Mr. SHANNON. Right; and he—

Mr. RUDD. Does that apply to Mr. Cohen also?

Mr. SHANNON. Richardson produced under our direction a report on State experience with revenue sharing at the State level for local governments. He went out and did considerable research.

Actually he worked within the office and he described the various arrangements that States have to duplicate at that level the same thing that the Federal Government does. A very detailed analysis was made of the State Revenue Sharing Programs in Wisconsin, Michigan, Minnesota, to a lesser degree in New York and Maryland, to give other States, because we get so many inquiries from State officials—as Mr. Stenberg pointed out, what are the other States doing?

How are they handling the problem of State revenue sharing, local governments, and what kind of formula do they use, income or property tax data? How do they construct the formulas for distributing State aid to localities? So that report was designed to give State officials a pretty good bird's eye view of how the various States, the leader States, have performed in this particular area.

Mr. RUDD. States like Arizona, which is my home, could write you and you would say here is a pamphlet that was prepared and we will send it back to you; you take a look at it and if it fits, fine, and if it does not, too bad.

It is hard to compare a small State like mine to a State like New York, since the guidelines are different.

Mr. SHANNON. Each State will always have to carry that in mind. There are diversities but, nevertheless, you do see commonalities running through, so the States and the State Legislators are very interested in finding out how other States are tackling that same problem.

Let me underscore that there is increasing pressure being placed by localities on the State Capitals, partly now with the reduction in Federal aid. The States are being asked to step in to help fill that gap and State revenue sharing has got to keep moving.

Mr. RUDD. Since we started on this, let us turn to the other one, the study prepared by Mr. Cohen.

Mr. STENBERG. Mr. Cohen works for me, Congressman. He has had a somewhat more diverse range of assignments than Mr. Richardson. He is largely responsible for preparing the report which is now at the printer on State assistance to distressed communities—this is the second year of this assessment—and you are looking at some 20 ways in which State governments can provide assistance to distressed communities.

We are analyzing legislation they have enacted and we are beginning to look at the effects, at this point in time, of this legislation, and in the next phase of the project that report will be published.

In a second activity Mr. Cohen has been analyzing private enterprise zones, a case study of innovative approaches to deregulation, and his article on this subject will appear in the summer issue of our quarterly magazine.

Besides those two research activities, he has also been involved, since he is on the implementation staff, in working with our research people, and various legislative activities, specifically the Commission's report dealing with payments in lieu of taxes on Federal property in urban areas.

There was some interest expressed by former Representative Fisher in developing congressional legislation to provide reimbursement to State and local governments for the loss that they suffer due to Federal exemption from taxes on property.

Mr. Cohen has worked with the task force, researchers from Dr. Shannon's section, members of the appropriate Congressional committees in putting together such a bill for consideration.

Most recently he has been working with Dr. Walker's governmental structure and function staff on a request from Senator Durenberger to develop an analysis of the Administration's block grant proposals, and to look at those pursuant to a Commission

recommendation which calls for this decongestion or sorting out of appropriate governmental roles.

Specifically, what we are examining is, if there is an increase in the Federal contribution for a program such as Medicaid, what programs would the States and local governments be willing to assume greater or perhaps full financial responsibility for, what would be the implications in this in terms of the structure of Federal programs and the funding for services at or below the State level. So Mr. Cohen has been very heavily involved in the analysis of the block grant programs and discussions with this staff, intergovernmental relations with those trade-off packages.

Mr. RUDD. I can understand. I guess it is his job description here, addressing itself to that better than I can for Mr. Richardson.

I thank you very much, gentlemen.

Mr. STEINKO. I should make one point that the fellows are included in our agency personnel allotment, the 51 total employees for fiscal year 1981. In 1981 there are 16 positions authorized for temporary, intermittent, part-time, and personal service contracts. The fellows come under that ceiling, as do all full-time personal service contracts of one year duration.

Mr. RUDD. Thank you.

#### DISTRESSED COMMUNITIES

Mr. ANDERSON. If I could add one thing, the Chairman asked us about distressed communities. The motivation for a couple of reports, the one on the most outstanding State Revenue Sharing System and the work that Mr. Cohen has been doing, this is all a part of an effort to say to the States, "the Federal Government has taken the responsibility for an awful lot of things in these central cities, disadvantaged cities, and there are more ways the States can do this." The States generally have a poor record in this field, so we are trying to get the States to do a larger part of what we think their allotted role in the system should be.

#### "BALANCED U.S. GROWTH"

Mr. RUDD. One other quick field, I am sure you read this article. It is "Balanced U.S. Growth", by Jay Rockefeller and Richard Lamm.

Mr. ANDERSON. Yes; I did.

Mr. RUDD. The question is based on an article that appeared in the New York Times, page 25, March 7, 1981. It is an article written by two Governors: the Honorable Jay Rockefeller of West Virginia and the Honorable Richard D. Lamm, of Colorado. The article in my opinion, pictures this Commission as developing studies and moving population centers from one area of our country to another.

I will tell you that I would be very much opposed to trying to legislate or mandate population moves.

I don't think it can be done and I don't think it is constitutional, and I don't think we could pick up people from one area of the country where they have roots and where there have been immense investments made for sewer lines, and electrical operations and buildings, and governmental entities, and move them over, for

example, into my State, which has all kinds of problems with influx of people now to try to keep up with that growth.

The article puts you in that position in my opinion, and I would like your comments.

Mr. ANDERSON. That article was in response to the recently released report of the Presidential Commission on the Agenda for the 1980's and I am not certain that it was a correct interpretation of the report, but it was widely stated that they had recommended the Federal Government no longer aid places and no longer try to prop up places that free market forces were causing the movement of capital and people away from.

These two Governors said in effect that the Federal Government has to continue to aid places that would otherwise lose population, income, and so forth.

I don't remember the respect in which they referred to us, but in our work on that same subject, we found that regional competition forces had not created such bad effects within our economy and Nation, that there should be Federal intervention to redress the balance.

These studies were done by Dr. Shannon a couple of years ago, and our work is among the leading work that shows that we have had what we called "convergence over time." Over the last 50 years the incomes of the various States have moved closer together. Connecticut used to be 170 percent of the national average, and now it is 110; South Carolina used to be 38; now it is 85 or 90. We have had very good convergence of the different regions over time. We are much more fortunate than other nations, and our work showed it was without catastrophic effects on unemployment, so ours is a testimonial to the principle of letting free market forces work.

Mr. RUDD. You are in favor of that?

Mr. ANDERSON. Yes.

Mr. RUDD. I am glad to have that on the record, because this article would lead me to believe that you are being pushed into a position of trying perhaps to be in some sort of a positive way of actually moving populations from one area to the other.

Mr. ANDERSON. So that I do not let myself get misunderstood, our Commission at that time in effect found that there was nothing happening that was so injurious that the Federal Government should intrude with any kind of regulation.

Our Commission has made 350 recommendations over 21 years, and I would not be surprised but what a position they took somewhere could be interpreted as a recommendation to prop up a place, but our most recent work, no.

Mr. SHANNON. I read that article and I was amazed at the interpretation that they placed on our recommendations.

Mr. RUDD. I am glad that the record shows that you have not.

Mr. ANDERSON. We have your Governor on our Commission as an active member.

Mr. ROYBAL. Any other questions?

#### REPORT DISTRIBUTION

Mr. RUDD. I have one last question.

These reports that are produced by the Commission, are they made available to the general public, to students, to libraries? What kind of distribution do you make of the reports?

Mr. ANDERSON. For every report we make a custom-made distribution. We ask who should get this, and our mailing list is classified so that we can target transportation people or State legislators so the distribution can range from what, 5,000 to 15,000. It always includes Congress and Governors, and certain essential parts of the system, of course.

There are a number of members of the general public who have asked to be on our mailing list, either for certain things or all things, and anyone who writes in we can provide them a single copy or they can buy it from the GPO.

Mr. ROYBAL. Mr. Anderson, I would like to thank you on behalf of the committee for your testimony.

Mr. ANDERSON. Thank you, sir.

Mr. ROYBAL. The committee will take your presentation and request under consideration.

Mr. ANDERSON. Thank you.

Mr. ROYBAL. The subcommittee is adjourned.

September 2, 1980

ACIR BUDGET REQUEST SUMMARY

FY 1982

The Advisory Commission on Intergovernmental Relations' FY 1982 budget requests are in full conformance with the Presidential policy guidance supplied by OMB, and these requests also extend our pattern of real budget shrinkage that goes back some nine years. The following facts sustain this statement and characterize our requests:

- ACIR's FY 1982 requests propose no increases in full-time permanent staffing levels or program activity over FY 1981, FY 1980, or FY 1979.
- Our FY 1982 requests would hold our budget increase to \$168,000 or 9.2%. Hence we would be carrying out the guideline calling for absorption of some of the impact of inflation as is contemplated by OMB's budget planning ceilings.
- Of the \$168,000 increase requested, costs fixed by Congress and others account for \$163,000 (a change in our SLUC payment to GSA due to a new building lease amounts to \$138,000), and costs fully controlled by ACIR account for only \$5,000. Once again, the \$5,000 requested for discretionary purposes amounts to less than 1% of FY 1981 appropriated funds, well below the rate of inflation. In constant dollars, the amount of our appropriation within ACIR's control would decrease.

Despite the fact that we are not contending for full-time permanent staff increases or new programs, we believe the following descriptions of work contemplated for the next several years sustain that ACIR is continuously dealing with cutting-edge issues that are very important to our federal system and that our productivity is high. In fact, for reasons to be cited, events could well cause our value and influence to be at a new peak during FY 1981, FY 1982, and perhaps beyond.

THE RESEARCH WORK PROGRAM OUTLOOK FOR FY 1982

In former Director McIntyre's letter providing Presidential policy guidance for preparation of FY 1982 budget requests, the key paragraph states that the

President's objectives are a "leaner federal government, one that does not attempt to carry out responsibilities that are performed better by individuals, families, state and local governments, or other institutions."

To a degree that is unsurpassed by any other agency or institution we know of, ACIR is the federal system's lighthouse and foremost instrument for accomplishing the devolution of responsibilities from the federal government to state and local governments and private parties. This has been true for some time, but work that is being completed at ACIR in FY 1980 has substantially expanded our knowledge base and leadership capability that can assist the Executive Branch, Congress, state and local governments, and other parties to make progress toward these objectives.

The foregoing statement refers to ACIR's quite monumental study of The Federal Role in the Federal System: The Dynamics of Growth. This study will comprise 11 volumes, seven of which are case studies that probe how the federal role began and grew in seven functional areas, and four of which explore the political, judicial, and fiscal environment and breakdown of the constraints that have allowed explosive growth of roles. Our Commission, on June 19 and 20, 1980, adopted a summary conclusion that the federal system is "overloaded" and that it must be "decongested." The Commissioners then adopted six recommendations that identify specific approaches for decongesting the federal aid system, one of which is devolution to state and local governments and the private sector, and some basic reforms of our federal system that they believe are meritorious.

As attachments we are supplying the first volume of this series entitled, A Crisis of Confidence and Competence. On page 108 the content of nine of the remaining ten volumes is disclosed; the final volume being the report on the hearing ACIR conducted on the federal role. We are also appending a draft chapter that sets forth the Commission's six recommendations.

Our Commission, at its January 1981, meeting, adopted a motion which stated that the staff's highest priority shall be assisting the Congress, the new Administration, and state and local governments in their efforts to decongest the federal aid and regulation system. We expect this work to dominate our work program through FY 1982 and probably beyond.

At the same time, we will be proceeding on other research and implementation projects authorized by the Commission. This current work program includes:

- Federal Mandates;
- Jails: Intergovernmental Dimensions of a Local Problem;
- State Severance Taxation of Energy and Mineral Resources;
- Financing Local Governments in the 80s;

- Interstate Fiscal Capacity Equalization through the Federal Aid System;
- HUD-ACIR State and Local Government Financial Management Improvement Project; and
- HUD-ACIR-NAPA State Assistance to Distressed Communities Project.

Meanwhile, four out of the five projects that we identified last year as composing our FY 1980 work program have been substantially completed. These subjects were "The Federal Role in the Federal System," "The Servicing and Financing Roles of State and Local Governments," "Future Forces Affecting American Federalism," and "Payments in Lieu of Taxes on Federally Owned Urban Property."

#### FUTURE IMPLEMENTATION ACTIVITIES

The ACIR implementation program encompasses a broad range of monitoring, technical assistance, and information activities at both the federal and state levels.

Current activities can be grouped under four general categories: monitoring and providing assistance to Congressional and Administration efforts to improve the federal grant-in-aid system, with particular emphasis on the proposed "Federal Assistance Reform Act of 1980" and specific grant consolidation measures; collecting information and providing technical assistance with respect to state intergovernmental advisory agencies (ACIRs), state and local financial management improvements, and state efforts to aid distressed communities; conducting an implementation research project focusing on OMB's Circular A-102 and the financial management of federal pass-through funds; and providing information about ACIR's work and recommendations by disseminating our reports and other work products to the media, public officials, citizens, academicians, and others interested in intergovernmental relations.

With respect to the future directions of the ACIR implementation program, we anticipate continuing our work in the areas of federal grant reform, consolidation, and management practices. In addition, a series of roundtables focusing on issues, problems, and opportunities associated with the formulation and implementation of federal assistance policy is being conducted by ACIR in cooperation with the Office of Management and Budget. These roundtables are funded by various federal agencies.

We also envision a significant expansion of our information reporting and technical assistance activities in the areas of regulatory reform, sunset legislation, federal and state mandates and fiscal notes, pension reform, tax and expenditure limitations, state financial management im-

provements, state ACIRs, state initiatives to aid their distressed communities, and local government modernization.

Attention also will be directed toward several implementation research activities identified as very timely, short-term, highly visible, and practically oriented projects. Among the subjects to be addressed are an update of our earlier report on city financial emergencies; a follow-up to our state mandates report, analyzing recent experiences with reimbursement procedures; a review of ACIR recommendations and model legislation to identify those which could be offered to state and local policy-makers as guides for reducing or controlling governmental costs; and an examination of how the nation's press treats intergovernmental issues and problems in light of its role as an important conditioner of public attitudes and opinions.

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## COST ANALYSIS OF 1982 BUDGET

A comparative analysis of FY 1980, 1981, and 1982 figures shows how three items not entirely under agency control account for the majority of the agency's budget and its annual increases.

The figures in the table below are determined by dividing the obligations incurred by the ACIR appropriation for the fiscal year. It should be noted that in FY 1976 ACIR had approximately \$250,000 under discretionary control and that, as indicated below, the figures for the three fiscal years covered are \$216,000 for FY 80, \$213,000 for FY 81, \$218,000 for FY 1982.

<u>Expenditures (in \$000s)</u>	<u>FY 1980</u>		<u>FY 1981</u>		<u>FY 1982</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
(APPROPRIATION).....	(\$1,704)		(\$1,822)		(\$1,990)	
Personnel Costs	\$1,210	71.0	\$1,288	70.7	\$1,320	66.3
Permanent Positions.....	(1,048)		(1,107)		(1,128)	
Other than permanent.....	( 5)		( 19)		( 12)	
Other personnel compensation....	( 4)		( 7)		( 10)	
Special personal services pay....	( 68)		( 60)		( 70)	
Civilian personnel benefits.....	( 85)		( 95)		( 100)	
Standard Level User Charges	138	8.1	144	7.9	282	14.2
Rent, Communications, and Utilities	140	8.2	177	9.7	170	8.5
	_____	_____	_____	_____	_____	_____
TOTALS EXPENDITURES, AND AS A PERCENT OF APPROPRIATION..	\$1,488	87.3	\$1,609	88.3	\$1,772	89.0

OMB INITIAL SUBMISSION

BUDGET REQUEST FOR FISCAL YEAR 1982

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

BUDGET REQUEST AND JUSTIFICATION FOR  
FISCAL YEAR 1982

1981	Salaries and Expense Appropriation	\$1,750,000	
	(pending)		
	Proposed Civilian Pay Cost		
	Supplemental	72,000	
	Indicated Change		\$168,000
1982	Salaries and Expense Appropriation Request		\$1,990,000

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Federal Funds

General and special funds:

## Salaries and Expenses

For expenses necessary to carry out the provisions of the Act of September 24, 1959, as amended (73 Stat. 703-706), [\$1,750,000] of \$1,990,000 which not to exceed \$2,500 may be used for meals at Commission meetings. (Independent Agencies Appropriations Act, 1980.)

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

(Narrative for printing)

## SALARIES AND EXPENSES

The Advisory Commission on Intergovernmental Relations is an independent, bipartisan body which attempts to identify and analyze the causes of intergovernmental conflicts, and recommends ways of strengthening and improving the American federal system. The 26-member Commission includes representatives of the executive, legislative, and administrative branches of all levels of government--Federal, state, and local--as well as representatives of the general public.

The Commission and its staff examine Federal and state programs having an intergovernmental aspect. Proposed legislation is reviewed to determine its overall effect on the federal system. The Commission also identifies emerging problems of Federal-state-local relations.

The Commission makes recommendations concerning the allocation of responsibilities and revenues among the various levels of government. The recommendations and published reports growing out of the Commission's work are submitted to the executive and legislative branches of Federal, state, and local governments for appropriate action.

Continuing and annual projects of the Commission include the monitoring of the general revenue sharing effort, polling the changing public attitudes on government and taxes, surveying state and local finances, monitoring the legislation of state and local governments, cataloging federal grants-in-aid, and providing educational and technical assistance to the Federal, State, and local governments with regard to Commission recommendations.

Non-recurring projects currently under Commission study are the assignment of servicing functions among and between the various levels of government; comparing federalism as practiced in Germany, Australia, Canada, and the United States; payments-in-lieu of taxes on Federally owned urban property; the status of local discretionary authority in the 50 states; development of summary information on state aid to distressed communities; and preparation of a catalog of candidates for consolidation of federal grant programs.

Congressional appropriations finance the personnel and personnel-related expenses incurred in the basic day-to-day operation of the Commission.

The Commission receives funds from other Federal agencies for special projects carried out by the Commission pursuant to contracts with these agencies. Each contract is charged for a share of the Commission's overhead.

Current research being conducted under interagency contracts with the Department of Housing and Urban Development involves developing and implementing model state financial management programs, the assignment of functions among the various levels of government, and state aid to distressed urban areas.

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## STANDARD FORM 300

July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-107

11

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
SALARIES AND EXPENSES  
THROUGH SEPTEMBER 30, 1980

## Program and financing (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-0100-0-1-806			
<b>Program by activities:</b>			
<b>Direct Program:</b>			
Administrative expenses (total direct program costs, funded)...	1,707	1,852	1,988
Change in selected resources (Undelivered orders).....	22	...	32
Total direct obligations.....	1,729	1,852	2,020
<b>Reimbursable program:</b>			
1. PILOT Study (HUD).....	23	...	...
2. Financial Manage (HUD).....	405	314	...
3. Urban Policy (HUD).....	50	...	...
4. Compliance Project (HUD).....	49	...	...
Total reimbursable program costs, funded.....	527	314	...
Change in selected resources (Undelivered orders).....	-37	-314	...
Total reimbursable obligations...	490	...	...
10.0001 Total obligations.....	2,219	1,852	2,020
<b>Financing:</b>			
Offsetting collections from:			
11.0001 Federal funds.....	-465	-27	-27
14.0001 Non-Federal sources.....	-29	-3	-3
22.4001 Unobligated balance transferred from other accounts*.....	-26	...	...
25.0001 Unobligated balance lapsing...	4	...	...
39.0001 Budget authority.....	1,704	1,822	1,990
<b>Budget authority:</b>			
40.0001 Appropriation.....	1,704	1,750	1,990
44.2001 Supplemental for civilian pay raises.....	...	72	...
<b>Relation of obligations to outlays:</b>			
71.0001 Obligations incurred, net.....	1,725	1,822	1,990
72.4001 Obligated balance, start of year	580	565	251
74.4001 Obligated balance, end of year	-565	-251	-283
77.0001 Adjustments in expired accounts	-24	...	...
90.0001 Outlays.....	1,717	2,066	1,956
91.2001 Outlays from civilian pay raise supplemental.....	...	70	2
*Includes \$26,000 transferred from the discontinued Consolidated Working Fund.			
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## STANDARD FORM 300

July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

12

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
SALARIES AND EXPENSES  
THROUGH SEPTEMBER 30, 1980

## OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-0100-0-1-806			
Direct obligations			
Personnel compensation:			
111.101 Permanent positions.....	1,000	1,107	1,128
111.301 Positions other than permanent..	3	19	12
111.501 Other personnel compensation...	5	7	10
111.801 Special personal services payments.....	72	60	70
Total personnel compensation..	1,080	1,193	1,220
112.101 Personnel benefits: Civilian...	89	95	100
121.001 Travel and transportation of persons:			
121.101 Staff Travel.....	17	17	15
121.201 Commission Travel.....	22	25	25
121.301 Invitation Travel.....	4	7	6
122.001 Transportation of Things.....	11	10	15
123.101 Standard level user charges...	138	144	282
123.201 Communications, utilities, and other rent.....	140	177	170
124.001 Printing and reproduction.....	93	68	88
125.001 Other services.....	88	85	70
126.001 Supplies and materials.....	36	22	24
131.001 Equipment.....	11	9	5
Total direct obligations.....	1,729	1,852	2,020
Reimbursable obligations:			
211.301 Personnel compensation: Posi- tions other than permanent..	98	...	...
212.101 Personnel benefits: Civilian...	8	...	...
221.001 Travel and transportation of persons.....	15	...	...
223.201 Communications, utilities, and other rent.....	60	...	...
225.001 Other services.....	309	...	...
Total reimbursable obligations	490	...	...
999.001 Total obligations.....	2,219	1,852	2,020
	(Memo cast: 21.5)	(Memo cast: 8)	(Memo cast: 4.9)

GPO: 1971 O-462-277

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
SALARIES AND EXPENSES  
THROUGH SEPTEMBER 30, 1980

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code	Function	Line No.	Def.		1980 actual	1981 estimate	1982 estimate
			(D) (I)	(S) (N)			
55-0100-0-1-806							
<b>A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS</b>							
Budget authority	806	40.00	D	N	1,704	1,750	1,990
	806	44.20	D	S	...	72	...
<b>Total</b> .....					<b>1,704</b>	<b>1,822</b>	<b>1,990</b>
Outlays	806	90.00			1,717	2,066	1,956
	806	91.20			...	70	2
<b>Total</b> .....					<b>1,717</b>	<b>2,136</b>	<b>1,958</b>
Memorandum entries:							
Appropriation to liquidate contract authority .....							
Limitations:		9					
		9					
		9					
		9					

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-0100-0-1-806			

B. DISTRIBUTION OF OUTLAYS

	Line code	19 80 actual	19 81 estimate	19 82 estimate
From new authority—current.....	311	1,205	1,571	1,707
From new authority—permanent.....	312			
From obligated balances.....	313	486	565	251
From unobligated balances.....	314	26	...	...
From new appropriations to liquidate contract authority (memo entry).....	315	( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code	19 80 actual	19 81 estimate	19 82 estimate
Budget authority	806	1	6313-24	1,704	1,822	1,990
		1				
		1				
		1				
		1				
		1				
		1				
		1				
Total.....				1,704	1,822	1,990
Outlays	806	2	6313-24	1,717	2,136	1,958
		2				
		2				
		2				
		2				
		2				
		2				
		2				
Total.....				1,717	2,136	1,958

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Case 180  
Read instructions  
Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
SALARIES AND EXPENSES  
(Personnel Summary)  
THROUGH SEPTEMBER 30, 1980

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-0100-0-1-806			
Total number of permanent positions...	35	36	36
Full-time equivalents of other positions.....	5	2	3
Average paid employment.....	40	38	39
Average IR grade.....	12.40	12.60	12.70
Average IR salary.....	\$27,849	\$31,476	\$32,106
Average salary of ungraded positions..	...	...	...
	(Memo cont: 2L)	(Memo cont: 3)	(Memo cont: 4,5)

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## SALARIES AND EXPENSES

THROUGH SEPTEMBER 30, 1980

## Current Services Estimates (in thousands of dollars)

Identification code 55-0100-0-1-806	Func tion	Line No.	G/N	1981 Current Services Base	1982 Current Services Est.
Budget authority	806	40.00	N	1,750	1,990
	806	44.20	N	72	...
Total.....				1,822	1,990
Outlays	806	90.00	N	2,066	1,956
	806	91.20	N	70	..2
Total.....				2,136	1,958

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## SALARIES AND EXPENSES

THROUGH SEPTEMBER 30, 1980

## Agency Planning Document (in thousands of dollars)

Identification code	Func- tion	Line No.	G/N	1983	1984	1985	1986
55-0100-0-1-806							
Budget authority	806	40.00	N	1,990	1,990	1,990	1,990
Total.....				1,990	1,990	1,990	1,990
Outlays	806	90.00	N	1,990	1,990	1,990	1,990
Total.....				1,990	1,990	1,990	1,990

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

(Narrative for Printing)

Trust Funds:

## CONTRIBUTIONS

Contributions from State and local governments and nonprofit organizations are used to strengthen the Commission's clearinghouse, information, and policy education services to state and local governments and to improve intergovernmental coordination and relations. Specific items financed by this account include the Commission's quarterly publication, Intergovernmental Perspective; summaries of full Commission reports making up the In Brief series of ACIR publications; and reprints of popular out-of-print but up-to-date Commission reports.

In 1977, the Commission returned to seeking contributions from state and local governments. The states are responding positively and a goal of \$100,000 has been established for 1981.

Type size:  
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Case 180  
Red ink reverse  
Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. A-11, Revised.  
500-101

19

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
TRUST FUND (CONTRIBUTIONS)  
THROUGH SEPTEMBER 30, 1980

Program and financing (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-8155-0-7-806			
<u>Program by activities:</u>			
Information, technical assistance and other services to state and local governments (total program costs, funded).....	102	139	100
Change in selected resources (Undelivered orders).....	3	...	...
10.00 Total Obligations.....	105	139	100
<u>Financing:</u>			
Offsetting collections from:			
21.40 Unobligated balance available, start of year.....	-65	-69	-30
24.40 Unobligated balance available, end of year.....	69	30	30
60.00 Budget authority (Permanent, indefinite).....	109	100	100
<u>Relation of obligations to outlays:</u>			
71.00 Obligations incurred, net.....	105	139	100
72.00 Obligated balance, start of period.....	34	9	9
74.00 Obligated balance, end of period.....	- 9	-9	-9
78.00 Adjustment in expired accounts..	-28	...	...
90.00 Outlays.....	102	139	100
(Memo cont: 31.6)	(Memo cont: 8)	(Memo cont: 8)	(Memo cont: 4.9)

GPO: 1971 O - 448-371

Type size:  
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Red underlines  
Case 210

STANDARD FORM 300  
July 1964, Bureau of the Budget  
Circular No. 4-11, Revised.  
500-101

20

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
TRUST FUND (CONTRIBUTIONS)  
THROUGH SEPTEMBER 30, 1980

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	19 80 actual	19 81 estimate	19 82 estimate
55-8155-0-7-806			
21.0 Travel and Transportation of persons.....	19	20	20
22.0 Transportation of Things.....	...	5	5
23.2 Communications, utilities, and other rent.....	1	...	...
24.0 Printing and reproduction.....	53	79	50
25.0 Other services.....	31	35	25
31.0 Equipment.....	1	...	...
99.0 Total obligations.....	105	139	100

(Memo cast: 21.5)

(Memo cast: 4)

(Memo cast: 4)

(Memo cast: 4.5)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
TRUST FUND (CONTRIBUTIONS)  
THROUGH AUGUST 31, 1980

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code	Function	Line No.	Def.	Leg.	1980	19 81	19 82
			(D)	(B)			
55-8155-0-7-806			Indef.	No leg.	actual	estimate	estimate
			(I)	(N)			
<b>A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS</b>							
Budget authority	806	60.00	I	N	71	100	100
<b>Total</b> .....					71	100	100
Outlays	806	90.00			89	128	100
<b>Total</b> .....					89	128	100
<b>Memorandum entries:</b>							
Appropriation to liquidate contract authority .....							
<b>Limitations:</b>							
		9					
		9					
		9					
		9					

Identification code	1980 actual	1981 estimate	1982 estimate
55-8155-0-7-806			

B. DISTRIBUTION OF OUTLAYS

	Line code			
From new authority-current	311			
From new authority-permanent	312			
From obligated balances	313	15	40	40
From unobligated balances	314	9	49	30
From new appropriations to liquidate contract authority (memo entry)	315	65	39	30
		( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	806	1	6313-24	71	100	100
		1				
		1				
		1				
		1				
		1				
		1				
Total				71	100	100
Outlays	806	2	6313-24	89	128	100
		2				
		2				
		2				
		2				
		2				
		2				
Total				89	128	100

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND  
CONTRIBUTIONS

THROUGH SEPTEMBER 30, 1980

## Current Services Estimates (in thousands of dollars)

Identification Code 55-8155-0-7-806	Func- tion	Line No.	G/N	1981 Current Services Base	1982 Current Services Est.
Budget Authority	806	60.00	N	100	100
Total.....				100	100
Outlays	806	90.00	N	121	100
Total.....				121	100

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND  
CONTRIBUTIONS

THROUGH SEPTEMBER 30, 1980

## Agency Planning Document (in thousands of dollars)

Identification code	Func- tion	Line No.	G/N	1983	1984	1985	1986
55-8155-0-7-806							
Budget Authority	806	60.00	N	100	100	100	100
Total.....				100	100	100	100
Outlays	806	90.00	N	100	100	100	100
Total.....				100	100	100	100

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
SALARIES AND EXPENSES

	80	81	82
55-0100-0-1-806			
THROUGH SEPTEMBER 31, 1980			
Executive Level V.....	1	1	1
Subtotal.....	1	1	1
Grades established by the Chairman comparable to GS grades			
IR-18.....	2	2	2
IR-16.....	2	2	2
IR-15.....	2	2	2
IR-14.....	5	5	5
IR-13.....	2	2	2
IR-12.....	5	7	7
IR-11.....	2	1	1
IR-10.....	1	1	1
IR-9.....	0	0	0
IR-8.....	4	4	4
IR-7.....	2	2	2
IR-6.....	7	5	5
IR-5.....	...	2	2
Subtotal.....	34	35	35
TOTAL PERMANENT POSITIONS			
TOTAL PERMANENT EMPLOYMENT, END OF YEAR.....	35	36	36

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## NUMBERS OF CIVILIAN PERSONNEL

THROUGH SEPTEMBER 30, 1980

	Number of Employees at End of Year					
	1980 Actual		1981 Estimate		1982 Estimate	
	Full-time in Permanent Positions	Total	Full-time in Permanent Positions	Total	Full-time in Permanent Positions	Total
Salaries and Expenses						
Administrative Expenses	35	42*	36	50*	36	51*
Salaries and Expenses						
Reimbursable Program...	...	5	...	2	...	...
Contributions Account...	...	...	...	...	...	...
<hr/>						
Total Agency Employment (Employment shown in budget schedules).....	35	47	36	52	36	51

\*Several Commission members out of a potential of 12 are paid a per diem salary for Commission business.

STAFF OF THE  
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
THROUGH SEPTEMBER 30, 1980

EXECUTIVE OFFICE

Anderson, Wayne F. (Executive Director)  
Byrne, Joanne G. (Secretary to the Executive Director)

ADMINISTRATIVE SERVICES

Steinko, Franklin A., Jr. (Budget and Management Officer)  
Fried, Esther (personnel Officer)  
Hahn, Thomas D. (Accountant)  
Jones, MacArthur C. (Duplicating Machine Operator)  
Kirkwood, Karen L. (Staff Assistant)  
Koch, Patricia A. (Librarian)  
Roberts, Diana (Production Manager)  
Ross, Ronald L. (Mail Room Supervisor)

TAXATION AND FINANCE

Shannon, F. John (Assistant Director)  
Ainsworth, Kenneth (Senior Resident of Public Finance)  
Calkins, Susannah (Senior Analyst)  
Clarke, Lavinia B. (Secretary)  
Davis, Albert (Analyst)  
Gabler, L. Richard (Senior Analyst)  
Myers, Will S. (Senior Analyst)  
Phillips, Ruthamae A. (Secretary to the Assistant Director)  
Tippett, Francis X. (Statistician)

GOVERNMENT STRUCTURE AND FUNCTION

Walker, David E. (Assistant Director)  
Beam, David R. (Senior Analyst)  
Colella, Cynthia C. (Analyst)  
Hahn, Evelyn M. (Secretary)  
McDowell, Bruce D. (Senior Analyst)  
Richter, Albert J. (Senior Analyst)  
Talley, Martha A. (Secretary)  
Behringer, Kathleen (Secretary)  
Schwalje, Lynn C. (Secretary to the Assistant Director)  
Monical, Carol J. (Analyst)

POLICY IMPLEMENTATION

Stenberg, Carl W. (Assistant Director)  
Adams, Harolyn D. (Secretary)  
Bunn, Elizabeth A. (Secretary to the Assistant Director)  
Mitchell, Michael C. (Federal Relations Associate)  
Roberts, Jane F. (State-Local Relations Associate)  
Weissert, Carol (Information Officer) (time sharing)  
Becker, Stephanie (Information Officer) (time Sharing)

**STATEMENT OF RECEIPTS—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**  
 (Department or agency)

(In thousands of dollars)

Receipt symbol	Receipt Account Title	Source category	Function Type	19 80 actual	19 81 estimate	19 82 estimate	Comments
	55X8.55.1 Contributions		G 806	71	100	100	
				THROUGH AUGUST 31, 1980			
				Contributions, honoraria, and gifts from state and local governments and nonprofit organizations and private foundations.			

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND  
55X8155STATE CONTRIBUTIONS  
FY 1980  
THROUGH SEPTEMBER 30, 1980

<u>STATE</u>	<u>AMOUNT</u>
Florida	\$ 3,000
Hawaii	1,000
Illinois	4,000
Indiana	6,000
Kentucky	2,000
Maine	2,000
Massachusetts	3,000
Michigane	6,000
Minnesota	2,000
Missouri	2,000
Montana	1,000
New Mexico	2,000
New York	5,000
Ohio	4,000
Pennsylvania	4,000
Rhode Island	1,000
South Dakota	1,000
Tennessee	4,000
Vermont	1,000
Virginia	2,000
West Virginia	2,000
Wisconsin	2,000
Wyoming	1,000
	<hr/>
TOTAL	\$ 61,000

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND  
55X8155HONORARIUMS  
FY 1980  
THROUGH SEPTEMBER 30, 1980

<u>PAYEE</u>	<u>AMOUNT</u>
Portland State University	\$ 100.00
Community Collaborators	200.00
Municipal Association of South Carolina	200.00
University of South Carolina	150.00
Harry S. Truman Scholarship Foundation	10,800.00
University of Wisconsin	190.45
Texas Municipal League	200.00
	<hr/>
TOTAL	\$11,840.45

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES  
55.00100REIMBURSEMENTS BY OBJECT CLASSIFICATION  
FY 1980  
THROUGH SEPTEMBER 30, 1980OBJECT CLASSIFICATION

<u>PAYEE</u>	<u>AMOUNT</u>	
<u>21.0 Travel &amp; Transportation of Persons</u>		
University of Missouri	\$ 222.00	
Texas Municipal League	71.07	
F. John Shannon	44.93	
Franklin Steinko	44.59	
National Railroad Passenger Corp.	27.50	\$ 410.09
<u>22.0 Transportation of Things</u>		
University of North Carolina	31.25	
Michigan Tobacco & Candy Distributors	68.75	100.00
<u>23.0 Rent, Communications &amp; Utilities</u>		
Thomas Hahn	280.00	
F. John Shannon	280.00	
Carl Stenberg	280.00	
Ronald Ross	280.00	
Jane Roberts	280.00	
Franklin Steinko	280.00	1,680.00
<u>24.0 Printing &amp; Reproduction</u>		
Forty-Niner Shops, Inc.	75.00	
State of Missouri	114.81	
American University	21.60	
NOVA University	200.00	
University of Arizona	42.75	
Franklin Steinko	100.00	
University of Maine	36.00	
Loyola University	11.00	
National Bank of Washington	27.50	
Housing & Urban Development	25,000.00	25,627.66

<u>25.0 Other Services</u>		
The Washington Monitor	541.56	
University of Miami, Florida	106.99	648.55
<u>26.0 Supplies &amp; Materials</u>		
The State Planning Council	20.95	20.95
<u>31.0 Furniture &amp; Equipment</u>		
David B. Walker	180.00	<u>180.00</u>
TOTAL		\$28,836.25

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES  
55.0100SUMMARY OF OVERHEAD WITHDRAWAL FROM THE  
REIMBURSABLE PROGRAM  
FY 1980

THROUGH SEPTEMBER 30, 1980

## AMOUNT WITHDRAWN FROM CONTRACTS

Local Financial Management Capacity Building Program (HUD)	\$35,447
Scorecard on State Performance (HUD)	12,287
Market Value of Federal Property (HUD)	1,498
A-102 Compliance Project - A study of the Passthrough of Intermediary Funding Agent (HUD)	10,140
Ways to Measure the State Urban Role (HUD)	162
TOTAL	<u>\$49,256</u>

AMOUNT CURRENTLY SET ASIDE FOR REVERSION

\$49,256

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## REIMBURSABLE PROGRAM

NEW GRANTS

FY 1980

THROUGH SEPTEMBER 30, 1980

AGENCY: U.S. Department of Housing and Urban Development.

AMOUNT: \$49,140.00

TIME FRAME: October 1, 1979, to September 30, 1980.

PURPOSE: To look at the actual problems local governments are having with applications, performance & financial reporting requirements associated with the pass-through on intermediary funding agent.

STAFF: One part-time contractor  
One part-time secretary

<u>ALLOTMENTS:</u>	Object <u>Classification</u>	<u>FY 1980</u>
	11.3 Salaries.....	\$22,492
	12.1 Benefits.....	2,145
	21.0 Travel.....	\$ 4,307
	23.0 Rent, Communications and Utilities.....	10,156
	25.0 Other Services.....	585
	TOTAL	\$ 39,685

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## REIMBURSABLE PROGRAM

NEW GRANTS  
FY 1980

THROUGH SEPTEMBER 30, 1980

AGENCY: U.S. Department of Housing and Urban Development.AMOUNT: \$25,560.00TIME FRAME: January 25, 1980, to September 25, 1980.PURPOSE: To estimate the current market value of Federally owned property in the United States, estimates will be developed by place and by Federal bureau and usage categories. Finally, the distribution of the current value of Federally owned properties will be analyzed to determine its impact on the economic development of the place in which the property is located.STAFF: One part-time contractor  
One part-time secretary

<u>ALLOTMENTS:</u>	Object <u>Classification</u>	<u>FY 1980</u>
	21.0 Travel.....	\$ 1,303
	23.0 Rent, Communications and Utilities.....	1,498
	25.0 Other Services.....	19,777
	<b>TOTAL</b>	<b>\$ 22,578</b>

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## REIMBURSABLE PROGRAM

NEW GRANTS  
FY 1980

THROUGH SEPTEMBER 30, 1980

AGENCY: U.S. Department of Housing and Urban Development.

AMOUNT: \$78,369.00

TIME FRAME: December 1, 1979, to September 15, 1980.

PURPOSE: To test the feasibility of using matrix indicators to assess the States' performance.

STAFF: One part-time contractor  
One part-time secretary

<u>ALLOTMENTS:</u>	Object Classification	FY 1980
	21.0 Travel.....	\$ 183
	23.0 Rent, Communications and Utilities.....	2,009
	25.0 Other Services.....	28,441
		<hr/>
	TOTAL	\$ 30,633

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## ALL ACCOUNTS

## TRAVEL EXPENSES\*

FY 1980

THROUGH SEPTEMBER 30, 1980

<u>ACCOUNT</u>	<u>TOTAL</u>	<u>STAFF TRAVEL</u>	<u>COMMISSION TRAVEL</u>	<u>INVITATIONAL TRAVEL</u>
Salaries and Expenses 55.00100	\$57,796	\$31,526	\$22,473	\$ 3,797
Trust Fund 55.8155	19,175	19,175		
	<hr/>	<hr/>	<hr/>	<hr/>
TOTALS	\$76,971	\$50,701	\$22,473	\$ 3,797

\*The amounts presented above represent gross expenditures through 9/30/80.

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## TRUST FUND 55X8155

TRAVEL AND EXPENSE REIMBURSEMENTS FY 1980  
THROUGH SEPTEMBER 30, 1980

<u>PAYEE</u>	<u>AMOUNT</u>
Portland State University	\$ 244.00
University of North Carolina	50.00
National Association of Regional Councils	213.49
A.S.P.A.	131.70
Southern Growth Policies Board	151.00
Will Myers	158.00
University of Georgia	200.00
T.A.R.P. Institute, Inc.	25.00
Public Securities Association, Inc.	355.55
Assembly of Governmental Employees	194.00
University of Mississippi	332.05
Academy for Contemporary Problems	526.00
State of West Virginia	195.00
Charles F. Kettering Foundation	329.09
Indiana University	14.00
Wichita State University	325.66
University of South Carolina	295.86
Multnomah County, Oregon	15.00
Missouri Municipal League	50.00
Indiana University	18.00
N.O.V.A. University	250.00
Center for Urban Environmental Studies	120.00
I.C.M.A.	507.30
American Petroleum Institute	265.00
National Conference of State Legislatures	29.00
University of Southern California	30.00
A.S.P.A.	168.00
American University	19.20
New England Municipal Center	254.68
University of South Carolina	170.00
N. Y. City Council on Economic Education, Inc.	134.35
Municipal Finance Officers Assopciation	195.50
Abt Associates, Inc.	6.82
Environmental Recycling, Inc.	134.86
O.P.M.	78.19
N.C. League of Municipalities	15.00
Commonwealth Trading Bank of Australia	19.65
University of Wisconsin	259.05
Will Myers	184.00

Indiana University	\$	40.00
The Kroger Company		19.80
State of Oklahoma		12.50
I. B. M.		989.42
Council of State Governments		500.00
N. A. P. A. Foundation		488.53
National Bank of Washington		70.00
		\$ 8,784.25

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## SALARIES AND EXPENSES

## INVITATIONAL TRAVEL

FY 1980

THROUGH SEPTEMBER 30, 1980

<u>PAYEE</u>	<u>AMOUNT</u>	<u>FROM</u>	<u>PURPOSE</u>
G. Brown	\$ 259.87	Boston, Ma	Conference on Federal Grant Law
H. Monaghan	186.00	Boston, Ma	" "
A. Naftalin	304.65	Minneapolis, Mn	Hearing on "Federal Role in the Federal System"
D. Elazar	151.40	Philadelphia, Pa	" "
R. Kleine	205.00	Lansing, Mi	Hearing on State Revenue Losses from Cigarette Bootlegging
A. Hastings	23.90	Charlottesville, Va	ACIR's Fellowship Interview
R. Hero	229.29	Indianapolis, In	" "
L. Dzieza	21.53	Baltimore, Md	" "
D. Webber	131.75	Philadelphia, Pa	" "
N. Cohen	626.00	San Francisco, Ca	" "
M. LoPresti	187.10	Roanoke, Va	" "
D. Dalton	113.25	New Brunswick, NJ	" "
J. Bay	223.84	Columbus, Oh	State ACIR's Critics Session
C. Griffiths	154.00	Harrisburg, Pa	" "
N. Spurgin	497.53	Austin, Tx	" "
G. Van Ostrand	337.20	Tallahassee, Fl	" "
R. Leach	144.25	Raleigh, NC	Meeting on Canadian Fiscal Federalism Study
 	<hr/>		
TOTAL	\$3,796.56		

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES  
DIRECT PROGRAM  
OBJECT CLASSIFICATION NET CHANGE JUSTIFICATION  
FY 1981-1982

<u>OBJECT CLASSIFICATION</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>NET CHANGE</u>
------------------------------	--------------------	--------------------	-----------------------

## Personnel Compensation:

11.1 Permanent Positions	1,107	1,128	+21
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Merit increases, changes in personnel, upward mobility, and normal step increases account for the change. It is currently estimated that FY 1981 personnel costs in this category will be higher than estimated here.

11.3 Positions other than permanent	19	12	-7
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This category covers our use part-time temporaries on regular staff and short-term temporary personnel to work on special projects such as the legal and mailing list updates.

11.5 Other personnel compensation	7	10	+3
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Normal overtime for nonprofessionals and payments for accumulated leave of those leaving the staff account for this amount.

11.8 Special personal services payments	60	70	+10
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The broader utilization of the best possible advisers, critics, "thinkers," and consultants with the year-old payment level, and the continued use of reimbursement project temporaries necessitates the increase.

TOTAL PERSONNEL COMPENSATION	1,193	1,220	+27
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## Personnel Benefits:

12.1 Civilian	95	100	+6
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Because there are increases in the salaries of personnel that receive fringe benefits, there will be an increase in benefit costs.

21.0 Travel and transportation of persons	49	46	-3
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Basically, Commission member travel will amount to \$25,000 (in

<u>OBJECT CLASSIFICATION</u>	<u>FY</u> <u>1981</u>	<u>FY</u> <u>1982</u>	<u>NET</u> <u>CHANGE</u>
part due to the fact that the Commission now holds one meeting each year outside of Washington); invitational travel for critics and applicants will total \$6,000; travel by the office of the Executive Director will approximate \$4,000; travel by staff of the taxation and finance section will be \$4,000; staff travel in the structure and function section will be \$4,000, and polciy implementation will utilize \$3,000.			
22.0 Transportation of things	10	15	+5

Increased rates and utilization of private shippers for all bulk shipments to state and local governments and public official meetings account for the increase in this account.

23.1 Standard level user charges	144	282	+138
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GSA has indicated that the renegotiation of the lease on the Vanguard building will result in an increase in excess of 100% for our office rental.

23.2 Communications, utilities, and other rent	177	170	-7
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A leveling off of postal increases and slower general rate increases indicate that this group of charges should begin to show moderate increases rather than the dramatic ones shown in budgets over the previous four years. The increase of \$11,000 is due to the higher rates mandated by GSA, USPS, etc, and for internal use of time sharing due to termination of contracts.

<u>Item</u>	<u>1980</u> <u>Act.</u>	<u>1981</u> <u>Est.</u>	<u>1982</u> <u>Est.</u>
GSA Federal Telephone Service	17.0	18.0	20.4
GSA Telephone Switchboard	12.0	13.0	17.0
GSA Motorpool	1.5	2.0	2.5
GSA Building Management Services	1.5	1.5	1.5
GSA Protective Service	4.3	4.7	5.2
GSA Parking	5.3	2.8	0.5
GSA Interior Maintenance	1.2	1.3	1.4
U.S. Postal Service	62.0	64.0	66.0
U.S. Public Health Service	1.2	1.4	1.7
C&P Telephone & Alterations	1.1	1.2	1.3
Lexitron Rental	6.2	6.2	6.2
Kodak Rental	14.3	14.5	14.5
Maintenance and Service Contracts	15.0	16.0	21.8
Service Bureau Corp.	...	30.4	10.0
TOTALS	143.1	177.0	170.0

<u>OBJECT CLASSIFICATION</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>NET CHANGE</u>
24.0 Printing and reproduction	68	88	+20
<p>GPO projected cost increases account for the change. The amount budgeted for FY 1981 is insufficient to cover anticipated costs.</p>			
25.0 Other services	85	70	-15
<p>The completion of the Congressionally assigned projects in FY 1981 and the fact that there is no contract research in hand for FY 1982 result in this substantial increase. The indicated amount for FY 1982 is in line with Commission expenditures prior to the Congressionally mandated work for a like amount of typesetting and other contract work.</p>			
26.0 Supplies and materials	22	24	+2
<p>We are building our supply inventories through scavenging and joint purchasing. Cyclical purchases of stationary, envelopes, and paper in bulk necessitate a moderate increase.</p>			
31.0 Equipment	9	5	-4
<p>The technological changes in word processing equipment and computer compatability mean that modifications on our second generation equipment are continually necessary. The life expectancy of of stand-alone low volume copies expires in FY 1981 and maintenance problems are already appearing. Normal wear and tear are also beginning to catch up with the Commission WP equipment, calculators, and typewriters.</p>			
99.0 Total Direct Obligations	1,852	2,020	168 <u>1/</u>

1/ The merging of the Consolidated Working Fund into the Salaries and Expense account will always make year-to-year comparisons of obligations almost meaningless due to the rise and fall of advancement and reimbursement-type contracts with other Federal agencies.

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## RESEARCH AND DEVELOPMENT ACTIVITIES\*

ALL ACCOUNTS  
(in thousands of dollars)

<u>Conduct of Research and Development Activity</u>	<u>Line Code</u>		<u>1980</u>	<u>1981</u>	<u>1982</u>
Applied Research	102				
Salaries & Expenses (55-0100-0-1-806)	102	B.A.	1,704	1,822	1,990
		Oblig.	2,219	1,852	2,020
		Outlays	1,717	2,136	1,958
Trust Funds (55-8155-0-7-806)	102	B.A.	109	100	100
		Oblig.	105	139	100
		Outlays	102	139	100
<hr/>					
APPLIED RESEARCH	102	B.A.	1,813	1,922	2,090
		Oblig.	2,324	1,991	2,120
		Outlays	1,819	2,275	2,058

\*It has been determined that the entire effort of the Commission is in the area of research and development and therefore the entire budget for both accounts is included and the need for a separate narrative is negated. It should also be noted that the Commission does not have any research facilities as defined by the National Science Foundation and, hence, the negative facilities report.

## FEDERAL TECHNICAL ASSISTANCE ACTIVITY

Agency SummaryAgency: Advisory Commission on Intergovernmental RelationsAppropriation or Fund Account Title: Salaries and ExpensesAppropriation of Fund Identification Code: 55-0100-0-1-806 & 55-8155-0-7-806

	Funding (Obligations) (in thousands of dollars)			Personnel Services (Man-years)		
	1980	1981	1982	1980	1981	1982
	actual	estimate	estimate	actual	estimate	estimate
Research and Demonstration (Policy Implementation)	250	265	275	6.0	6.0	6.0
<b>TOTALS</b>	<b>250</b>	<b>265</b>	<b>275</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## AGENCY NARRATIVE STATEMENT

## FEDERAL TECHNICAL ASSISTANCE ACTIVITY

AGENCY: Advisory Commission on Intergovernmental Relations

ACTIVITY: Policy Implementation

DESCRIPTION: Implementation of Commission recommendations at the Federal, state and local levels.

AUTHORIZATION: P.L. 86-380

OBJECTIVES: Legislative and administrative adoption of Commission recommendations by Federal, state and local governments. Improved government operations through intergovernmental cooperation.

USE AND USE RESTRICTIONS: None

ELIGIBILITY REQUIREMENTS: None

INTENDED BENEFICIARY: The Federal, state and local governments, and through them all citizens.

TYPES OF ASSISTANCE:

1. FUNDING: No
2. MANPOWER: No
3. INFORMATIONAL SERVICES: Yes

The information is prepared by the staff of the Commission and is distributed on a closely directed mass basis. It is then tailored to specific requests and situations for further impact in specific areas.

ACCOMPLISHMENTS: The direct impact of ACIR is difficult to measure with precision. Some legislative enactments clearly flow from Commission work. More frequently, actions are the result of a

convergence of numerous forces. Still, ACIR activities have clearly led to numerous state and local actions including adoption of indexation of the state income tax, state reimbursement to localities for state-imposed mandates, state oversight of Federal funds, state advisory commissions on intergovernmental relations, "circuit breaker" property tax relief, local government reorganization legislation, and others.

At the Federal level, ACIR impact is clearer. The Commission developed the Uniform Relocation Act, the Intergovernmental Cooperation Act, State and Local Fiscal Assistance Act, and Cigarette Bootlegging, among numerous other Federal legislation. ACIR also works with Federal agencies and departments interested in adopting Commission positions through changes in administrative procedures and rules.

REGULATION AND  
GUIDELINES:

None

RELATED TECHNICAL  
ASSISTANCE PROGRAMS:

None

RELATED NONTECHNICAL  
ASSISTANCE PROGRAMS:

None

FUTURE PLANS:

The FY 1981 budget request to OMB seeks subsistence staff and resources to carry this effort into the field and into more special situations with the requisite tailoring of the Commission's recommendations to meet individual state and local governmental needs.

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES  
55.0100EQUAL EMPLOYMENT  
THROUGH SEPTEMBER 30, 1980

Affirmative Action Plan: The ideal objective for ACIR is a staff that is racially, economically, sexually, and age balanced. Due to the low turnover on the staff, drastic changes in the composition of the staff do not take place. During FY 1980, the four vacancies on the staff were filled 67% by females and minorities and 33% by white males.

Through the use of our network of contacts and universities throughout the nation, we try to get the broadest range of applicants for openings possible, with special emphasis on recruitment from colleges having a predominant minority student body. In addition, referrals from the ACIR audience are also investigated. During FY 1979, recruitment through ethnic civic organizations was begun in an effort to specifically improve Hispanic, black, Amerindian, and Asian American representation. It is hoped that the use of our 15 temporary slots for the reimbursable program will allow the retention on minority and female staff for possible movement onto the permanent staff.

Level	Blacks		Hispanics		White		Asian Americans	
	M	F	M	F	M	F	M	F
Full-Time Permanent Professional	-	-	-	-	15	6	-	-
Temporary Professional	1	-	-	-	1	1	-	-
Part-Time Professional	-	-	-	-	-	2	-	-
Temporary Clerical	-	-	-	-	-	1	-	1
Junior Professional	1	-	-	-	-	1	-	-
Technician	1	-	-	-	-	-	-	-
Secretarial	-	5	-	-	-	6	-	-
Contractor-Professionals	-	-	-	-	3	2	-	-

Operating Costs: Because of the small size of the Commission and the overlapping of duties within the Administrative Services section, no records of time spent on EEOC activities in particular, and no separate accounts are maintained for EEOC expenditures. Less than 1% of the time of each of three EEOC coordinators is spent on EEOC. This involves fulfilling reporting requirements and attending meetings and keeping up to date on changes in rules and regulations.

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## ALL ACCOUNTS

## PERSONAL SERVICES

FY 1980

THROUGH SEPTEMBER 30, 1980

<u>Contractor</u>	<u>Date of Order</u>	<u>Amount</u> <u>Purpose</u>	<u>Time Frame</u>	<u>Account</u>
SALARIES AND EXPENSES				
EUSTACE DURRETT	10-19-79	\$ 1,530 Editorial services in connection with report on Regional Economic Comparisons.	To 4-7-80	5500100 SHANNON
ELIZABETH FLEATHER	11-2-79	\$ 1,530 Editorial Service in connection with report on Federal Flow of Funds.	To 9-30-80	5500100 SHANNON
FRANCES GLENDENING	11-13-79	\$ 1,096 Specifications, editing & proofreading of Fire Protection Case Study.	To 9-30-80	5500100 WALKER
KATHLEEN BEHRINGER	3-3-80	\$ 1,402 Secretarial, library, & publications assistance.	To 4-4-80	5500100 STEINKO
STEPHANIE BECKER	3-3-80	\$ 3,716 To replace information officer during maternity situation.	To 6-13-80	5500100 STENBERG
JUDITH FERGUSON	5-29-80	\$ 2,015 Editing & specifications for various reports.	To 9-30-80	5500100 STEINKO
CHRIS P. COOPER	7-28-80	\$ 1,335 Review of proposed legislation by Congress on restriction of state severance taxes.	To 8-22-80	5500100 SHANNON
ANNE H. HASTINGS	8-18-80	\$18,000 Analyze field studies as necessary on fiscal and functional responsibilities between levels of government as mandated by Congress.	To 8-17-80	5500100 WALKER
MAVIS M. REEVES	9-1-80	\$ 6,000 Complete first draft of a volumn on "The States' Stance in the System."	To 1-31-81	5500100 WALKER
Josephine Scheiber	8-14-80	\$ 1,096 Specivications, editing and proofingreading of the PILOT report.	To 9-30-80	5500100 SHANNON

ROBERT LUCKE	8-25-80	\$18,000	To 8-28-81	5500100
Analyze & investigate field studies as may be necessary to complete assigned projects.				SHANNON
CHARLES RICHARDSON	9-15-80	\$20,336	To 9-18-81	5500100
Analyze & investigate field studies as may be necessary to complete assigned projects.				SHANNON
JACOB JAFFEE	9-11-80	\$ 1,000	To 10-31-80	5500100
Editorial services on Payment In Lieu of Taxex in Urban Areas report.				SHANNON
RICHARD LEACH	8-22-80	\$ 3,500	To 9-30-80	5500100
Shall prepare a comparative study of federalism on four countries (United States, Australia, Canada, & West Germany).				SHANNON
REIMBURSABLE PROGRAM				
JOAN TOWLES	10-1-79	\$ 6,000	To 12-31-79	55X3900
Conduct & completion of PILOT Study.				SHANNON
WILLIAM COLMAN	12-2-79	\$ 3,650	To 12-31-79	55X3900
Complete three state briefings of state officials on State Initiatives in Local Financial Management Capacity Building Project.				STENBERG
THOMAS KIMMEL	1-1-80	\$ 4,160	To 6-15-80	55X3900
Research, analysis , & writing in connection with commissions State Initiatives in Local Financial Management Capacity Building Project.				STENBERG
JOAN TOWLES	2-19-80	\$ 2,000	To 3-17-80	55X3900
Conduct & completion of PILOT Study.				SHANNON
WILLIAM COLMAN	4-4-80	\$ 3,650	To 6-30-80	55X3900
Complete ten state briefings of state officials on State Initiatives in Local Financial Management Capacity Building Project.				STENBERG
ROBERT STEIN	4-22-80	\$ 1,069	To 9-30-80	55X3900
Computer runs of federal property analysis.				WALKER
NEAL COHEN	8-4-80	\$18,000	To 8-3-81	55X3900
Assist in developing & implementing programs and procedures for aquainting policy-makers with the finding and recommendations of the Commission.				STENBERG

## TRUST FUND (CONTRIBUTIONS)

ULRIKE RICHARDSON	1-1-80	\$ 2,804	To 3-31-80	55X8155
Library assistance services.				
				STEINKO
KATHLEEN BEHRINGER	1-1-80	\$ 1,495	To 3-31-80	55X8155
Library assistance services.				
				STEINKO
AARON WILDAVSKI	1-8-80	\$ 5,000	To 5-15-80	55X8155
Examine the historical dynamics leading to the present				
shape & scope of fiscal, judicial, or political				
federalism.				
				WALKER
LEWIS KADEN	1-15-80	\$ 5,000	To 5-15-80	55X8155
Examine the historical dynamics leading to the present				
shape & scope of fiscal, judicial, or political				
federalism.				
				WALKER
GEORGE BREAK	1-22-80	\$ 5,000	To 5-15-80	55X8155
Examine the historical dynamics leading to the present				
shape & scope of fiscal, judicial, or political				
federalism.				
				SHANNON

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

## ALL ACCOUNTS

PUBLICATIONS COST SUMMARY  
THROUGH SEPTEMBER 30, 1980, INCLUDING ESTIMATES

<u>No.</u>	<u>Title</u>	<u>Pages</u>	<u>Type</u>	<u>Press Run</u>	<u>GPO Price</u>
M-117	The Inflation Tax: The Case for Indexing Federal and State Income Taxes.....	60	1,025	10,000	2,515
M-118	Recent Trends in Federal and State Aid to Local Governments.....	108	2,861	11,700	
A-73	Citizens Participation in the American Federal System.....	380	8,064	7,500	11,107
A-74	Regional Growth: Historic Perspective.....	156	5,034	10,000	4,264e
A-75	Regional Growth: Flows of Federal Funds, 1952-76.....	156	4,082	7,500	3,864e
A-77	A Crisis of Confidence and Competence....	164	5,027	12,500	
A-79	Public Assistance-The Growth of a Federal Function.....	140	2,837	10,000	6,152e
A-84	Federal Involvement in Libraries: The Dynamics of Growth.....	52	1,317	7,500	
A-85	The Federal Role in Local Fire Protection.....	140	2,837e		
A-86	Hearings on the Federal Role in the Federal System.....	140	2,451e		
A-	State and Local Pension Systems: Federal Regulatory Issues.....	76e	1,652e		
A-	The State of State-Local Revenue Sharing.	76e	1,393e		
M-	State Administrators' Opinions on Administrative Change, Federal Aid, Federal Relationships.....	68e	1,306e		
M-	Central City-Suburban Fiscal Disparity: City Distress, 1977.....	100e	2,548e		
M-	Significant Features of Fiscal Federal- ism: 1979-80 Edition	200e			
S-9	Changing Public Attitudes on Government and Taxes--1980.....	44	500	11,675	
214	<i>In Brief: The Federal</i>				
5-3	Intergovernmental Perspective	24	905	22,500	6,373
5-4	Intergovernmental Perspective	24	831	22,500	6,254
6-1	Intergovernmental Perspective	24	784	28,000	8,387
6-2	Intergovernmental Perspective	32	1,083	28,000	10,520
6-3	Intergovernmental Perspective	24	824	22,500	

## ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

PUBLICATION COST SUMMARY  
PUBLICATIONS RELEASED DURING FY 1980

THROUGH SEPTEMBER 30, 1980, INCLUDING ESTIMATES

Total Number of Regular Reports Published.....	16
Total Pages in One Set of 16 Publications.....	1,920
Total Number of Copies Printed by GPO.....	155,375
Average Number of Pages per Publication.....	116
Average Press Run per Publication.....	9,558
Total Typesetting Costs.....	\$45,834
Total Printing Costs.....	\$100,999
Average Typesetting Cost per Publication .....	\$2,869
Average Printing Cost per Publication.....	\$6,332
Average Typesetting Cost per Printed Page.....	\$25.02
Average Printing Cost per Page.....	\$55.23
TOTAL AVERAGE COST PER PUBLICATION.....	\$9,228.75

WEDNESDAY, MAY 6, 1981.

## FEDERAL ELECTION COMMISSION

## WITNESSES

COMMISSIONER JOHN WARREN MCGARRY, CHAIRMAN

COMMISSIONER FRANK P. REICHE, VICE CHAIRMAN, CHAIRMAN OF  
THE TASK FORCE ON THE BUDGET

B. ALLEN CLUTTER, STAFF DIRECTOR

CHARLES N. STEELE, GENERAL COUNSEL

Mr. ROYBAL. The committee will come to order.

The committee is in session this afternoon to hear from the Federal Election Commission regarding their budget request for fiscal year 1982.

Will you please proceed, Mr. McGarry?

Mr. MCGARRY. Thank you, Mr. Chairman.

Mr. Chairman, I am John Warren McGarry, Chairman of the Federal Election Commission.

With me is Vice Chairman Frank Reiche, who is Chairman of the Commission's Budget Task Force. Vice Chairman Reiche will be presenting our testimony today.

In addition, Mr. Allen Clutter, our Staff Director, and Mr. Charles Steele, our General Counsel, are with me today. At the conclusion of Mr. Reiche's testimony, all of us will be available to answer your questions.

The Commission is requesting an appropriation of approximately \$11.1 million. While I will leave the detailed explanation of this request to Mr. Reiche, I would like to make a very brief statement about the request.

The Commission's request for \$11.1 million represents an absolutely bare bones budget for the agency. Without that amount, the Commission's ability to perform its basic statutory mandate would be seriously impaired.

Please keep in mind in reviewing our request that there are many cost increases over which the Commission has absolutely no control. Our rent has increased by over 50 percent, our reproduction and microfilming costs have risen substantially, and our employees receive cost of living raises each October. The Commission can do nothing to avoid or reduce these cost increases.

In addition, many of the activities on which the Commission spends money produce income that goes to the General Treasury. For example, many publications produced by the Commission are sold; in addition, the Public Records Office charges for the reproduction of candidate and committee reports. There are other areas where Commission personnel and resources are used to produce revenue which goes directly to the U.S. Treasury. The Federal

Election Commission derives no benefit whatever from these revenues.

Thank you, Mr. Chairman, for the opportunity to make this preliminary statement.

I now present to you the Vice Chairman of the Federal Election Commission and the Chairman of the Budget Task Force, Mr. Frank Reiche, who will deliver our budget request testimony.

Before closing, I would like to extend an invitation to you, Mr. Chairman to other members of the committee, and to the committee staff, to visit our facilities and to examine our operations. I can assure you you would be most welcome at any time.

I now present to you the Vice Chairman of the Commission and the Chairman of the Task Force on the Budget, Frank Reiche.

#### SUMMARY OF REQUEST

Mr. REICHE. On behalf of the Federal Election Commission I want to thank the committee for this opportunity to present to you our fiscal 1982 appropriation request.

As you know, we submitted concurrently to Congress and the Office of Management and Budget (OMB) as we are required to do by law, an original budget request in the amount of \$13,251,212. Subsequently, on February 16 of this year, acting in response to pleas for fiscal restraint on the part of Administration officials, including the President, we voluntarily reduced that request to \$11,143,285 which is the request we present to you today.

As you also know, the Office of Management and Budget has suggested a figure in the amount of \$9,746,000.

A question commonly asked of us, and understandably so, is why, in a year in which all Federal agencies are being asked to exercise fiscal restraint, is the FEC proposing an increase in its budget?

In order to appreciate the answer to this, you have to review the financial history of the FEC for the last two or three years, as well as the prospective for operations during fiscal year 1982.

During the last three fiscal years, even though there have been modest increases in the number of absolute dollars allocated to the Commission, the number of real dollars available to us has dropped significantly.

Perhaps this can best be illustrated by reference to the fiscal year of 1980. For that year we received an appropriation which increased by 7.9 percent the number of absolute dollars available for Commission operations.

During calendar year 1980, which is the closest comparable time period, the Consumer Price Index rose by 19.9 percent. This does not even begin to take into account the fact that the prices for some of the items most commonly used by the Commission—for example, microfilm and photocopy materials—rose by considerably more than 19.9 percent.

Second, we are, as our Chairman mentioned a minute ago, facing a significant rent increase this year. The amount of that rent increase is \$200,000. This is an increase over which we have absolutely no control. Our lease is negotiated for us by the GSA. We do not participate in the negotiations.

Third, we have been forced to make up from general Commission funds over the last two years, and presumably would be required to

do so in fiscal year 1982, the difference between the total amount of the cost of living increases, granted by Congress to our employees and the amount of supplemental appropriations granted by Congress.

In fiscal year 1980, the amount we had to make up was \$110,000. This may seem small by Congressional standards, and yet I can assure you that for a Commission such as ours with a very small budget, that figure looms large.

In fiscal year 1981, it appears as if we will have to make up and in effect reallocate from other programs, \$233,000 for this same purpose. In fiscal 1982 if there is a cost of living increase of the magnitude which is currently being mentioned, namely 4.8 percent, this would involve an additional expenditure by the Commission in the amount of \$363,200.

Fourth, we are beset, as are all other Federal agencies, with the problems of inflation. Even if the rate of inflation is 8 percent, as I believe it was for the first quarter of this year, that figure when applied to the non-personnel items in our budget, would cost us an additional \$240,000.

Last, I would like to make mention of the expense which the Commission is incurring in terms of the voting systems standard study which has been mandated by the Amendments to the Act passed in 1979 and signed by the President early in 1980. It is estimated that the cost of this study will be in excess of \$150,000. Yet there has been no additional appropriation with respect to such study. We are happy to have our Clearinghouse undertake it, but it means that in the absence of any additional appropriation for this purpose, we will have to divert resources from other activities.

With respect to the number of personnel involved, approval of the appropriation request we have submitted would increase the number of the Commission's permanent positions by 15.72 for fiscal year 1982.

The net result of the financial history of the Commission over the last two or three years has been that we have been forced to divert monies which we had initially intended to apply towards other programs for the purposes I just mentioned. We have had to postpone some programs, and to defer equipment replacement and equipment maintenance.

We are now using equipment which is approximately six years old. Sooner or later, we are going to have to face up to that situation if by the 1984 presidential election we are to be able to provide the information required of us by the Act.

#### POTENTIAL IMPACT OF BUDGET REDUCTIONS

I had intended to review in some detail the areas where we would have to consider cuts if we did not receive the \$11.1 million appropriation and if instead we received the \$9.746 million appropriation suggested for us by OMB, but I note that the House Administration Committee this morning, and the Senate Committee on Rules and Administration last week, both have suggested authorizations of \$9.746 million as recommended by OMB.

As a matter of information, I will briefly touch on the areas where cuts will have to be considered.

First, we will have to consider cuts in the data entry area. This is the heart and core of the Commission's primary function in terms of entering information into our system and then making it available for dissemination to the public. Already we are entering data at the \$500 level, instead of the \$200 level as we should be.

We will also have to consider elimination of the campaign finance seminars for which a modest amount was included in the proposed 1982 budget. We have not held any such seminars since the amendments and the regulations related thereto were adopted in 1979 and 1980.

Unquestionably, we will have to consider a reduction in our capability to undertake internal, non-presidential enforcement. We will also have to consider significant cuts in the Clearinghouse budget. In this connection, I note that the clearinghouse budget has been cut within the last two years, from \$750,000 down to its present level of \$400,000.

A reduced budget will undoubtedly result in limitations upon the ability of our Office of General Counsel to prepare regulations, to respond expeditiously to advisory opinion requests and to provide legal guidance to the Commission on policy matters.

We will likewise have to consider a further delay in completing the Voting Systems Standards Study.

Three other items where we may have to make cuts include delaying and possibly canceling our planned review of audit sampling techniques in connection with the 1984 election and the certification of public funds.

A second item would be the possible elimination of an outside review of our computer contract. This computer contract expires in 1985, but it has to be renegotiated in 1983. If we do not receive this type of assistance in 1982, it would not be available in timely fashion.

Finally, any reduction will inevitably have the effect of reducing our litigation capabilities.

In summary, I note that the Commission prepared its fiscal year 1982 budget with great care. When it was originally brought before the Budget Task Force in the summer of 1980, long before the pleas for fiscal restraint we heard in Washington, we informed the staff that all efforts should be made to pare down the budget as much as possible.

The staff originally proposed 16 program packages to us. While all of them were within the purview of our statutory mandate, the Budget Task Force recommended to the full Commission that we omit the last four of those packages, 13 through 16, simply because we did not feel that Congress would be able to consider these additional items for fiscal year 1982.

As I said before, early this year, in February, we voluntarily cut the budget again.

I mention this by way of illustrating that even before it was popular to think in terms of cutting budgets, we consciously sought to prepare a limited budget for submission to you and the Office of Management and Budget. The actions of the Senate Rules Committee and the House Administration Committee will indeed make life difficult for us.

I realize that there is great pressure upon every member of Congress to cut the budget. I realize also that we are not the most popular agency in the Federal Government, and that it is perhaps easier to reduce the budget of an agency where there is no natural constituency to speak up in its defense. Yet we feel constrained to call to your attention the fact that with a reduced budget of the magnitude suggested by OMB, we believe that we will not be able to carry out our statutory mandate.

All we ask is a fair hearing, which you are giving us this afternoon, and due consideration which we know we will receive from you in the future as you consider these matters.

I thank you very much, Mr. Chairman.

[The statement of Mr. Reiche follows:]

STATEMENT OF COMMISSIONER FRANK P. REICHE, VICE CHAIRMAN  
OF THE FEDERAL ELECTION COMMISSION,  
BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON  
TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT

May 6, 1981

Mr. Chairman, Members of the Subcommittee:

On behalf of the Federal Election Commission (FEC), I would like to thank you for this opportunity to present the Federal Election Commission's authorization request for Fiscal Year 1982. Others here with Chairman McGarry and me include our Staff Director, B. Allen Clutter, and our General Counsel, Charles N. Steele.

Basic Request

We submit for your consideration the FEC's revised request for an appropriation of \$11,143,285 for Fiscal Year 1982. This figure is higher than that recommended by the Office of Management and Budget (OMB), which was \$9,746,000. It is nevertheless substantially lower than the Commission's original submission in the amount of \$13,251,212. On February 16, 1981, the Commission, acting in response to pleas for fiscal restraint by President Ronald Reagan and others in the Administration, voluntarily reduced the amount of its original submission by \$2,107,927 to the \$11,143,285 figure we present today. This re-assessment by the Commission reflects the Commission's sensitivity to the need for fiscal austerity by all Federal agencies. Despite suggestions that we should further reduce our budgetary request, it is our considered judgment and the unanimous decision of the Commission that additional cuts cannot be made without significantly impairing the ability of the Commission to discharge its statutory functions under the Federal Election Campaign Act, as amended. In order to understand the basis for our decision, one should examine the prior history of budgetary submissions by the FEC and the financial history of FEC operations during the past few years.

Historical Perspective

Although there have been modest increases in the dollar amounts allocated to the FEC for fiscal years since 1978, FEC appropriations have steadily decreased in terms of real dollars. For example, while the amounts allocated to the FEC for Fiscal Year 1979 represented a 9% increase over those allocated to the Commission for Fiscal Year 1978, the Consumer Price Index was rising during the Calendar Year of 1979 by 14.9%. The corresponding figures for the succeeding year indicate an increase in the dollars allocated to the Commission by 7.9% while the Consumer Price Index was rising 19.9%. In actuality many of the necessary costs of the Commission have increased at a greater rate than the Consumer Price Index.

In addition, there are a number of items included in the FEC's normal operating budget over which the Commission has no control. A good illustration involves rental payments for the Commission's offices which have risen during the last few years and which will increase by more than \$200,000 during Fiscal Year 1982. The space occupied by the Commission is rented by the General Services Administration. The Commission does not participate in any of the negotiations associated with this rental.

This large rent increase is particularly troublesome in light of the Commission's belief that its current offices are substandard and detract from its ability to perform effectively. Although the Commission believes a move to other offices would be beneficial, we have deferred requesting funds for this purpose for budgetary reasons. Likewise, the Commission has been beset with price increases which directly affect supplies frequently used by the Commission. Perhaps the most dramatic of these price increases involves microfilm purchased by the Commission for recording information filed with the Commission. The price of microfilm rose sharply during 1980 at a time when the number of reports being filed with the Commission was also on the rise as a result of the 1980 General Election. It therefore became necessary, as it has on other occasions, for the Commission to cut the funds allocated to other programs to meet this increase. Another example of an expense which had not been contemplated when the Fiscal Year 1980 Budget was submitted and approved, involved the printing costs associated with the new regulations required by Public Law 96-187 and approved by the Congress in the Spring of 1980. These costs totalled \$12,000. Again the Commission had to curtail other programs to provide for this increase.

In this connection it should be remembered that the Commission is a personnel-intensive agency. The percentage of the Commission's resources allocated to personnel costs has risen steadily during the past few years and equals approximately 74% of the Commission's budget for Fiscal Year 1981. Pay raises for Commission employees, which were not funded in their entirety by additional Federal funds during the past two years, have exacerbated our financial difficulties. During Fiscal Year 1980 the pay raise cost \$410,000, only \$300,000 of which was funded by a supplemental appropriation. In Fiscal Year 1981, the pay raise cost \$612,350, only \$379,000 of which, or 61.89%, will apparently be funded by a supplemental appropriation. On both occasions the Commission was forced to reallocate its resources in order to meet these financial obligations imposed upon it by the Congress. Naturally this pressure to increase the amounts allocated for personnel has reduced the amounts allocable by the Commission for non-personnel purposes. We estimate that the Commission's non-personnel budget has decreased by more than 30% since Fiscal Year 1978. Even in terms of absolute dollars, the portion of the Commission's budget allocated to non-personnel items was reduced by \$70,000 between Fiscal Year 1978 and Fiscal Year 1981--and this does not take into account the impact of inflation in terms of the items which those dollars would purchase in Fiscal Year 1981 as opposed to Fiscal Year 1978.

The net result of these budgetary reallocations has been to forego maintenance and equipment replacement to a point where we cannot defer these items any longer unless the Commission is to run the risk of restricting its capability to process promptly the reports and documents filed with the Commission. Likewise, we have been forced to delay programs and projects to a point where their timeliness is questionable. Furthermore, in the 1979 Amendments to the Federal Election Campaign Act Congress mandated that we conduct a study on voting systems standards costing in excess of \$150,000 without providing any additional funds with which to undertake this study.

In summary, we have regularly delayed implementation of Commission programs and maintenance of the requisite support facilities and equipment to a point where the Commission's capabilities in this area have been impaired. Please note that OMB proposes a Fiscal Year 1982 Budget for the Federal Election Commission in the amount of \$9,746,000, an increase of \$84,000 over OMB's proposed budgetary allocation for Fiscal Year 1981 (\$9,662,000). This represents a rise of 87/100 of 1% in our proposed budget. Were it not for the Commission's history of absorbing externally generated increased expenses during the past two or three years, this might be manageable, but it is precisely that history of financial reallocation which forces the Commission at this time to call to your attention the impact which OMB's proposal would have upon the proper functioning of the FEC during Fiscal Year 1982.

#### Impact of Further Reductions

Further reductions below the \$11,143,285 figure would force the Commission to consider deep cuts in its data entry program, its enforcement program, its public information activities and the Clearinghouse. With respect to these areas, we note:

1. The data entry program is essential if the FEC is to continue its pre-election release of statistical information on campaign financing (Reports on Financial Activity). The Commission does not presently enter all individual contributions into the data base but only those over \$500 simply because we do not have the resources to enter data down to the statutory reporting threshold of \$200.
2. The Commission sharply reduced the resources allocated to internal enforcement in Fiscal Year 1981 and found that some restoration must be made if we are to enforce, in adequate and timely fashion, the reporting and filing requirements of the Act.
3. Roughly one-half of Fiscal Year 1982 encompasses a General Election period. It is therefore important that the Commission continue its efforts to educate candidates and political committees concerning their obligations under the Act; hence, the FEC's seminar program for filers and potential filers should be re-instituted.

4. The Clearinghouse has suffered severe budget reductions during the past two fiscal years, the budgets for Fiscal Years 1980 and 1981 being \$400,000 in contrast with the prior allocation of \$750,000.

As we mentioned at the outset, the Commission is keenly aware of the need for budgetary restraint in this time of economic crisis. As a consequence, the Commission has already reduced its original request by more than 15%, even in the face of the prior reductions in real dollars allocated to the Commission during the past three fiscal years. It is our informed judgment, however, that further reductions of the magnitude proposed by OMB simply will not permit the Commission to fulfill its statutory responsibilities in the manner required by law.

#### Commission Proposal

The Commission's revised proposal of \$11,143,285 reflects a number of factors including the transfer of data coding and data entry functions from the Reports Analysis Division to the Data Systems Development Division. It also reflects the initial cost of having this division's ADP contract reviewed by an outside consultant. Other items covered by this budget request include the rental increase of more than \$200,000, a significant increase in the price of various supplies, and an overhead allocation for the modest increase in Commission personnel (still below Fiscal Year 1978 levels).

With respect to the Office of General Counsel, the proposed budget of \$11,143,285 would permit us to strengthen our internal non-Presidential enforcement effort. In Fiscal Year 1981 the Commission was forced to reduce the resources allocated to non-Presidential internal enforcement matters and apply them instead to matters involving Presidential candidates. It is apparent that we must now re-allocate such resources back to non-Presidential internal enforcement if the Office of General Counsel is to keep pace with the workload in this area. The proposed Fiscal Year 1982 Budget would effect this re-allocation.

Other changes proposed for the Office of General Counsel would permit the Commission to process within the new statutory deadlines imposed by the 1979 Amendments to the Act the advisory opinion requests anticipated during Fiscal Year 1982 and to undertake such projects as the development of an index to closed compliance cases (Matters Under Review or MUR Index) and legislative histories of the 1979 Amendments and the 1966-67 Congressional debates on public financing of Federal elections. It would also enable the Commission to continue a review of its regulations and re-draft and simplify them as appropriate. It would further allow the Office of General Counsel to respond to the ever-increasing number of legal questions posed to it by the Commission and its operating divisions.

While the number of positions allocated to the Audit Division would decrease, the amount budgeted for the Audit Division would increase slightly, this increase being attributable to the increased cost of travel. The proposed budget would also enable the Commission to hold seminars on the Act throughout the country for candidates and political committee personnel in connection with the 1982 General Election. During the past two fiscal years, the Commission has not held any seminars of this type as a result of budgetary limitations.

The proposed budget includes a \$68,000 increase for the Clearinghouse which relates specifically to part of the costs associated with the Congressionally-mandated study of voting systems standards. There would be some decrease in the level of activity of the Reports Analysis Division as a result of the transfer of data entry and data coding personnel to the Data Systems Development Division. Likewise, we note that there would be a slight decrease in the number of positions and resources allocated to the Public Disclosure Division which reflects expected decreases in the activities of such division during the first part of Fiscal Year 1982.

Although the Commission proposes the addition of 15.72 positions for Fiscal Year 1982, it should be remembered that these are not, in effect, new positions, but represent instead merely the restoration of positions which the Commission was forced to eliminate during the past two or three fiscal years.

While every effort is made by the Commission to anticipate changing levels of activity for the various divisions over a four-year election cycle, we note for the record that not only is there some election activity in every fiscal year, but that the commonly-held notion that the Federal Election Commission is primarily occupied during General Election years, but much less busy during the off-years, is not well-founded. It is true that in General Election years the Commission must respond, frequently on an expedited basis, to various emergency situations, these responses generally requiring the reallocation of resources within the various divisions, thereby delaying the implementation of Commission programs. There are, however, many matters which customarily arise in off-years, particularly in the enforcement and public information areas, which require continuing attention (e.g., informing candidates and committees in advance of their reporting responsibilities for the succeeding election years). The overall result is that the Commission experiences relatively few peaks and valleys in its workload over a four-year period. It should be noted that this is not a characteristic unique to the Federal Election Commission--to the contrary, this relatively constant flow of work is typical of similar commissions operating on the state level throughout the country.

#### Conclusion

Mr. Chairman, it is our belief that the Federal Election Commission performed creditably in discharging its functions under the Federal Election Campaign Act during the 1980 General Election. The Commission's 1980 performance represented a significant improvement over that of 1976

which occurred at a time when the Commission's staff was still being assembled and both the Commission and people involved in campaigns were becoming acquainted with the Act. Note, for example, the audit program conducted by the Commission in 1980. As of this date, all but two of the Presidential Primary Election audits have been publicly released and the other two will be forthcoming shortly. The three General Election Presidential audits will be publicly released this summer, all of which stands in marked contrast to the delayed audits of 1976.

In 1980 the Commission continued its comprehensive program of providing candidates and committee treasurers with manuals and other information to assist in complying with the Act. Furthermore, the Commission held a number of FECA seminars throughout the country in 1979. The Commission also continued to answer the day-to-day questions of those involved in campaigns by means of the 800 telephone line. Under great pressure, the Commission produced regulations in time for application to the 1980 campaign, even though the amendments were not signed into law until January 8, 1980.

We realize that much remains to be done in the administration of the Federal Election Campaign Act, but we sincerely believe that a good start has been made by the Federal Election Commission during the past four years. We wish to continue this improvement and believe that the modified budget request which we have submitted to you in the amount of \$11,143,285 will permit us to do so. This request is designed solely to enable the Commission to meet its statutory obligations. We respectfully request your favorable consideration.

# FEDERAL ELECTION COMMISSION

Press Office  
1325 K Street, N.W., Washington, D.C. 20463  
Phone: Local 523-4065 Toll Free 800-424-9530



FOR IMMEDIATE RELEASE  
JANUARY 1, 1981

CONTACT: FRED EILAND  
SHARON SNYDER

## BIOGRAPHY

### JOHN WARREN McGARRY CHAIRMAN

APPOINTMENT: October 25, 1978 by President Jimmy Carter  
TERM EXPIRES: April 30, 1983  
PARTY AFFILIATION: Democrat

Commissioner John W. McGarry was elected Chairman of the Federal Election Commission for a one-year term beginning January 1, 1981. He previously had served as Vice Chairman of the Commission.

Commissioner McGarry is a native of Massachusetts. He was appointed to the Commission on October 25, 1978, by President Carter. His term expires April 30, 1983.

Commissioner McGarry graduated cum laude from Holy Cross College in Massachusetts in 1952. He subsequently did graduate work at Boston University and obtained a Juris Doctor degree from Georgetown Law Center in 1956.

From 1959 through 1962, Mr. McGarry was Assistant Attorney General of Massachusetts. In that capacity he served as both trial counsel and appellate advocate. Following his tenure in office, he combined private law practice with service as Chief Counsel for the Special Committee to Investigate Campaign Expenditures of the U.S. House of Representatives. This Committee was created temporarily by special resolution every two years through 1972 in order to oversee House elections. From 1973 until his appointment to the Commission, Mr. McGarry served as Special Counsel on Elections to the Committee on House Administration of the U.S. Congress.

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## BIOGRAPHY

### FRANK P. REICHE VICE CHAIRMAN

DATE NOMINATED: May 1, 1979  
CONFIRMED BY SENATE: July 25, 1979  
SWORN IN: July 31, 1979  
TERM EXPIRES: April 30, 1985  
PARTY AFFILIATION: Republican

Commissioner Frank P. Reiche was elected Vice Chairman of the Federal Election Commission for a one-year term beginning January 1, 1981.

Commissioner Reiche was nominated to the Federal Election Commission by President Carter on May 1, 1979. He was confirmed by the Senate on July 25, 1979, and sworn into office on July 31.

Mr. Reiche was born in Hartford, Connecticut. He received his A.B. Degree from Williams College in Massachusetts in 1951, and a L.L.B. Degree from Columbia Law School in 1959. In addition, he holds a M.A. Degree in Foreign Affairs from George Washington University (1959), and a L.L.M. Degree in Taxation from New York University Law School (1966).

He joined the U.S. Navy in 1952 and served for four years. He received his commission as an Ensign in March of 1953, and served for 14 months aboard a destroyer escort. The remainder of his tour was spent in Washington, D.C., attached to the Bureau of Naval Personnel. Following law school, he was employed by the law firm of Stryker, Tams & Dill in Newark, New Jersey (1959-1961). In 1962, he joined the law firm of Smith, Stratton & Wise, becoming a partner in 1964.

Commissioner Reiche has been active in a number of civic organizations and institutions, among them the Advisory Board of Stuart County Day School and the Central New Jersey Williams Alumni Association, of which he was the first president. Active in Republican Party affairs, he was a Republican County Committeeman for over 8 years, president of the Republican Club of Princeton, a member of the Mercer County Republican Executive Committee (1968-1972), and Chairman of the Princeton Township Republican County Committee (1970-1972).

Mr. Reiche has had extensive governmental experience, particularly in state election law. He served as a member of New Jersey Governor William T. Cahill's Tax Policy Committee from 1970 to 1972, and later was appointed Chairman of the first New Jersey Election Law Enforcement Commission in 1973. He was reappointed Chairman by Governor Brendan Byrne in 1975. The Commission is responsible for the administration and enforcement of the New Jersey Campaign Finance Disclosure Act. From 1977 to 1978, he served as Chairman of the Steering Committee of Interstate Agencies, which led to the organization of the Council on Governmental Ethics Laws in December 1978.

Commissioner Reiche is married to the former Janet D. Taylor of Vineland, New Jersey. They have a son, Dean, and a daughter, Cynthia.

# FEDERAL ELECTION COMMISSION

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FOR IMMEDIATE RELEASE  
NOVEMBER 9, 1979

CONTACT: FRED EILAND  
SHARON SNYDER

## BIOGRAPHY

### JOAN D. AIKENS

ORIGINAL APPOINTMENT: March 24, 1975 by the President Pro Tempore of the Senate James Eastland upon the recommendation of the Minority Leader of the Senate Hugh Scott (R-PA).

CONGRESSIONAL APPROVAL: April 11, 1975

SWORN IN: April 14, 1975 by President Ford

RE-NOMINATED: May 11, 1976 by President Ford

CONFIRMED: May 18, 1976

SWORN IN: May 21, 1976 by President Ford

CHAIRMAN OF FEC: May 1978 - May 1979

TERM EXPIRES: April 30, 1981

PARTY AFFILIATION: Republican

Commissioner Joan D. Aikens was originally appointed in 1975 to a one year term as Commissioner of the Federal Election Commission by President Pro Tempore of the Senate James Eastland upon the recommendation of Minority Leader of the Senate Hugh Scott (R-PA). Following the reconstitution of the Commission as a result of the Supreme Court decision in Buckley v. Valeo, Mrs. Aikens was nominated by President Ford to a five year term. She was confirmed by the Senate on May 18, 1976 and sworn into office by the President in a Rose Garden ceremony on May 21, 1976. She was Chairman of the Federal Election Commission from May 1978 to May 1979.

Prior to her appointment to the Commission, Mrs. Aikens was Vice President of Lew Hodges Communications, a public relations firm located in Valley Forge, Pennsylvania. In addition she served two terms as President of the Pennsylvania Council of Republican Women from 1972 until 1974; was a member of the Board of Directors of the National Federation of Republican Women; and served as Alternate-at-large Delegate to the 1972 Republican National Convention. A precinct Committeewoman for 15 years, she was, at the time of her initial appointment, a member of the Pennsylvania Republican State Committee. In addition, Mrs. Aikens is listed in Who's Who in American Politics, and received an honorary Doctor of Laws from Ursinus College in November 1979.

Through the years, Commissioner Aikens has been active in a number of volunteer organizations. Her civic involvement includes memberships on the Commonwealth Board of Directors of the Medical College of Pennsylvania and the Women's Board of Associated Auxiliaries of Riddle Memorial Hospital in Delaware County - an organization which she also served as President.

A native of Delaware County, Pennsylvania, Commissioner Aikens is a graduate of Ursinus College in Collegeville, Pennsylvania. She has one son and makes her home in the Nation's Capital.

NEWS FROM...

# FEDERAL ELECTION COMMISSION



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JUNE 20, 1979  
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(800) 424-9530

## BIOGRAPHY

THOMAS E. HARRIS

ORIGINAL APPOINTMENT: March 24, 1975 by President Pro Tempore of the Senate James Eastland upon the recommendation of the Majority Leader of the Senate Mike Mansfield.

CONGRESSIONAL APPROVAL: April 11, 1975

SWORN IN: April 14, 1975 by President Ford

RE-APPOINTED: May 11, 1976 by President Ford

CONFIRMED: May 18, 1976

SWORN IN: May 21, 1976 by President Ford

CHAIRMAN OF THE F.E.C.: May 1977 - May 1978

TERM EXPIRED: April 30, 1979

RE-APPOINTED: May 1, 1979 by President Carter

CONFIRMED: June 19, 1979

SWORN IN: June 25, 1979

TERM EXPIRES: April 30, 1985

Commissioner Thomas E. Harris is a native of Little Rock, Arkansas. On January 29, 1975, he was appointed to the Federal Election Commission by the President Pro Tempore of the Senate James Eastland upon the recommendation of the Majority Leader of the Senate Mike Mansfield. Following the reconstitution of the Commission in May 1976, Mr. Harris was re-appointed to the Commission and sworn into office on May 21, 1976. Following the termination of this appointment on April 30, 1979, he was re-appointed by President Carter. He served as Chairman of the Federal Election Commission from May 1977 to May 1978.

From 1955 to 1975, Mr. Harris was Associate General Counsel of the AFL-CIO. Prior to this he held the same position with the CIO from 1948 until it merged with the AFL in 1955. He previously worked as an attorney in both private practice and with various government agencies.

Commissioner Harris is a graduate of the University of Arkansas and the Columbia University Law School. At Columbia, he was on the Law Review and was a Kent Scholar. Following graduation, he served as a law clerk to Supreme Court Justice Harlan Stone.

Mr. Harris has three sons. His wife is the former Margaret Samson of New York.

# FEDERAL ELECTION COMMISSION



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## BIOGRAPHY

### VERNON W. THOMSON

Commissioner Vernon W. Thomson was named January 2, 1981, to fill an interim appointment. He is a former member of the Commission whose term expired April 30, 1979. He served as Commission Chairman from May, 1976, to May, 1977.

Mr. Thomson has an extensive record of public service, including 14 years in the U.S. House of Representatives, 1961-1975, during which he served on the Foreign Affairs Committee and the Select Committee on Small Business.

Prior to his election to Congress, Commissioner Thomson served as Governor of the State of Wisconsin. He also served in that State's Assembly for 16 years, including three consecutive terms as Speaker; was Attorney General of the State; Assistant District Attorney of Richland County; and City Attorney and three-term Mayor of Richland Center.

The Commissioner is a graduate of the University of Wisconsin and holds a law degree from the University's Law School. He has been a practicing attorney in Wisconsin since 1932.

# FEDERAL ELECTION COMMISSION

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FOR IMMEDIATE RELEASE  
MAY 16, 1980

CONTACT: FRED EILAND  
SHARON SNYDER

## BIOGRAPHY

### ROBERT O. TIERNAN

ORIGINALLY APPOINTED: January 29, 1975 by the Speaker of the House Carl Albert upon the recommendation of the Majority Leader of the House Thomas P. O'Neill.

CONGRESSIONAL APPROVAL: April 11, 1975

SWORN IN: April 14, 1975 by President Ford

RE-APPOINTED: May 11, 1976 by President Ford

CONFIRMED: May 18, 1976

SWORN IN: May 21, 1976 by President Ford

PARTY AFFILIATION: Democrat

Commissioner Tiernan is from Warwick, Rhode Island. He was originally appointed to the Federal Election Commission in January 1975 by the Speaker of the House of Representatives Carl Albert upon the recommendation of the Majority Leader of the House Thomas P. O'Neill. Following the 1976 Amendments to the Federal Election Campaign Act, reconstituting the Federal Election Commission, President Ford appointed Mr. Tiernan to the Commission. He was confirmed by the Senate on May 18, 1976 and sworn into office by the President on May 21, 1976.

Commissioner Tiernan served as Chairman of the Federal Election Commission 1979-80. He had previously served a one-year term as Vice Chairman of the Commission.

From 1967 to 1975, he represented the 2nd Congressional District of Rhode Island in the U.S. House of Representatives, during which time he served on the Interstate and Foreign Commerce Committee and the Appropriations Committee. Prior to his election to Congress, Commissioner Tiernan served in the Rhode Island State Senate from January 1961 until March 1967.

Mr. Tiernan is a graduate of Providence College and Catholic University Law School. He is a member of the American Bar Association and the Rhode Island Bar Association. In addition, he serves on the Board of Directors of the Rhode Island Mental Health Association and is Chairman of the State and Federal Legislation Committee of the Rhode Island Bar Association.

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FOR IMMEDIATE RELEASE  
SEPTEMBER 16, 1980

CONTACT: FRED EILAND  
SHARON SNYDER

B. ALLEN CLUTTER, III

STAFF DIRECTOR

Mr. Clutter's appointment as Staff Director of the Federal Election Commission was effective September 15, 1980. He served as director of the Minnesota Ethical Practices Board from January 5, 1976.

A nine-year veteran of the U.S. Air Force, he served from 1967 to 1976 in administrative and command positions in California and in Thailand, and at the time of his resignation, was on the faculty of the Air Force Academy in Colorado Springs.

He also worked with the World Press Institute, Macalester College, St. Paul, Minnesota, and serves as a faculty member of Hamline University Law School, Continuing Legal Education Program.

A native of Oskaloosa, Iowa, Mr. Clutter holds a graduate degree in geography from Eastern Michigan University and has attended business administration courses at the University of Colorado. He received his Bachelor's Degree from Macalester College, and has attended courses at Utah State University and the Department of the Air Force.

Mr. Clutter was listed among the Outstanding Young Men in America in 1978. He served as a Peace Corps volunteer, Iran I, 1962-1964. He has been active in professional and civic affairs and has participated in panel discussions on public financing of political campaigns before the U.S. House of Representatives Committee on Administration, the Florida State Senate Committee on Judiciary, and University of Kentucky Symposium on Campaign Finance.

He is married to the former Elizabeth Ann Jaksa of Shaker Heights, Ohio, who holds a B.A. from Marygrove College, Detroit, Michigan, and A.M.A. from the University of Michigan, Ann Arbor, Michigan. They are parents of two children, Allen, IV, seven, and Julie, five.

# FEDERAL ELECTION COMMISSION



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NOVEMBER 1, 1979

CONTACT: FRED EILAND  
SHARON SNYDER

## CHARLES N. STEELE

Charles N. Steele was named Acting General Counsel by the Federal Election Commission on November 1, 1979. Prior to this appointment, he was Associate General Counsel for Enforcement and Litigation. He has been with the Commission since January 1976.

Prior to his service with the Commission, he was an attorney with the National Labor Relations Board.

Mr. Steele holds his B.A. and LLB from Harvard University. He is a member of the bar of the District of Columbia.

He currently resides with his wife Helen and daughter in Washington D.C.

# FEDERAL ELECTION COMMISSION

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FOR IMMEDIATE RELEASE  
APRIL 9, 1981

CONTACT: FRED EILAND  
SHARON SNYDER

## BIOGRAPHY

### MARK JOHN DAVIS

Mark J. Davis serves as the Director of Congressional, Legislative and Intergovernmental Affairs for the Federal Election Commission.

Mr. Davis, a native of Washington, D.C., is a 1970 graduate of Albion College in Michigan. He earned a Juris Doctor degree from the Georgetown University Law Center in 1973. He is a member of the District of Columbia Bar.

From 1974 until his appointment to the Commission, Mr. Davis was the Legislative Counsel for the Law Enforcement Assistance Administration of the U.S. Department of Justice. From 1973 to 1974, he was an attorney for the U.S. Board of Veterans Appeals of the Veterans Administration. Prior to this he served as a Staff Assistant to Senator Vance Hartke of Indiana.

He resides with his wife and son in Greenbelt, Maryland.

Mr. ROYBAL. We thank you, Mr. Reiche.

#### DIFFERENCE BETWEEN COMMISSION AND ADMINISTRATION REQUESTS

I would like to discuss the difference between your request and the request contained in the President's budget.

There seems to be a difference of approximately \$1.3 million.

You also told the committee that the authorizing committee has already taken a position with regard to this matter, and they have authorized a budget for fiscal year 1982 of \$9.7 million.

Mr. REICHE. Right.

Mr. ROYBAL. Which means then that this committee cannot go beyond the 9.7, the authorized level. Therefore, what we are talking about now is the 9.7, or to be exact, it is \$9,746,000.

Mr. REICHE. Right.

Mr. ROYBAL. Under that particular budget of \$9.7 million, you have said certain reductions would have to take place. You made reference to some reductions in services, such as data entry, the Clearinghouse budget, and the voting systems study.

Will you be more specific as to what you will have to do with the data entry and what effect that will have on your overall operation?

Mr. REICHE. None of the potential reductions of which I spoke have been approved by the Commission.

Mr. ROYBAL. You feel that is the only way you can go?

Mr. REICHE. The areas I mentioned are some of the areas in which we would have to consider significant cuts in order to reduce the budget to the \$9.7 million level.

We are only entering data currently at the \$500 level, whereas we should be entering it now at the \$200 level. It is conceivable that we might have to raise that level even further. Also, if we are forced to reduce the number of personnel assigned for these purposes, there may well be delays in providing this information.

Mr. ROYBAL. Will you explain then the \$200 versus the \$500 level?

#### DATA ENTRY LEVELS

Mr. REICHE. At the present time, under the statute detailed information must be provided to the commission on all contributions and expenditures above \$200. It used to be \$100 before the 1979 Amendments, when it was raised to \$200.

It is desirable to have all of that information above the \$200 level entered in order to obtain an accurate picture of the sources of candidate's funds and their ultimate disposition. At the present time we simply have not had the resources to enter that information at the \$200 level. All we can do is \$500 and above. That is what I meant, Mr. Chairman.

Mr. ROYBAL. All right. What about with regard to the Clearinghouse budget; what will happen there?

#### CLEARING HOUSE BUDGET

Mr. REICHE. The requested amount for the Clearinghouse is \$468,650, of which \$65,000 would be allocated to the Voting System Standards Study.

There are a number of items which we would at least have to consider cutting. Perhaps our Staff Director, Mr. Clutter, might wish to comment on that.

Mr. CLUTTER. Currently the budget includes a request for the continuance of the Voting System Standards Study at a \$65,000 level. The Commission might be forced to delay or defer a portion of that study.

Second, as you know, the Commission publishes an Election Law/Case Law series of reports that details Federal and State election law developments. That might be required to be delayed or changed in some manner.

One area on which the Clearinghouse has received excellent comments is its workshops that deal with Federal election responsibilities. Funds for those workshops are contained within the proposed budget. The Commission might be required to look closely at the level of continuation of those workshops.

#### PERSONNEL REDUCTIONS

Mr. ROYBAL. All of those cuts will actually result in reductions of personnel, would it not?

Mr. REICHE. It is quite likely that they would. I can't conceive how we can make cuts of \$1.4 million, Mr. Chairman, without eventually cutting personnel.

Mr. ROYBAL. Will you provide for the record your projection as to the number of people who may have to be fired?

Mr. REICHE. We would be happy to provide estimates, Mr. Chairman. We have made no precise projection because the Commission has not determined exactly where cuts in programs will be made. We cannot firmly project reductions in personnel until the Commission has reviewed the budget, but would be happy to provide preliminary projections that for the committee.

[The information follows:]

#### IMPACT OF BUDGET REDUCTIONS ON PERSONNEL

The Federal Election Commission is a very personnel-intensive agency, with approximately 70 percent of its annual budget allocated to staff. The Commission's fiscal year 1981 full-time permanent personnel ceiling is 235 employees.

The Commission hopes to avoid any major reduction-in-force and achieve decreases in staffing which may be deemed appropriate through normal attrition. Should expected attrition not occur, the Commission may well be placed in a position of initiating a reduction-in-force. In anticipation of this possibility, we have commenced negotiations regarding reduction-in-force procedures with the labor organization representing Commission bargaining unit employees.

Mr. ROYBAL. Thank you.

Mr. Miller?

Mr. MILLER. Thank you, Mr. Chairman.

#### NUMBER OF PRESIDENTIAL CANDIDATES

Looking at last year's hearings, I recall that we had requested the number of people who filed for President of the United States. I am not really sure whether you have that number right before you, but it was quite a few, over 100, as I recall.

Mr. REICHE. Yes; it was well over 100.

Mr. CLUTTER. It was a substantial number of individuals, including the recognized major party candidates, minor party candidates,

and those who might be considered unaffiliated individuals who do file.

Mr. MILLER. Could you list those for the record? It is not necessary to have that right at the present time, but it will show some of the workload that you have. Most people feel that only a few people who filed are running for President of the United States, or if they stop to think about the primaries, they may get six or eight candidates.

You had to take into consideration that more than 100 people actually filed and, therefore, you had to keep track of each item that those people would need to file with you.

Mr. CLUTTER. In 1980, 279 individuals declared with the Commission as candidates for President. Of these, 165 had campaign committees. Only 39 candidates had to report regularly, however, because they surpassed the statutory threshold of \$5,000 in receipts or expenditures included in the Amendments approved by Congress in 1979.

Mr. MILLER. I am not certain where we got that figure of over 100. They would be people who filed but had no expenditures over \$5,000.

Mr. REICHE. Correct.

#### REVENUE RETURNED TO THE TREASURY

Mr. MILLER. You spoke in your testimony of reimbursements. Do you have revolving funds of any kind?

Mr. MCGARRY. We do not have any revolving fund accounts. With reference to charges for the matters that I mentioned, Mr. Miller, we do not retain any of the money. It goes to the U.S. Treasury.

Mr. MILLER. You spoke of the amount going to the U.S. Treasury, but not identifying anything other than to say that you have work that raises revenue that goes to the Treasury. You are speaking of reproduction of candidate and committee reports, and they produce revenue.

Apparently, you have other places where you produce revenue.

Mr. MCGARRY. The sale of publications by the Clearinghouse, the reproduction of candidate reports and matters of that nature involves the use of Commission personnel as well as the utilization of supplies. We are reimbursed or compensated for none of these costs. These costs come right from our budget.

The Staff Director may be able to add other things which produce revenue which does not come to the Commission even though utilization of our resources and supplies is involved.

Mr. CLUTTER. Under the Freedom of Information Act, we are charged for some basic costs such as the preparation of material. The Chairman has highlighted those areas where we receive revenue.

Mr. MILLER. Could you list for the record the amount of revenue that is forthcoming that would be deposited in the U.S. Treasury?

Mr. CLUTTER. Yes, sir; we will be glad to supply that.

[The information follows:]

## FEDERAL ELECTION COMMISSION-GENERATED FUNDS RETURNED TO THE TREASURY

\$317,320 in civil penalties have been levied by the Commission, with \$283,770 actually collected as of February 28, 1981. The Commission receives other payments from the sale of documents and from fees levied for other services. This money is not retained by the Commission, but is returned to the Treasury.

During 1978 alone, some 2,908 hard copies (not including micro-fiche or subscriptions) of Clearinghouse documents were sold at an average cost of \$10.00 per copy, or \$29,080. In addition, in July of 1980, the Commission established a subscription service for "Case Law—Election Law Survey." As of February 15, 1981, over 600 subscribers were paying \$21.00, or \$12,600, each year. It is estimated that an average of two to three subscribers a day are being added to the list. Prior to enactment of Public Law 96-187, free copies of Clearinghouse reports were provided on request to election officials. Thus, sales figures prior to 1980 represent sales only to the general public.

From fiscal year 1975 through fiscal year 1979, \$1,172.50 was realized from sale of FEC Annual Reports. For all years through April 23, 1981, receipts for copies of records from the Public Records Office of FEC have totalled \$187,781.

These amounts do not reflect the approximately \$2.8 million required by the Commission to be repaid to the Treasury by publicly-financed 1976 and 1980 Presidential candidates following complete audits.

Mr. MCGARRY. This would not include civil penalties.

Mr. MILLER. No.

Mr. MCGARRY. Presidential candidates are required to make payments that go to the Treasury; however, we are now talking primarily about services.

Mr. MILLER. Services, listed by category so that you would know what is reproduction funds, what you charge for a sheet.

## FREEDOM OF INFORMATION

I am interested in it because of the Freedom of Information Act. If someone comes in and would like 100 sheets reproduced, under the Freedom of Information Act, you must reproduce them.

Can you charge that person for those sheets?

Mr. MCGARRY. We do. Once again, that money goes directly to the U.S. Treasury. Those demands are very great upon us.

Mr. MILLER. I would like to pursue this a little more as to how much of a problem we have caused you with the Freedom of Information Act, as to how many people it requires and how much of a workload there is due to this.

Do you have some information on that right now that you could convey to the committee?

Mr. CLUTTER. At this time, to summarize our experience, it is fair to say that the Commission is experiencing increasing inquiries in the Freedom of Information area. We would be happy to submit for the record information as to the impact and cost to the Commission associated with Freedom of Information.

Mr. MILLER. That will be fine.

[The information follows:]

## FEDERAL ELECTION COMMISSION FREEDOM OF INFORMATION ACT COSTS

	Hours	Amount	Projected for year
Fiscal year 1981 to date:			
Press office.....	59	\$2,559	\$5,118

## FEDERAL ELECTION COMMISSION FREEDOM OF INFORMATION ACT COSTS—Continued

	Hours	Amount	Projected for year
Data systems.....	137	4,476	8,952
Total.....	196	7,035	14,070
Fiscal year 1980 actual:			
Press office.....	337	5,656	
Data systems.....	353	5,218	
Total.....	690	10,874	

## CANDIDATE SECRET SERVICE PROTECTION

Mr. MILLER. This might be a time to get into one of my pet peeves with the Secret Service.

When Secret Service agents travel with a presidential candidate, the campaign committee bills the Secret Service for the agent's seats on the campaign airplane.

This is what I have complained about. If the candidate wants the protection they should be willing to pay, or at least not charge back to the Secret Service and to the taxpayers, for those seats.

This produces income and they can use that income as further political revenue for advertising, or whatever it may be.

Is that accounted for? That is a lot of taxpayers' dollars that go out. We are probably talking about a couple million dollars worth of seats on a plane. We have to appropriate from this side of the table to the Secret Service so they can give it to a candidate and the candidate is having the protection of the Secret Service.

Mr. REICHE. Money received from the Secret Service are reportable as reimbursements by the candidates' committees. Also the Secret Service has published a directive on this to ensure a consistency of the treatment so that one committee would not receive more than another. The common practice appears to be reimbursement at no more than the first class rate.

Mr. MILLER. Air fare for a lot of agents in one day amounts to quite a few dollars. They are traveling a lot and it may not only be one shift of agents on the plane, but several.

I am thinking of a couple million worth of travel and that it is nothing more than campaign reimbursement. There is no public law that you know of that stops that?

Mr. REICHE. There is no law I know of that stops that. The only information received is contained in the reports of the individual candidates' principal campaign committees.

Mr. Steele, our General Counsel, may wish to comment on that.

Mr. MILLER. How can we stop it if there is no law that will stop it right now?

Mr. STEELE. My understanding is that there is no law now prohibiting that practice. The Federal Election Campaign Act does not address that.

We would have to go back and study this. One approach might be that the candidates would have to accept the expense as a cost of campaigning. We have seen nothing in our Act that prevents the

candidates from charging, the Secret Service, just as they charge other people who ride on those planes on a direct basis.

It would seem that it would require some form of legislation or statement that this was an improper charge by the candidates. The Commission has seen nothing in the Campaign Act that makes that an improper charge for a candidate to make.

Mr. MILLER. You see no prohibition, but do you have the authority to stop it, due to regulations, or new regulations, that you would come up with?

Mr. STEELE. We could certainly examine that question. Again, the problem that the Commission looks at is the question of what are qualified campaign expenses. Restrictions apply only if an expense not totally for campaign purposes.

Mr. MILLER. Both political parties, are doing it, and I am not happy with it. Actually they are fooling the taxpayer, because it is a campaign contribution over and above that \$1.00 that they may have marked off on their tax reform. But it is a way that the committees have found, to get additional dollars to the campaign. We should be able to stop it somehow.

I have talked to the Secret Service. They feel that it is their obligation to pay this if they are billed. But I have also asked them why they could not convey the message that if they want the protection, they should pay the freight. If they do not want to pay their way they should not have the Secret Service.

There should be some way and it seems like you people should be able to control that. Give it consideration at your meetings. I would appreciate that.

Mr. REICHE. If I might comment briefly, I would say that if we were to issue a regulation which had that net effect, it is possible that we would find ourselves in court. Our authority to act in this fashion might be questioned by any candidate.

I am not saying that we should shy away from the issue for that reason. I am merely saying that such a challenge is a very distinct possibility. In the process of our considering what you are suggesting, we would have to take that into account.

Mr. MILLER. I understand that, and we are not asking that you have that kind of a problem. But every place I turn I find people say that we don't have the authority to do this.

The taxpayers keep getting billed whenever there is a presidential election. I see that there was an amount of \$1,188,269 spent for the 1980 presidential election. That was only part of the coverage, and we had to appropriate that money to Secret Service so they could put it out to the candidates' committees, and that is what it amounted to.

There is no way we can really answer our constituents back home, as to why you do this. We need to find a way to close that loophole. One of the candidates, and this is public record, never even got to the final election and collected \$226,000. That is actually campaign funds.

Mr. REICHE. It is reported to us.

Mr. MCGARRY. I know this is a matter of continuing concern to you, Mr. Miller. I certainly would honor your request to present this issue to the full Commission at one of our meetings and give

every consideration to its ramifications and ways of ameliorating the problem.

Mr. MILLER. You will find in our hearings over the last several years information on that subject where I have questioned the Secret Service from time to time. It is public record, and you might have one of your people go through that first so you will know what we are talking about.

Would you feed us back the information as to what is the outcome and whether we are going to have this same thing again, and if we cannot set up a regulation within the Federal Election Commission that will stop it.

If it requires a bill in Congress we need to introduce one, so that we can do something, not just talk about it but actually take some action.

Mr. MCGARRY. We will be happy to honor that request.

Mr. MILLER. I have used my time.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Rudd?

#### INCOME TAX CHECK-OFF

Mr. RUDD. Thank you, Mr. Chairman.

Mr. Chairman, let's talk about that little box on the income tax return.

What does that provide to you?

Mr. MCGARRY. There is some popular confusion about that.

To begin with, it is a box that appears on the face of the Federal tax return. If the taxpayer wants to check off the box it does not cost the taxpayer any additional taxes. \$1 of tax liability will instead be allocated to Presidential campaign funding.

It is a paper credit to the U.S. Treasury. We do not get the money. There is a popular misconception that there is in existence an actual segregated presidential fund. There is not. It is merely a paper credit. It accounts for monies that provide the public funding, in terms of matching funds for the primary and the general election public funding which we administer.

What we do in administering the presidential public financing system is to certify to the U.S. Treasury who is eligible and for what amount of public funds to which they are entitled. I am referring to the primary matching funds, the public grants for the general election, and the funding of the national conventions for the major parties.

Mr. RUDD. If there is a misconception there, how can you erase that misconception, or can you, in the minds of the public?

Mr. MCGARRY. It is something that we probably could direct our attention to. It seems as though people are constantly referring to a real fund that is in existence in actual dollars, and it is not. Further, they go beyond that to think that we have custody of the monies and we do not.

Mr. RUDD. It is fraudulent, because what you just said was that the taxpayer can strike off that fund. It does not cost him anything, but it is a paper transaction. It does cost him something, and it costs me something whenever he puts that there.

He is saying that we ought to take funds for these public campaign funds for candidates across the land that I neither know,

have nothing to do with and may not vote for. Yet this taxpayer is saying he is going to use the fund from the general Treasury to do this.

He made a decision for me on that, and that misconception should be clarified.

Mr. MCGARRY. It does not cost the taxpayer an additional amount in taxes for that current tax year.

Mr. RUDD. We should put on that return something like "now you have paid your income tax, and if you would like to dig down in your pocket and get another dollar or two and put it into the Treasury for this candidate, we will accept that." That is the way it should be done, in my opinion.

Is there some way we can really tell the public about that? Do you believe there is a misconception too?

Mr. MCGARRY. We could in our literature give some thought to including some explanatory language. The Vice Chairman might have further thoughts on it.

Mr. REICHE. I am delighted to hear someone say what you just have said.

I think you are absolutely right. If people decide not to contribute the dollar, then as long as there is public funding of presidential campaigns, the money is going to generally have to come from somewhere—specifically, the U.S. Treasury, all of which means raising taxes if an insufficient number of people have checked the credit box. To say it doesn't cost anything is dead wrong. I have been saying this for years.

As far as what can be done about the problem, it mainly involves the literature published by the IRS. It would have to be corrected with the IRS.

We really have nothing to do specifically with the fund. All we do is certify that someone is eligible for public funds. The focus of attention there would have to be on the Treasury Department.

I am uncertain as to whether any change would require legislation.

I would tend to doubt that, unless what you wanted to use the voluntary system you are talking about, i.e., "All right, you, Mr. Taxpayers, have paid your full taxes; if you want to give an extra dollar or two, it will be deductible, but you will have to give it. That would require legislation. I am quite certain of that."

Mr. RUDD. Do you have any ideas on the legislation? I would appreciate if you would let the committee know, if you do.

Mr. REICHE. I would be happy to.

#### PERSONNEL LEVELS

Mr. RUDD. Your testimony indicated that it looks like the 9.7 figure is the one you are going to be dealing with.

Mr. REICHE. That is correct.

Mr. RUDD. And just for the record I couldn't find when you first became operational.

When was it, by the way?

Mr. REICHE. April 14 of 1975.

Mr. RUDD. What is your complement of personnel; what was it at that time?

Mr. REICHE. I would defer on those prior years.

Mr. RUDD. In 1976, the complement of personnel. You should have been under operation well by 1976.

Mr. REICHE. I do not have the precise figures.

Mr. RUDD. What was the growth in personnel between 1976 and the present?

Mr. CLUTTER. Sir, again to summarize what I know of the history, I believe the Commission began in 1975 with a staff well under 100. In 1978, the staff was close to 300. Since then the Commission staff has been declining down to its current strength, which is full-time permanent staff of 235; as of last Friday.

#### PRIOR YEARS' PERFORMANCE

Mr. RUDD. I am wondering if you thought you were doing a good job in 1975, 1976 and 1977 and you were not able to tell me because you were not there.

Mr. CLUTTER. That is correct.

Mr. RUDD. I know you have been here for a second year, and you immediately become negative because those are the things you can no longer do—this and that—but I would be delighted to hear some positive things about knowing that this is the way it is going to be, some positive things about the things that you can do with what you have to work with.

Because many times, I don't have to tell you about bureaucracy and how it grows, but when you have tools to work with, even if it is a Model T Ford, as compared to a Lincoln Continental in today's age, the real objective is to get from point A to point B, and you need wheels to do it.

Maybe it will take you a little longer to get there, but I would like to hear some positive things about the exciting new ways that you are going to have to get this job done with 9.7 rather than 11.2.

I am not being facetious. I think we ought to really consider how you are going to do it, knowing now that it is probably the way you are going to go.

In other words, can you do the job?

Mr. REICHE. The answer I gave to the Senate Rules Committee was, "No, we could not do the job in the way that we are required to do it by the statute." What we must do under those circumstances is obviously reduce the scale of our operations: We would cut here and we would cut there. We must come as close to doing the job as is possible under the circumstances.

In terms of exciting new ways of doing things, I am not sure that those come under the heading of "new ways," but there has been a big difference in the operation of the Commission since its inception.

For example, as between 1976 and 1980, one need but note the difference in the time required to publish the primary audits for presidential candidates; also, we will be completing the audits of the presidential general election candidates as well by July of this year.

This contrasts with the performance of 1976, when it took 3 to 4 years. I do not say that critically. Before I came to the Federal Election Commission I participated in New Jersey in the founding of a similar commission, so I know what those first few years are like. They are very difficult. I am mentioning this to you merely to

underscore the significant improvement in the Commission's operations.

#### INFORMATIONAL ACTIVITIES

We have a long way to go, though, and we are constantly looking for new ways of, for example, educating candidates and treasurers of committees. This is why I made reference to the fact that this budget cut might force us to withhold action on campaign finance seminars throughout the country.

Mr. RUDD. Is that really vital?

Mr. REICHE. It is, because in order to try and obtain the voluntary compliance that we seek, we must disseminate as much information concerning the amendments to the Act as possible and yet, since the amendments were adopted in late 1979 and early 1980, we have not had any campaign finance seminars.

What we wanted to do was to hold these seminars in advance of the 1982 election and thus improve the level of voluntary compliance and decrease potential enforcement activities.

To our way of thinking, enforcement is an adjunct to our primary role which is disclosure; however, you cannot obtain the level of disclosure you would like without having some enforcement capability.

Mr. RUDD. You mentioned use of the terminology in your testimony of public information. That is one of the three impacts that you might have to have reductions in public information activity.

What do you mean by that?

Mr. REICHE. In our Information Division, we have four separate areas—Public information—includes campaign finance seminars I just mentioned. These involve trying to educate the public as to changes in the act since it was adopted.

Mr. RUDD. In this sense you are giving the public information.

Mr. REICHE. That is right, in the hope that it will increase, as I mentioned a minute ago, the level of voluntary compliance. Budget restrictions also limit the numbers of publications that the Commission can prepare and disseminate.

It also means that in some cases, where we used to distribute publications without charge to candidates and committees, we now may have to charge for their distribution.

When talking in terms of public information, reference needs to also be made of the Clearinghouse. One of the activities of the Clearinghouse, as our Staff Director mentioned, was to hold workshops not on the campaign finance aspect of our work, but rather on election administration. Both State and local administrators have found those to be extremely useful. I know that Congress constantly receives word to that effect.

Mr. RUDD. Public information means you are imparting information to the public and not receiving information?

Mr. REICHE. That is correct; trying to educate the public.

Mr. RUDD. Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Campbell?

Mr. CAMPBELL. Thank you, Mr. Chairman.

## VOLUNTARY TAX CHECK-OFF

Let me touch just a minute on voluntary check-offs. Of course, we all know if you lend a man an extra dollar they come in like a couple of the States have done. That is what experience shows in different places.

In Maryland, I believe, somebody tried that. What percentage of the people checked the box in just the last year?

Mr. MCGARRY. We have a chart on that. The staff director can speak to that.

Mr. CLUTTER. Preliminary statistics for 1979 indicate that as of June 30, 1980, approximately 31.6 percent of the returns included designations for the fund. We probably could obtain from the Internal Revenue Service a more current figure. In 1976, 27.5 percent of the returns had a check-off. In 1978, 25.4 percent. So there is a fluctuation in the numbers of designations.

Mr. CAMPBELL. Even though it didn't cost them anything, 27.5 percent of the country refused to check it because evidently they don't believe in it; is that a fair statement?

Mr. CLUTTER. Well, sir, I came from Minnesota where we had a similar system. There have been some recent studies done in the States that do have public financing systems.

My recollection is that it partly depends upon the wording of the form for a check-off and upon the placement of the form. There may be a number of other reasons why people fail to act.

Mr. CAMPBELL. It's kind of hard to put it any place other than on the front of the return, where you can sign your name, check the box, and say it doesn't cost you anything. That is a little difficult to change. You can improve the IRS form?

Mr. CLUTTER. I recall, sir, in one instance a State required that an initial be placed beside the check-off. There was some preliminary research which indicated that the requirement had an impact on the amount of check-offs from one year to the next.

Mr. CAMPBELL. Is it not also true that most of the tax preparers in the country last year, when they were so instructed, informed people that they would automatically check it?

Mr. CLUTTER. I am uncertain of that, sir. I am not aware of that.

Mr. REICHE. Congressman, I am uncertain of that. I am a former tax preparer. I certainly did not do it. I do not think that one can conclude that because you have those percentages, the others consciously did not act. That depends upon taxpayers' level of consciousness of the one dollar check-off. I am not saying that a good many do not check off because they do not believe in it. I tend to agree with you that is probably the case.

No matter how high that percentage is, I don't really think we can suggest any better way to do it.

Mr. CAMPBELL. It would be safe to assume that it would fall down considerably?

Mr. REICHE. No question about that.

Mr. CAMPBELL. When you get down to the thing, that is the closest thing to a vote we have for the American public on public financing to go by because they have an opportunity to vote, with no cost, barring anything else other than polls or studies?

Mr. REICHE. Right; on the other hand, the fund as of this time has in it between \$78 million and \$79 million. All of the payments

for the 1980 election have been made, except perhaps for one or two minor amounts. We already have building toward 1984 a fund of \$79 million.

Mr. CAMPBELL. We are running the risk year after year of third and fourth and fifth party candidates coming all the way through the cycle and, if I am not mistaken, most of the new studies, the Harvard Report a couple of years ago, everybody else said the thing wrong with politics was not that there was too much money in it but that there wasn't enough.

Mr. REICHE. Yes.

Mr. CAMPBELL. The costs of running campaigns, I think they compared it to soap and fingernail polish. We don't spend as much on campaigns as we do for soap, fingernail polish, deodorants, things like that.

#### REPORTING AND DATA ENTRY LEVELS

The reporting level at \$500 that you are using now, did your new budget anticipate your compliance with the \$200 requirement?

Mr. REICHE. No; the new budget did not. It might have been possible to reduce it some.

Mr. CAMPBELL. I may have misread this. I thought we were trying to reach the statutory requirement there of \$200.

Mr. REICHE. Once we reduced our request from the \$13 million level to the \$11 million level, I am not at all sure, even though our aim initially was to achieve it, that we could have done it.

Mr. CLUTTER. The answer to that question, sir, is that the Commission, in the original budget request, envisioned entering the data at the \$200 level. However, when we reduced it, it was not included within the revised amount. It would continue at the \$500 level.

Mr. CAMPBELL. There are, of course, many who feel that is a reasonable level and that in times of the inflation that we have had, it went from \$100 to \$200. I am also interested when we made the change in the law, we cut back on the number of reporting requirements and simplified a few things.

That should have had some impact on your agency as far as cost of data processing, as far as reports, even down to the point of advisory opinions. Having been in existence for a while, your AO's ought to be pretty well standard within the law. I see there is a pretty good increase in here for AO's, some for data processing. Yet we have reduced the number of reports that are required by candidates.

You have been in existence. We have simplified the form. We have raised the reporting level from \$100 to \$200. If we are pulling that burden off, and the costs are going up, tell me what we have done wrong.

Mr. REICHE. First, it should be pointed out that even though the plateau for political committees was raised up to the \$5,000 level, even one dollar of activity now triggers a reporting requirement for PACs. We did conduct studies on this in terms of the cost impact and how much less it would cost the Commission to administer the law because of fewer reports.

The figure that stands out in my mind—and I am willing to be corrected by our staff director—is that the cost saving to us was something less than \$10,000.

Mr. CAMPBELL. Because of the fewer reports?

Mr. CLUTTER. I would like to amplify on Mr. Reiche's comments in two areas.

The first area, speaking of data entry, relates to the number of reports filed. It is true that the number of reports have decreased. We have not gone through an entire election cycle, particularly the nonelection year cycle with respect to the numbers of filings.

We projected in this fiscal year on a per document basis for data entry, for example that these would be, approximately eight transactions. A transaction includes, for example, contributor entry.

Recently, I asked the Director of Data Services precisely what his experience was, having completed the six months constituting the first half of the fiscal year. He indicated to me that the entry level is nearly double what was anticipated. Although, the number of documents may be fewer, the financial activity and the volume of activity is up substantially. This has put us behind in entry, which we have taken steps to correct.

#### NONFILERS

For the nonfiler program, current law provides a very constrained period of time. Under the previous law, our nonfiler activity was extended over a longer period of time. At the end of the time, there were less committees. Now we have more committees than we thought. At the time the laws were changed, it was probably thought there would be fewer nonfilers.

What we have instead is more nonfilers because of that constrained time period. At this juncture it would be fair to say that the Commission probably should go through an entire nonelection year cycle, and then reexamine the impact of the change.

Mr. CAMPBELL. In examining that impact, I should hope that you would provide the House Administration Committee or someone in this committee, recommendations for changes that might lighten that load.

I think we realize, in our election laws over a period of time, we required a lot of things that were almost ridiculous. It required a lot of paperwork and a lot processing.

If there are other changes that can be made within the reporting requirements, within your thresholds, I would certainly appreciate your providing us with your recommendations.

I think that it would be very important.

Mr. Chairman, if I might, I have two quick questions.

Mr. ROYBAL. Proceed.

#### LITIGATION

Mr. CAMPBELL. I am interested in the three defensive cases you are going to the Supreme Court with. I wonder if you could tell us about those.

What points are they going on? I know there is quite a cost in here for that.

Mr. STEELE. Yes; the case that has been argued and is awaiting decision was a challenge by the California Medical Association to the provisions of the law enacted in 1976 regarding solicitations. Because that case has been argued, it will presumably involve no further expense.

There are two cases which the Court has presently taken that will presumably be argued in the October term next year. One involves the Commission ruling in the NRSC versus DSCC case, which is the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committee, with regard to the Commission interpretation of 441a(d) that that did allow agency agreements.

That case has been briefed. Presumably, except for the time of oral argument, which is not very substantial, the costs for that case are pretty much behind us.

The third case is a combined case which relates to a provision in the Presidential Election Campaign Funding Act—section 9012(f) is its technical designation.

It relates to the independent expenditures and the prohibition in that Act against independent expenditures by political committees in amounts greater than \$1,000. In that case the District Court ruled it unconstitutional. That has been appealed to the Supreme Court by both sides.

There are two cases involved, one brought by Common Cause, and one, subsequently brought by the Commission. Those two cases are presently in the briefing process. Our brief in one case is due next week. The one after that will be due in June. There are still some costs outstanding on that. Presently, we have used roughly one year of staff time on that case.

Mr. CAMPBELL. Do you raise the same questions in that brief and in the case you had under *Buckley v. Valeo*?

Mr. STEELE. The position taken by the independent expenditures committees is that the principle enunciated in *Buckley v. Valeo* should require the Court to render section 9012(f) of the statute unconstitutional. That provision was not brought forward in *Buckley* and has remained in the statute since it was included in the original public funding statute back in 1971.

Mr. CAMPBELL. That is the only case you have where you anticipate substantial additional expenditure, those three cases?

Mr. STEELE. With regard to Supreme Court cases, there are two other cases presently being appealed that involve issues similar to those in the California Medical Association case which I mentioned.

The Supreme Court has not indicated whether it will accept those. One is being appealed by a political action committee which relates to the trade association provisions of the Act, that challenge was started in 1977. Another case involves a variety of constitutional defenses to one of our subpoena cases. We subpoenaed Mr. Lance in 1977. That is a Fifth Circuit case. We just do not know at this juncture whether the Court will take them.

Mr. CAMPBELL. Do you anticipate that the *California Medical* case, depending upon its decision, will either not be pursued by you or would be dropped on the other side?

Mr. STEELE. I think that they will attempt to pursue it. We won, so we are not in the position of pursuing it.

Mr. CAMPBELL. Do you think they will pursue it?

Mr. STEELE. I think they will attempt to convince the Court. There are many issues that are the same. But they relate to a different subsection of 441(b). I think they will attempt to pursue it, as Mr. Lance certainly has indicated that he intends to pursue his case.

Mr. CAMPBELL. I have one final little point.

#### SECRET SERVICE EXPENSES

Mr. Miller talked about the Secret Service. If we bill back the campaign for the Secret Service, if we made them pay back the Secret Service, do we not then have to anticipate an additional allotment of moneys to the presidential candidates on the one hand and it would be coming out of one pocket and being put back into the other on the other hand?

Mr. MCGARRY. That is why we want to take a look at the whole thing, Mr. Campbell, and not give a snap judgment without having addressed it fully and formally as it should be. We will as a result of Mr. Miller's request.

Mr. CAMPBELL. Money is going to get paid out of the Treasury one way or the other as long as you have public financing of campaigns; isn't that right, in a general election campaign?

Mr. MCGARRY. Certainly I would say that is a reasonable statement.

#### COMPLIANCE COSTS

Mr. REICHE. There is one other possibility here. It might be included within compliance costs. I am not saying that it is a compliance cost. But you might pay for it with monies raised for compliance purposes.

Mr. CAMPBELL. It costs around \$4 million, \$5 million now?

Mr. REICHE. You mean for a presidential candidate?

Mr. CAMPBELL. It costs about \$4 million or \$5 million now, doesn't it?

Mr. REICHE. I have not checked recently.

Mr. STEELE. That is roughly accurate.

Mr. CAMPBELL. That is a lot of money to spend, about \$20 million, to spend \$4 million or \$5 million to comply with regulations and law. It kind of shows us what we can do with paperwork sometimes.

Thank you, Mr. Chairman.

I have no more questions.

#### LITIGATION COSTS AND RESULTS

Mr. ROYBAL. Would you please tell the committee or provide for the record your costs for litigation based on the last few years?

Mr. MCGARRY. Provide that for the record?

Mr. ROYBAL. Can you provide it for the record?

Mr. MCGARRY. We certainly will. As you know, under the law, Mr. Chairman, as has been raised by Mr. Campbell, the Act provides that the Federal Election Commission has exclusive jurisdic-

tion with respect to civil enforcement of the act. There are a lot of other cases pending in the courts, including the Supreme Court of the United States, the U.S. courts of appeals for the various circuits and in the district courts around the country.

We would be very happy to provide you with that.

[The information follows:]

FEDERAL ELECTION COMMISSION LITIGATION—TOTAL COSTS OF MAN-YEARS AND NUMBER OF STAFF HOURS

	Defensive	Offensive	Including nonfiler
Fiscal year 1978:			
Staff hours.....	6,541	9,496	
Total cost of man-years.....	\$78,052	\$116,165	
Fiscal year 1979:			
Staff hours.....	12,885	16,497	837
Total cost of man-years.....	\$134,744	\$188,013	\$11,105
Fiscal year 1980:			
Staff hours.....	11,898	12,709	116
Total cost of man-years.....	\$143,404	\$153,372	\$1,412
Fiscal year 1981 (through March 1981):			
Staff hours.....	6,601	4,927	( <sup>1</sup> )
Total cost of man-years.....	\$92,936	\$67,599	( <sup>1</sup> )

<sup>1</sup> No nonfiler.

Mr. ROYBAL. Then also in that same information tell us how many cases you have won and how many you have lost.

Mr. MCGARRY. Certainly.

[The information follows:]

FEDERAL ELECTION COMMISSION LITIGATION SUCCESS

Since its reconstitution in 1976, the Commission has participated in 124 cases which have been finally resolved (no appeal pending). Of these closed cases, 17 cases were brought to enforce Commission subpoenas; 72 were suits brought by the Commission to enforce the Act (offensive enforcement cases) of which 41 were against non-filers; and 35 were suits brought against the Commission (defensive suits).

With regard to the enforcement cases, the Commission has won 28 (17 by consent decree or settlement, and 11 by court judgment) and has lost 3. Of the subpoena enforcement cases, the Commission has won all: 11 by court judgment and has voluntarily dismissed or entered a consent order after compliance in 6. With regard to defensive cases, the Commission has won 25, lost 1 and the plaintiffs have dismissed 7. One additional case was settled by consent order satisfactory to both parties and one case was dismissed by a three-judge district court as moot. Finally, the Commission has won 21 non-filer cases by judgment, entered into consent orders in 19 cases and voluntarily dismissed one case.

In terms of open cases, where judgment has been rendered at some level, the Commission has won 4 subpoena enforcement cases in the district court, with one of those being affirmed in the court of appeals and being appealed to the Supreme Court. The other three open subpoena enforcement cases won in the district court are now pending in the court of appeals. Of the open enforcement cases, the FEC has prevailed in two in the district court, one of which was affirmed in the court of appeals. With regard to defensive cases, 4 have been won in the district court; one was reversed on appeal, and certiorari has been granted by the Supreme Court. Two defensive § 437h cases have also been won in the court of appeals and are presently on appeal to the Supreme Court. One three-judge district court case was lost and is presently on appeal to the Supreme Court.

The Commission presently has 42 cases pending, 21 in defense and 21 in offense, in which no decision or resolution has yet been reached.

Mr. ROYBAL. I would be interested in knowing how successful you have been.

Mr. MCGARRY. We would be happy to do that.

#### LATE FILING

Mr. ROYBAL. With regard to the late filings, those violations of late filings, what criteria do you propose to use in deciding what to do about late filings?

Mr. CLUTTER. Mr. Chairman, the statute provides criteria governing the procedures to be followed if an individual is late. I think it is safe to say at this point, given the dimensions, an examination of the late filing program in terms of costs is underway. One of the costs, for example, is mailgram expenses. As a very small example, we have some late filings outside the Continental United States.

I decided that rather than sending a telegram which might cost \$12.50, we should send a letter. We are going to look at that program. We are in the process under the new law. As I said, we would like to see how it runs through this year, but we can give you the information requested.

Mr. ROYBAL. Would you also include in that information the amounts that are being spent and also include the number of people that are involved?

Mr. CLUTTER. We would be happy to do that.

[The information follows:]

#### FILING CRITERIA AND COSTS

The Federal Election Campaign Act requires all committees supporting candidates in U.S. House, Senate and Presidential races to file reports on a quarterly basis in an election year. Additional reports must be filed prior to primary elections and before and after the November general elections. Committees with debts from past campaign years must file semi-annual reports.

All committees are notified by the FEC of potential reporting requirements approximately one month in advance of each reporting date. Committees which fail to file timely reports are again notified after the due date that their reports have not been received. By law, only authorized committees of candidates are published.

In non-election years, authorized committees of House and Senate candidates must file semi-annual reports. This does not apply to committees of candidates involved in special off-year elections, or to PAC's or party-related committees. The next required report for candidates' committees will be due July 31, 1981, covering the first six months of this year.

Failure to file the required reports results in publication of committee names on a list of nonfilers. Further FEC action against nonfilers and late filers is decided on a case-by-case basis, depending on the amount of financial activity involved, the percent of vote received and/or the lateness of the report. The election law gives the Commission broad authority to initiate enforcement actions, including civil court enforcement and the imposition of civil penalties (\$5,000 for "any violation" and \$10,000 for any "knowing and willful violation") for infractions of the law, including failure to file required disclosure reports.

The number of nonfilers published, the Commission man/hours involved, and the cost for recent years are as follows:

	<i>Amount</i>
Fiscal year 1981 to date:	
Published (1,184 projected).....	592
Man-hours (3,384 projected).....	1,692
Total (\$38,532 projected).....	\$19,852
Fiscal year 1980:	
Published.....	978
Man-hours.....	3,578
Total.....	\$33,186
Fiscal year 1979:	
Published.....	1,687
Man-hours.....	7,159
Total.....	\$63,440

Mr. ROYBAL. Late filings are many times due to neglect rather than just a willful violation.

What has been your experience? Into what categories do most of these late filings fall, willful violations; do they fall into neglect more than anything else?

Mr. MCGARRY. Well, before the Staff Director or General Counsel address that, in my opinion prior to the recent amendment by Congress, there were a large number of non-filers in the lesser dollar campaigns where the candidates were really not viable candidates.

The Staff Director or the General Counsel will have more to say on that, but the 1979 amendments to the Act raised the threshold requirement.

Now, if there is not \$5,000 of activity, the candidate does not have to file at all. That is going to help considerably in eliminating many of those lesser candidates with violations because they will not even have to file.

Now the Staff Director or General Counsel can address themselves to our current experience in this area.

Mr. CLUTTER. It's a little uncertain at this point as to our current experience, because the statute has different requirements for non-filers, the authorized campaign committee versus the unauthorized campaign committee.

The experience, again generalizing is that prior to the election there is substantially better compliance. After the election, what happens is that candidates and treasurers forget the filing dates.

In Minnesota, we went to the Legislature and asked for a late filing fee for those late filers. It was used as an incentive to file on time. When you don't file on time, it places a burden not only on the committees, but also on the agency in terms of the administration. We found that it worked very well and was not a punitive measure.

#### CLEARINGHOUSE

Mr. ROYBAL. One of the things that may have to be cut down is the Clearinghouse. That kind of bothered me a little bit. Just what function would you have reduced if, of course, you don't get that full amount requested.

Mr. MCGARRY. I will just address it preliminarily, if I may. I am glad you raised it, sir.

A most important function, in my opinion, one for which the government gets the "biggest bang for the buck," is workshops and campaign seminars conducted by the Clearinghouse. Working with State and local election officials around the country who are really starving for this information, the Clearinghouse of the Federal Election Commission is the only repository in government for all of this information relating to the administration of elections.

A Federal election is not truly different from a State or local election. It's all one election. The local dog catcher is on the same ballot with the President of the United States.

The cost to the Commission for these workshops has been minimal. Recent workshops were held in Alabama and Mississippi

where, Commissioner Aikens was present, something like 200 election officials paid their own expenses to attend.

The cost to the Federal Election Commission was minimal. Those involved in the administration of the election itself participated in the workshops. Congress, I think, has a vital interest in this area. Beyond that, as far as the campaign seminars are concerned, there is, as Commissioner Reiche has mentioned, a dire need to inform the public about the Act. A public forum recently highlighted that this law is very complex. We all agree with that. Without adequate seminars on the Act, it's like giving a student a manual to get into a complex jet airplane and say, "Go ahead; I hope you make out."

Those subject to the Act need help. This is a function that will be cut and possibly eliminated with the reduction in funds.

There are other things. The Voting System Standards Study, of course, was mandated by Congress. Where that will wind up, I really don't know at this time.

Just to put it in perspective, the Clearinghouse two or three years ago was managing "some research in the election field." Most but not all of that research is now out of the budget.

At the level of \$9.7 million, what would be happening in the Clearinghouse area is that the Commission would be looking at possibly cutting such things as the outreach program and, whether or not to continue the election law coordination with state officials, those kinds of things.

There is very little coordination or research in the election area.

Mr. ROYBAL. Would it actually result in the elimination of the Clearinghouse function all together?

Mr. MCGARRY. I would say flatly that it is headed in that direction Mr. Chairman. It could. I will just add before we leave the subject, that the funding has been reduced by 50 percent between fiscal years 1978 and 1981 in terms of constant dollars and by over 75 percent in terms of dollars adjusted for the cost of living.

The Clearinghouse funds now comprise less than 4.1 percent of the Commission's fiscal year 1982 budget request. The Clearinghouse staff now comprises less than 1.5 percent of total Commission staff.

I am not speaking for the other Commissioners. As you know, Mr. Chairman, in the years before I was appointed by the President, I was associated with the Congress as the Chief Counsel for the Special Committee to Investigate Campaign Expenditures. I have a personal understanding that there is a dire need for this information on the part of those local election officials and the candidates and committees that are involved in the campaign.

Mr. ROYBAL. I would like to thank you and your colleagues for your presentation this afternoon.

Mr. CAMPBELL. Mr. Chairman, two quick questions.

#### ELECTION DATA—1980

One, have you finished reporting this year on the contribution to congressional candidates and political action committees? Is that ready to be published yet?

Mr. MCGARRY. Where are we on that?

Mr. CLUTTER. As I mentioned earlier, the number of transactions was greater than we anticipated. We have completed the more

sophisticated entry of the data for the general election. It is anticipated, although we will go back and verify it, that we will have it all in within 6 to 8 weeks, with a final report or a wrapup shortly thereafter.

Mr. CAMPBELL. Let me ask you one other thing.

In the cost of security with the Secret Service riding with the President, a decision to raise that level has been discussed in talking about costs which come from the Secret Service or from the campaign treasury, which eventually comes from the U.S. Treasury under Federal financing. You mentioned the problem of compliance with this.

In looking at suggested changes in the law, I wonder if you would take a good look at that and see whether you think it is something that should be appropriated in the campaign side to be charged back as a bookkeeping change or whether in fact your compliance sector is something that we should go on with.

I would appreciate seeing a recommendation on that.

Mr. MCGARRY. I think it would be an added part of Mr. Miller's overall request, Mr. Campbell.

Mr. CAMPBELL. I just wanted to find out what we are looking at exactly.

Mr. MCGARRY. Thank you very much.

Mr. ROYBAL. Again, I would like to thank you on behalf of the committee. I want to thank also your colleagues for the presentation this afternoon.

[The justifications follow:]

FEDERAL ELECTION COMMISSION  
FISCAL YEAR 1982  
JUSTIFICATION  
APPROPRIATION REQUEST

MAY 6, 1981

## FY 1982 JUSTIFICATION--TABLE OF CONTENTS

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FY 1982 BUDGET REQUEST JUSTIFICATIONINTRODUCTION

The Federal Election Commission (FEC) has submitted its budget request for FY 1982 as a concurrent submission agency and has prepared a Decision Package Ranking Sheet and the required Decision Unit Overviews and Decision Packages. The Commission requests funding for Decision Packages 1 through 11, for a total budget request of \$11,143,285 and 269.44 permanent positions (FTE). 1/

The Commission's original FY 1982 budget request contained 12 Decision Packages, and requested a total of \$13,251,212 and 286.44 permanent positions (FTE). The Carter Administration approved a budget figure of \$10,339,000, which the Commission appealed. Subsequently, the Reagan Administration notified the Commission that it would recommend a FY 1982 budget for the FEC of \$9,746,000 and 227 permanent positions (FTE).

In response to the Reagan Administration request for fiscal restraint, the Commission voluntarily revised its original request downward to \$11,143,285 in an appeal to OMB. As a result, the original Decision Packages were reduced, as follows:

Decision Packages #1-8	--	no change
Decision Package #9	--	reduced by \$143,000
Decision Package #10	--	reduced by \$268,807
Decision Package #11	--	eliminated (reduction of \$182,166)
Decision Package #12	--	reduced by \$1,513,954, and re-designated as Decision Package #11

The total reduction was \$2,107,927 from the original request of \$13,521,212.

To facilitate consideration of this budget request, the Commission has also prepared this budget justification. This justification briefly describes the responsibilities of each office or division and analyzes the resources necessary to fulfill the Commission's statutory duties.

This year's budget request differs from past Commission requests in that it is based upon a program approach. Earlier budget requests were based on zero based budgeting but were more closely tied to the Commission's organizational structure. In FY 1982, five Decision Units were identified, based upon the Commission's five major objectives: Promote Disclosure; Provide Information; Obtain Compliance; Commissioners, Statutory Officers and Administration; and Implement Public Financing. 2/ No resources

1/ Full time equivalent (FTE).

2/ The Commission has certified \$103,292,275.28 in public funds for use of qualified Presidential candidates and political parties in connection with the 1980 Presidential election. (See Table I for a detailed summary.)

were sought for the fifth objective, to Implement Public Financing, since work on the 1980 Presidential election will be virtually completed by FY 1982. 3/ These objectives cross divisional lines. Table II (attached) identifies the programs contained in each Decision Unit. Table III (attached) relates the Commission's organizational structure to the five major objectives.

Table IV depicts the distribution of Commission resources by object class for the FY 1982 budget request. As is typical of most regulatory agencies, by far the greatest percentage of the Commission's budget is allocated to personnel (72% in FY 1980, 74% in FY 1981 and 68% in the FY 1982 request). The remainder of the budget reflects the necessary space, supplies, equipment, and overhead costs required to support the staff.

Table V depicts manpower by Commission office for FY 1979 through FY 1981, and for the FY 1982 budget request.

#### IMPACT OF RECENT APPROPRIATIONS ON COMMISSION OPERATIONS

The FEC is a personnel-intensive agency, with personnel accounting for 62% of the FY 1978 appropriation and rising to 74% in FY 1981. Support costs have continued to shrink as a percentage of the Commission's budget. This has been a conscious, if painful, decision as the FEC has striven to maintain needed staffing levels in the face of tight budgetary constraints.

The Commission's administrative support budget in FY 1979 was actually \$93,000 less than FY 1978 (excluding Clearinghouse Contract research funds which decreased due to authorization earmarking language since FY 1979). In FY 1980 these funds increased by \$82,000, but were still less than those expended in FY 1978 -- despite 10% or more annual inflation in many necessary costs such as air fare, printing, equipment, supplies, materials, etc.

In FY 1981, the Commission reduced administrative support costs by \$60,000 over FY 1980. Thus, for three successive fiscal years the Commission has put off replacing old and worn equipment, and has scrimped on supplies and materials to ensure adequate staffing levels to perform its mission. The Commission cannot continue to operate in this fashion indefinitely.

The FY 1982 budget request contains sufficient funds for the Commission to replace old, outdated equipment and to staff adequately. The FEC notes that in FY 1982 we will be faced with a rent increase of approximately 56%:

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3/ Minimal resources (one man-year) are requested in Package 2 (Obtain Compliance) to complete work on compliance matters related to the 1980 Presidential election.

from about \$8 per square foot to \$12 per square foot. This is approximately a \$200,000 increase over which the Commission has no control. This does not represent any additional or new space, but only existing space now occupied. While the Commission feels that its current facilities are substandard, it has deferred requesting funds to move to other facilities in recognition of the Administration's request for fiscal restraint.

The number of staff requested for particular programs is based upon the results of the Commission's work measurement system--the Management Information System (MIS). Computerized since FY 1979, the MIS provides resource allocation and productivity measures that enable the Commission to estimate, with greater accuracy, the resources necessary for particular programs.

Therefore, staffing levels in this budget request are based upon MIS estimates of the resources necessary to handle projected workloads. <sup>4/</sup> Continued attrition of Commission staff will impair the ability of the FEC to perform its mandated duties. The FY 1982 request ensures adequate staff and support resources to implement and enforce the FECA in an impartial, timely and efficient manner during the 1982 elections.

<sup>4/</sup> Projected workloads reflect Commission estimates of the numbers of candidates and committees expected to be involved in the 1982 elections.

TABLE I

DISTRIBUTION OF PUBLIC FUNDS IN CONNECTION WITH  
THE 1980 PRESIDENTIAL ELECTION

Primary Matching Funds

John B. Anderson	\$2,680,347.28
Howard H. Baker, Jr.	\$2,635,042.60
Edmund G. Brown, Jr.	\$ 892,249.14
George Bush	\$5,716,246.56
James E. Carter	\$5,117,854.45
Philip M. Crane	\$1,898,838.32
Robert Dole	\$ 446,226.09
Edward M. Kennedy	\$4,130,452.10
Lyndon H. LaRouche	\$ 526,253.19
Ronald Reagan	<u>\$7,294,461.55</u>
Total	\$31,337,971.28

Major Party Presidential Nominating Conventions

Republican National Committee	\$ 4,416,000
Democratic National Committee	<u>\$ 4,416,000</u>
	\$ 8,832,000

General Election Grants

Ronald Reagan	\$29,440,000
James E. Carter	\$29,440,000
John B. Anderson	<u>\$ 4,242,304</u>
	<u>\$63,122,304</u>

COMMISSION OBJECTIVES

1	2	3	4	5
PROMOTE DISCLOSURE	PROVIDE POLICY GUIDANCE, INFORMATION	OBTAIN COMPLIANCE	PUBLIC FINANCING	STATUTORY OFFICERS AND ADMINISTRATIVE SUPPORT
DATA CODING DATA ENTRY SEC. OF STATE REPORTS ON FINANCIAL ACTIVITY DATA BASE MONITORING PRESS OFFICE FREEDOM OF INFORMATION ACT POLICY PUBLIC RECORDS [APPLICABLE ADP]	ADVISORY OPINIONS REGULATIONS LEGISLATION/CONGRESSIONAL INQUIRY POLICY LEGAL REVIEW BOOKKEEPING MANUALS PUBLICATIONS PUBLIC COMMUNICATIONS CLEARINGHOUSE [APPLICABLE ADP]	ENFORCEMENT LITIGATION REPORTS REVIEW 438(b) AUDITS AUDIT REVIEW REPORTS ANALYSIS DIVISION COMPLIANCE [APPLICABLE ADP]	CERTIFICATION AUDITS SYSTEMS MANUAL AUDIT REVIEW ENFORCEMENT LITIGATION [APPLICABLE ADP]	COMMISSIONERS STAFF DIRECTOR COMMISSION SECRETARY GENERAL COUNSEL ADMINISTRATION PLANNING & MANAGEMENT DATA SYSTEMS

TABLE II

TABLE III

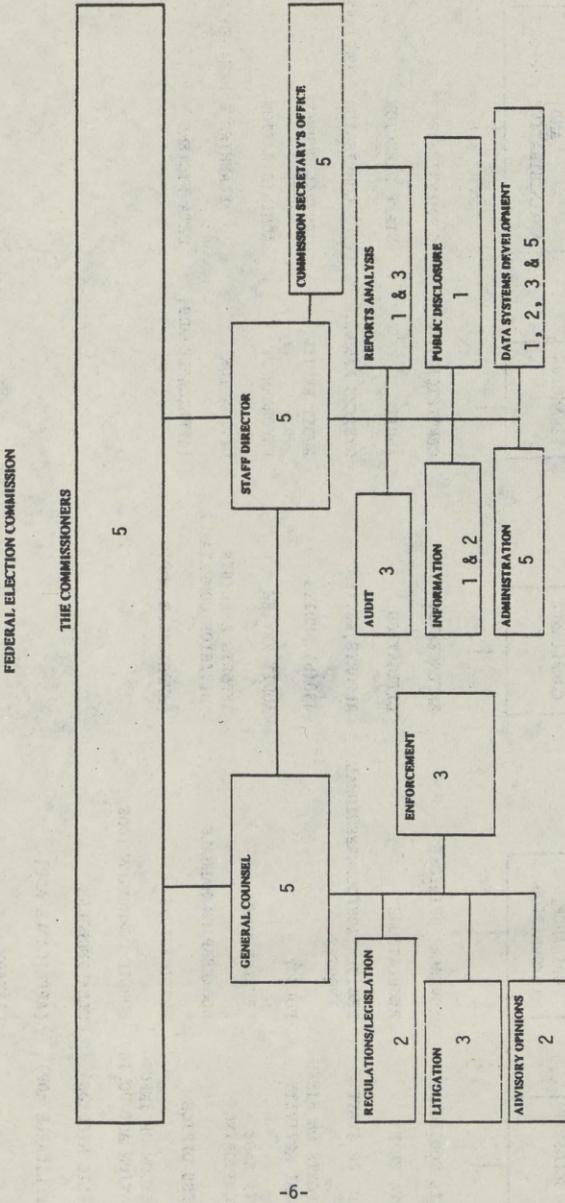


TABLE IV  
COMMISSION RESOURCES (\$) BY OBJECT CLASS

FY 1982

Personnel, Including all Benefits	\$ 7,566,683
Travel	418,300
Training	42,500
Publications/Printing	401,960
ADF & ADP Equipment	735,530
Research Contracts	247,000
Consultants	90,000
Space Rental & Related Expenses	648,162
Administrative Support & Other <u>1/</u>	<u>993,150</u>
TOTAL	\$11,143,285

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1/ Includes supplies, materials, equipment, etc.

TABLE V

COMMISSION MANPOWER (MAN-YEARS) BY FISCAL YEAR

	<u>FY 1979</u>		<u>FY 1980</u>		<u>FY 1981</u>		<u>FY 1982</u>	
Commissioners	20P	0T	20P	0T	20P	0T	20P	0T
Staff Director	14.5P	.5T	14.5P	0T	9.5P	0T <u>1/</u>	8.5P	1.5T
Administration	21P	.5T	21P	0T	25P	0T <u>1/</u>	25P	0T
Data Systems	15P	.5T	15P	0T	21P	12T <u>2/</u>	30.75P	7.5T
OGC	74.5P	2T	75.5P	2T	71.5P	2T	81.5P	1.5T
Audit	42P	0T	39P	1T	37P	0T	34P	1T
Reports Analysis	57P	5.5T	59P	8T	42P	11T <u>2/</u>	39P	1T <u>3/</u>
Information	16.6P	0T	16.72P	.5T	15.72P	0T	19.72P	1.5T
Clearinghouse	4P	.5T	4P	2T	4P	1T	4P	2T
Public Disclosure	7.4P	2T	8P	2T	8P	2T	7P	3T
TOTALS	272P	11.5T	272.22P	15.5T	253.72P	28T	269.44P	19T

1/ The Planning and Management Office was transferred from the Staff Director's Office to the Administrative Division in FY 1981.

2/ The data entry unit was transferred from Reports Analysis to Data Systems at the end of FY 1980.

3/ The data coding unit is projected to be transferred to Data Systems in the last quarter of FY 1981 and for FY 1982.

All manpower is expressed in man-years (FTE or full-time equivalent).

"P" denotes permanent employees; "T" denotes temporary employees.

## COMMISSIONERS' OFFICES

FY 1982 Budget

The total FY 1982 budget request for the Commissioners' offices is \$889,136 for 20 positions. This includes not only an Executive Assistant and Executive Secretary for each of the six Commissioners, but also an Executive Secretary for each of the two Ex-Officio Deputies representing the Secretary of the Senate and the Clerk of the House of Representatives.

The resources for the Commissioners' Offices are contained in Decision Package 1 (Commissioners, Statutory Officers Decision Unit) of the Commission's revised submission to Congress and the Office of Management and Budget (OMB).

Duties

Members of the Commission are charged with the construction, implementation and civil enforcement of the Federal Election Campaign Act (FECA), as amended. As required by the Act, each Commissioner works full-time and receives compensation at the rate of Level IV of the Executive Schedule.

The Commissioners, aided by their personal staffs, direct the formulation and implementation of all Commission policies and procedures. The Commission also reviews and acts on all regulations, advisory opinions, and compliance matters.

## OFFICE OF THE STAFF DIRECTOR

FY 1982 Budget Request

The total FY 1982 budget request for the Office of the Staff Director is \$336,033 and 8.5 positions.

The resources for this Office are contained in Packages 1, 6 and 11 (Commissioners, Statutory Officers, and Administration Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

The Staff Director is appointed by the Commission and serves as the Commission's chief administrative officer in carrying out its duties, powers and responsibilities under the FECA. The Staff Director has the direct responsibility for organizing and managing the staff whose function it is to carry out the programs approved by the Commission. The Staff Director recommends to the Commission the appointment of employees and the fixing of their salaries. Assisting the Staff Director is a Deputy Staff Director who is responsible, under the supervision of the Staff Director, for coordinating staff efforts to implement the Commission's policy decisions.

Secretary to the Commission

The Secretary to the Commission reports directly to the Staff Director and is responsible for the maintenance of the official record of all Commission votes, actions and meetings, including those involving compliance matters. The Secretary is also responsible for the internal distribution of all Commission documents.

Labor-Management Relations

The Director of Labor Management Relations and Personnel (LMR) reports directly to the Staff Director. He is responsible for developing personnel policies and supervising their implementation. The LMR Director also advises the Commission and Staff Director on union matters, as well as contract negotiations.

Equal Employment Opportunity Program (EEO)

The Commission's EEO program is administered by a senior-level attorney with the assistance of three counselors. Each of the four employees involved in the EEO program has Commission duties separate and apart from his or her EEO responsibilities. The senior attorney who serves as EEO Officer spends one-half of his or her time on legal work assigned by the General Counsel and one-half on EEO matters under the supervision of the Staff Director. The three Commission employees who currently serve as counselors are members of the Information Division, the Reports Analysis Division, and the Office of General Counsel. Approximately 5-10 percent of their time is spent on EEO matters.

## AUDIT DIVISION

FY 1982 Budget Request

The total budget request for the Audit Division is \$1,278,105 and 34 permanent positions. This request reflects another, further decrease from the FY 1979 audit staff of 42 positions (39 in FY 1980 and 37 in FY 1981).

The resources for this Division are contained in Packages 4 and 10 (Obtain Compliance Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

The Audit Division is responsible for conducting timely, professional audits of political committees in order to verify substantial compliance with the provisions of the Federal Election Campaign Act as well as the accuracy of the data placed on the public record by such committees. In addition, audits help continuing committees to understand the reporting and recordkeeping requirements of the Act and ways of avoiding problems in the future.

The statute authorizes the Commission to conduct three different types of audits:

- (1) Mandatory audits of Presidential candidates who accept public funding for their primary or general election campaigns. (26 U.S.C. 9008 and 9038);
- (2) Audits of those political committees whose reports are deemed not to be in substantial compliance with the statute after an internal Commission review (2 U.S.C. 438(b); the standards under which a committee is deemed to be in substantial compliance with the Act are set by the Commission as directed by the statute. See below);
- (3) Audits of those political committees against which the Commission has found reason to believe that a violation has occurred and in connection with which matters the Commission believes an audit is necessary (2 U.S.C. 437g).

The Audit Division also has primary responsibility for the certification, disbursement, and verification of contributions submitted for federal matching funds in Presidential primary elections.

Public Financing Program

No resources are provided for Public Financing in the FY 1982 request for the Audit Division since work on the 1980 Presidential campaigns will be completed during FY 1981. As of the date of this submission, the Commission has publicly released the final audit reports of eight of the ten candidates

## AUDIT/2

in the Presidential primaries and work on the audits of the three publicly-funded candidates in the general election is well underway. (See Appendix A for the 1980 Presidential Audit Schedule for primary candidates).

2 U.S.C. 438(b) Audit Program

A review of the Commission's audit procedures and policies was conducted in FY 1979 by the Arthur Andersen and Co. and the Accountants for the Public Interest (API). A major conclusion of the Andersen study was to reaffirm the importance of audits in obtaining compliance with the statute and full disclosure of campaign finance activity. In FY 1980, the Commission adopted many of the recommendations resulting from the review--an action which has apparently achieved the expected result--streamlining the audit process.

Shortly after adopting the new audit procedures, P. L. 96-187 was enacted. Section 438(b) of that law provides that:

...Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission. The Commission may, upon an affirmative vote of 4 of its members, conduct an audit and field investigation of any committee which does not meet the threshold requirements established by the Commission. ...

To comply with those statutory directions, the Commission developed and adopted the Reports Analysis Division Review and Referral Procedure. This Procedure provides: (1) How the Commission will determine which categories of committees' reports will be reviewed; (2) The standards the Reports Analysis Division will apply during the review process; and (3) The thresholds or standards the Commission has established for determining whether a committee has failed to comply substantially with the Act and, upon an affirmative vote of four members, will be audited. The Procedure also establishes:

- the basis for a referral to the Audit Division;
- how an audit is initiated;
- the period covered by the audit;
- the notification procedures to be followed prior to commencement of audit fieldwork:
- the scope of the audit, either full or limited, as appropriate; and
- a timetable to be followed by the Reports Analysis Division when referring committees for audit and to be followed by the Audit Division in conducting its fieldwork.

## AUDIT/3

The Procedure, in effect, sets up a four-year cycle that places priority upon Presidential audits in Presidential election years (late FY 1983, FY 1984, and early FY 1985; on authorized committee audits in off-election years (FY 1981 and FY 1983); and on unauthorized committee audits in election years (FY 1982, and on a somewhat reduced scale in FY 1984 due to the Presidential election).

In addition to the above, the guidelines set target dates for the post fieldwork processing of Track A audit reports (those with no unresolved legal issues) and Track B audit reports (those with unresolved legal issues). These target dates, or deadlines, apply to the Audit Division as well as to the Office of General Counsel and the Commission.

Pursuant to 2 U.S.C. 438(b), authorized committee audits are to commence within six months of the election in which the authorizing candidate was involved.

The budget currently calls for auditing both non-party (PAC's) and party committees during FY 1982. The actual number of each category of filer cannot be determined until a review of the reports filed is conducted by the Reports Analysis Division and referrals for audit are approved pursuant to 2 U.S.C. 438(b). Resources included in the request provide the capacity to conduct approximately 105 audits.

Each audit is expected to require an average of 50 mandays of Audit Division time to complete. This time includes pre-audit, fieldwork, and post-audit work through to the public release of the audit report. The actual time required from pre-audit through public release varies from 11 weeks to 19 weeks, allowing time for review of the report by the Office of General Counsel and the Commissioners, and also allowing for committees to respond to the interim audit report.

#### 2 U.S.C. 437g Audits

The budget request also includes resources for 12 audits under the provisions of 2 U.S.C. 437g, which empowers the Commission to conduct field investigations and/or audits following a finding by the Commission that there is reason to believe a violation has occurred.

#### Testing New Sampling Techniques

The FY 1982 budget request also provides for \$50,000 to contract for the testing of new sampling techniques and procedures for possible use in the 1984 Presidential public financing process. Use of sophisticated sampling techniques in 1980 resulted in reduction of the resources required for certification of matching funds. (Testing of this program took place in FY 1979.) The expected result would be to reduce further the resources required for public funding certification in 1984.

## OFFICE OF THE GENERAL COUNSEL

FY 1982 Budget Request

The total budget request for the Office of the General Counsel (OGC) is \$2,537,724 and 81.5 permanent positions.

The resources for the Office's advisory opinion and policy programs are contained in Packages 5, 8, and 9. (Provide Information Decision Unit) of the Commission's revised submission to Congress and OMB. The resources for the Office's enforcement and litigation programs are contained in Packages 2, 4, and 10 (Obtain Compliance Decision Unit).

Duties

The General Counsel is appointed by the Members of the Commission to serve as the Commission's legal counsel (2 U.S.C. 437c(f)(1)). The Counsel assists the Commission in establishing and formulating general policy with respect to the laws under the Commission's jurisdiction; drafts rules, regulations and advisory opinions; and represents the Commission in all legal proceedings. The Counsel presents all cases of apparent violations to the Commission and sets forth the facts and alternate courses of action.

The General Counsel also works with other federal agencies with respect to election related problems of mutual concern.

Advisory Opinions

Public Law 96-187 gives any person the right to seek an Advisory Opinion from the Commission. The statute directs the Commission to respond to all Advisory Opinion Requests within 60 days of the receipt of a complete request; or, if the request is submitted by a candidate or his/her authorized committee and is received within 60 days prior to an election in which the requestor is involved, the Commission must respond within 20 days of receipt. The broadened provision for standing and the imposition of deadlines for Commission responses to requests require that sufficient staff be allocated to the advisory opinion program to ensure that timely, well-reasoned responses to increasingly complex questions are provided.

The chart below shows the average time per response to Advisory Opinion Requests.

<u>Fiscal Year</u>	<u>Number of Advisory Opinions</u>	<u>Average Response Time</u>	<u>AOs Issued Within 60 Days (%)</u>
1980	119	47.7 calendar days	81%
1981	43*	38.6 calendar days	93%

\* Number of Advisory Opinions issued as of February 28, 1981.

OGC/2

The FY 1982 budget request would allow the Counsel to process approximately 134 advisory opinion requests. The increase of one man-year (a GS-5 paralegal) over the FY 81 level of 5.5 will enhance the staff's ability to produce opinions quickly by providing support for the routine requests and research support to senior attorneys on complex questions.

#### Regulations

Public Law 96-187 enacted on January 8, 1980 in the midst of the 1980 Presidential primaries, required the Commission to submit new regulations interpreting the wide-ranging statutory changes to Congress by February 29, 1980. The Commission met this deadline but only as a result of a massive shift of personnel from enforcement, advisory opinions, and litigation to work full or part-time on researching and drafting the new regulations. New reporting forms were also prepared and reviewed on an expedited basis.

The FY 1982 budget request provides for substantially increased attention to revising sections of the regulations that are outdated, cumbersome, or confusing. Many of these regulations were drafted after enactment of the 1976 amendments, again during the height of the 1976 Presidential primary elections, and should be revised. This budget request provides for 7 man-years, an increase of 2.25 over the FY 1981 planned level.

#### External Enforcement

The statute allows any person who believes a violation has occurred to file a notarized, sworn complaint with the Commission. The Commission must send a copy of the complaint to the respondent(s) within 5 days of receipt and gives them 15 days in which to reply to allegations. The Commission, upon the affirmative vote of four members, is authorized to investigate the alleged violation(s) if there is reason to believe a violation has occurred. After an investigation is complete, the statute provides that the General Counsel shall send a brief to the respondent(s) stating the legal and factual basis for his recommendation to the Commission (i.e., find probable cause that a violation has occurred or find no probable cause that a violation has occurred). The respondent may submit a responsive brief within 15 days of receipt of the General Counsel's brief. If the Commission determines, by the affirmative vote of four members, that there is probable cause to believe a violation has occurred, the Commission is required by statute to attempt to conciliate the matter with the respondent for a minimum of 30 days (but not more than 90 days). <sup>1/</sup> Should conciliation attempts fail, the Commission may bring suit against the respondent.

The FY 1982 budget request contains 15.5 man-years to process an estimated 94 complaints. This represents an increase of one man-year over FY 1981, reflecting the expected increase in enforcement activity

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<sup>1/</sup> FEC regulations allow the Commission to enter into a conciliation agreement prior to a probable cause to believe finding (See 11 CFR 111.18(d)).

QGC/3

stemming from projected increases in the number of filers for the 1982 election. In addition, the increase would ensure a more rapid processing of complaints under the amended enforcement provisions of the Act.

#### Internal Enforcement

Internal Enforcement includes matters arising from the review of disclosure reports by the Reports Analysis Division or from performance of an audit by the Audit Division. In FY 1980 and 1981, the Commission was forced to reduce the resources applied to matters that did not involve Presidential candidates (i.e., the Non-Presidential Internal Enforcement Program) in order to ensure timely resolution of all internal enforcement matters that did involve Presidential candidates (i.e., Presidential Internal Enforcement).

The FY 1982 budget request would shift most of these resources (2.5 man-years in FY 1981) back to the Non-Presidential Internal Enforcement Program in an effort to resolve matters pertaining to the 1982 elections in a more timely manner.

In an effort to concentrate Commission resources on the most significant apparent violations of the Act and/or the regulations, the Commission has developed criteria to govern the referral of possible violations to the Counsel by the Reports Analysis Division.

The FY 1982 budget request provides 11 man-years in Non-Presidential Internal Enforcement to process an estimated 115 enforcement matters. In addition, one man-year is provided to process an estimated 5 Matters Under Review (MURs) arising from the 1980 Presidential elections--Presidential Internal Enforcement. This request represents an increase of 3.5 man-years over the FY 1981 level for Internal Enforcement (Presidential and Non-Presidential).

Conciliation Agreements. Once the Commission determines that there is probable cause to believe a violation has occurred, it attempts to settle the case through the conciliation process. The FECA protects the negotiation process by assuring that no information derived in connection with a conciliation attempt may be made public by the Commission without the consent of the parties involved. A conciliation agreement with the Commission is a complete bar to any further action with respect to the violation(s) unless the terms of the agreement are violated. The number of conciliation agreements successfully negotiated by the Commission is shown below.

OGC/4

## CONCILIATION AGREEMENTS

<u>Fiscal Year</u>	<u>Number</u>
1976	1
1977	40
1978	95
1979	121
1980	125
1981	31 (as of 2/28/81)

<u>Dollar Amount of Agreement</u>	<u>Number of Agreements</u>	<u>Percentage of All Conciliation Agreements</u>
\$0 to \$99	182	44%
\$100 to \$999	181	44%
\$1,000 to \$4,999	35	8%
\$5,000 to \$10,000	11	3%
Over \$10,000	3	

Totals:

The Commission has reached conciliation agreements involving just under \$315,000 in civil penalties from 412 separate agreements in 142 MURs.

Litigation

The General Counsel is responsible for handling all civil litigation concerning the enforcement and defense of the Act including the representation of the Commission before the U.S. Supreme Court. The Supreme Court's recognition in Buckley v. Valeo of the Commission's "exclusive jurisdiction" in civil matters was subsequently embodied in the enforcement provisions of the Act.

The resources requested for litigation represent sufficient staff to handle the projected litigation caseload for the 1982 elections, as well as some matters remaining from the 1980 elections.

Defensive Litigation. Defensive litigation includes those suits involving a defense of the constitutionality of the Act or the validity of Commission actions. Already three major cases have been accepted by the Supreme Court for review and argument in the Court's October, 1981 term.

The budget request provides 10 man-years to handle an estimated 16 suits. This represents an increase of one man-year over the FY 1981 level.

Offensive Litigation. Offensive litigation is divided into three separate categories (437g, 437d, and non-filer) as described below.

The FY 1982 budget request provides for 12 man-years to handle offensive litigation, an increase of 2 man-years over the FY 1981 level. This would enable the Commission to initiate or complete the following:

OGC/5

437g litigation -- File suit to obtain compliance when unable to obtain compliance through the preferred conciliation route (an estimated 15.5 suits)

437d litigation -- File suit to compel respondents to make available the information the Commission deems necessary to complete an investigation. The Commission has consistently been successful in seeking district court enforcement of its subpoenas (an estimated 12.5 suits).

Non-filer litigation -- Enables the Commission to file suit in the most serious non-filer cases. While the Commission considers the failure to file required reports a serious violation, it has limited resources to deal with this problem. Therefore, the Commission has established standards for the referral of such cases by the Reports Analysis Division to the Commission. In deciding whether to refer and/or ultimately proceed against a non-filer, the Commission considers such factors as: the proximity of the report's due date in relation to the election; relative importance of the report(s) involved; the type of committee; the amount of financial activity; and the length of time a report is outstanding (an estimated 12 suits).

#### Legal Review and Policy Questions

The Commission has found in recent years that more and more of the General Counsel's time is required to handle administrative law and legal policy matters. Administrative law questions are those that involve Commission responsibilities under statutes other than the FECA, (for example, Freedom of Information and Sunshine Act questions). Legal policy matters involve FECA legal questions raised by the Commission and/or staff from other divisions, for example: policy questions that arise from an audit and policy questions that are raised in the context of an audit or a Commission meeting.

The FY 1982 budget request provides for 7 man-years, an increase of 2.75 over the FY 1981 level. This would allow the Counsel to perform these duties on a timely basis.

Also included in this request is \$40,000 to finance the preparation, indexing, printing and binding of a legislative history of the 1979 Amendments to the Federal Election Campaign Act, Public Law 96-187, and of the 1966 and 1967 Legislative History of Election Reform. This would continue the project begun in FY 1981 when the Commission prepared a similar legislative history for the 1971 Amendments. <sup>1/</sup>

*Note: Caseload figures for each major function of the General Counsel's Office can be found in Appendix B.*

<sup>1/</sup> The Commission has already compiled and printed the legislative histories for the 1974 and 1976 Amendments to the Act.

## REPORTS ANALYSIS DIVISION

FY 1982 Budget Request

The total budget request for the Reports Analysis Division is \$932,572 and 39 permanent positions. The FY 1982 request represents no increase over FY 1981 which reflected an actual decrease in staff from FY 1980. Any further decrease in resources would impair the Commission's ability to perform some of its most basic functions, such as identification of non-filers and the review of disclosure reports to ensure timely and accurate disclosure.

The resources for this Division are contained in Packages 2, 4, and 10 (Obtain Compliance Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

The Reports Analysis Division is responsible for:

- Assisting filers upon phone or written request by answering questions about their specific filing problems;
- Contacting filers by letter requesting further information about transactions they have reported for which there is incomplete information on the public record. (These letters are known as "Requests for Additional Information or RFAI's).
- Reviewing campaign finance disclosure reports to determine their accuracy and compliance with the Act;
- Identifying those political committees who have failed to file required campaign finance reports;
- Referring to the Audit Division, where appropriate, the reports of those committees or other filers that do not meet the threshold for substantial compliance; and
- Referring to the Office of General Counsel, where appropriate, those committees whose reports indicate they may be in violation of the Act.

Reports Analysis Division Review and Referral Procedure

In response to the 1979 Amendments to the Federal Election Campaign Act, the Commission has established criteria to guide staff review of campaign finance disclosure reports. The procedure sets forth: (1) How the Commission will establish the categories of committees whose reports will be reviewed; (2) The standards to be applied by the Reports Analysis Division during the review process; (3) The thresholds or standards the Commission has established for Reports Analysis to determine whether a committee has failed to comply substantially with the Act and, upon an affirmative vote of four members, will be audited; and (4) the standards which the Reports Analysis Division will use in determining whether a potential violation is to be referred to the Office of General Counsel.

RAD/2

The review of reports filed by political committees is the basis on which internal enforcement actions and audits are generated. Because of the volume of reports filed by an ever-increasing number of filers, the Commission has developed two systems for review: condensed review and basic review.

A condensed review is essentially a "scan" of the report to determine whether certain fundamental legal requirements have been fulfilled. The basic review is a more thorough review of reports to determine whether or not it complies with the major requirements of the statute.

Under the new procedures, informational notices will be sent to filers for less important procedural errors explaining what the proper procedure is for their future reference. 1/ Requests for Additional Information (RFAI's) will be sent when more information is necessary in order to determine whether the filer has complied with the statutory requirements. Filers are not expected to respond to informational notices. They are, however, expected to respond to RFAI's.

In FY 1982, the Division expects to review a total of 32,700 committee statements and reports.

#### Non-filer Procedures

The Reports Analysis Division is responsible for identifying those committees that are required by statute to file reports. If the required report has not been received within a pre-determined period of time following the filing date) 2/ the committee is notified by mailgram that the report is past due and is warned that if not received within such a time frame, the name of the committee will be published in compliance with 2 U.S.C. 437g(b) and 2 U.S.C. 438(a)(7). The Division tracks all responses to these notices, and, before the final publication list 3/ is released, the Division checks with the Clerk of the House and the Secretary of the Senate to ascertain whether or not the committee has, in fact, filed the required report with their offices and thus complied with the Act (even though the Commission itself has not received the report from these two Offices). After the final check is made, the names of those committees whose reports have not been received are published. For all but the most flagrant and

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- 1/ Repeated procedural errors by a reporting entity such as reporting required information on the wrong schedule, may result in an erroneous entry in the Commission's data base or, at the very least, delay the correct coding and entry of information into the data base. To the extent that it can be corrected on future reports, the result is improved public disclosure.
  - 2/ The time period varies according to which report is involved. Shorter time frames are used for pre-election reports.
  - 3/ Only the names of authorized committees are published.

RAD/3

egregious non-filer violations committed by authorized committees, publication is the only enforcement step taken. The statute does not authorize the Commission to publish the names of unauthorized committees which fail to file the required reports, nor does it provide for a civil penalty.

Failing to File Reports as Required with State Officials. 2 U.S.C. 439 requires candidates and committees to file copies of their federal campaign finance reports with their Secretary of State or equivalent state elections officer. The Commission sends each state officer a computer print-out of those candidates and committees that have filed reports with the Commission, the Clerk, or the Secretary and who are required by statute to file copies of such reports with their offices.

## INFORMATION DIVISION

FY 1982 Budget Request

The total FY 1982 budget request for the Information Division is \$1,102,090 and 23.72 permanent positions. That total represents: \$633,440 and 19.72 permanent positions for the Public Communications, Publications and Press Offices; and \$468,650 and 4 permanent positions for the Clearinghouse on Elections Administration.

The resources for this Division are contained in Packages 5, 8, and 9 (Provide Information Decision Unit) and Package 3 (Promote Disclosure Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

The four branches that comprise the Information Division--Public Communications, Publications, Press and the Clearinghouse on Elections Administration--share a common duty--to provide clear, timely, and accurate information on campaign finance and election laws. Each office serves a different constituency. The Public Communications and Publications Branches concentrate on keeping candidates, political committees and other potential filers apprised of their responsibilities under the statute. The Press Office responds to inquiries from the media about disclosure reports, the Commission and/or the statute. The Clearinghouse on Elections Administration directs its attention to the needs of state and local election officials charged with administering federal elections by providing up-to-date information on election management.

Public Communications and Publications

Although separate entities, the Public Communications and Publications Branches work closely together to develop complementary programs designed to help candidates and political committees understand how the FECA applies to their particular campaigns. They share not only a common goal, but also a common constituency. Therefore, their programs will be discussed jointly. Both programs are designed to promote public understanding of the Act and the Commission's role in enforcing the law in order to encourage voluntary compliance with the statute. The methods used to achieve this goal have included: technical publications, prompt response to inquiries received by phone or letter; providing speakers to various groups interested in the statute and/or the Commission; filling requests for forms and other publications; and timely advance notice to all committees and candidates reminding them of their responsibility to register and report.

Publications is also responsible for providing technical assistance to other divisions concerning the design, printing and procurement of paper supplies and serving as the Commission's liaison to the Joint Committee on Printing of the U.S. Congress. Public Communications is responsible for meeting the statutory requirement (5 C.F.R. 713) regarding the establishment of a Federal Women's Program.

INFO/2

Public Communications Branch. This branch is responsible for preparing written responses to written requests from candidates, committees and the general public requesting information about the Act or the Commission. Any question, the answer to which is not readily obtainable from the statute, the Commission's regulations or past advisory opinions, is referred to the Office of General Counsel with a suggestion that the requesting party seek an Advisory Opinion. Assistance on advisory opinion procedures is also provided.

Public Communications also handles the Commission's toll-free lines that operate year-round, as well as local calls seeking information about the specific requirements of the statute. It supervises the mailing of information packets and "reminder" notices on filing dates to candidates and political committees.

In FY 1979 and 1980, the Public Communications staff conducted campaign finance seminars in conjunction with the Clearinghouse regional seminars on elections administration. The FEC seminar program was designed to help the Commission meet one of its primary objectives: to promote public understanding of the FECA. In several respects, the program differed from others seeking to fulfill this same goal in that:

- It allowed the Commission to initiate contact with those involved in the political process rather than wait for them to contact the Commission.
- It enabled the Commission to obtain feedback on the needs/problems of filers and to structure the dissemination of information to meet those needs.

Lack of funds forced the Commission to eliminate campaign finance seminars in FY 1981 and to reduce the information staff through attrition.

The FY 1982 budget request restores the full Information staff--which would enable it to meet the increased demand for information in an election year. The request also reinstates the seminar program. Seminars held in FY 1982--the first since the 1980 Amendments to the Act--would be particularly valuable in helping committees understand the new law.

Publications Branch. This branch is responsible for writing and publishing a monthly newsletter (FEC Record), and publishing the FECA and FEC regulations (copies of which are automatically sent to each newly registered filer). In addition, the office develops Campaign Guides aimed at helping filers in each of several categories (e.g. Congressional Candidates and Party Committees) understand their responsibilities under the Act.

In addition, the FY 1982 budget request provides for the preparation of a series of short brochures that would focus on the statutory responsibilities of more specialized categories of filers or potential filers. In the past, the Commission has served three principal categories of filers: candidate committees, state and subordinate party committees and nonparty committees. Because of limited resources, the Commission has been unable to target information to the various types of filers or interested parties that exist within those three large categories and

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are substantially affected by the law. This budget request would allow the Commission to develop concise informational brochures directed at the special problems of such groups as: small corporate PACs, union locals, volunteers, trade associations, small grassroots party organizations, and those desiring to make independent expenditures. These brochures could be made available to state elections offices, civic groups, party organizations and congressional offices for easy distribution.

Press Office. The Press Office is responsible for aiding the media in locating, understanding, and correctly using the information contained in campaign disclosure reports and in understanding the purpose of the statute and the Commission's role in administering it. Because of limited resources, however, the Press Office is only able to respond orally to direct inquiries. There is limited use of press releases to announce significant Commission decisions. Moreover, contact has been generally limited to the Washington area press corps. Contact with press outside the Washington metropolitan area is confined to response to direct inquiries.

Recent Congressional hearings (Spring 1980) have emphasized the need to distribute information on the statute and the Commission's administration of it to areas outside of Washington. The FY 1982 budget request would enable the Commission to begin to deal with this problem by adding a writer to the existing along with a supporting clerk-typist. This minimal increase in staffing would enable the Press Office to provide information on the Law, the Commission, and other related items.

In addition, the Press Office is responsible for administering the Commission's compliance with the Freedom of Information Act (FOIA). In recent years, FOIA requests have increased in number as well as complexity as the Commission's activities have become better known to the media and the public. The FY 1982 budget request would allow the FEC to respond to these inquiries in a timely manner.

Clearinghouse on Elections Administration. Recognizing a need for the systematic collection and sharing of information on elections administration, Congress created the National Clearinghouse for Information on the Administration of Elections as part of the General Accounting Office in 1971. When Congress subsequently (1974) enacted the Federal Election Campaign Act which created the Federal Election Commission to administer the FECA, the Clearinghouse was transferred to the Commission.

The purpose of the Clearinghouse is to assist an estimated 13,000 State and local officials identified as being responsible for administering federal elections, in improving the administration of elections by gathering information on key issues and developments in this field and disseminating it in a timely fashion. In the past the Clearinghouse has contracted with election administration experts to develop studies on such topics as planning and budgeting for elections offices and available types of voting equipment. In 1979, Congress directed the Commission through the Clearinghouse to "conduct a preliminary study with respect to the future development of voluntary engineering and procedural performance standards for voting systems used in the United States." (Section 302 of P.L. 96-187). Limited resources have severely reduced the Commission's ability to contract for further election administration studies, and have

INFO/4

restricted its response to the statutory mandate on the voting systems study solely to conducting a survey of state and local elections officials to determine the need for such standards and how the study should be designed.

Lack of sufficient funding has also limited the Clearinghouse seminar program to workshops tailored by Clearinghouse staff to the needs of specific states rather than addressing election administration issues more broadly through a system of regional seminars using outside experts in addition to Clearinghouse personnel. The FY 1982 budget request would enable the Commission to conduct a limited number of state workshops (14) at a cost of \$35,000.

In addition to responding to written and telephone requests for information on election administration issues, the Clearinghouse publishes a quarterly Journal on Elections Administration.

Other projects provided for in the FY 1982 budget are:

--Beginning Phase II of the Voting Systems Standards study mandated by P.L. 96-187 and commenced (Phase I) in FY 1981 (\$65,000). (Phase II would be completed in FY 1983.)

--Continuing the Election Law, Case Law, and Campaign Finance Surveys on a quarterly basis, (\$80,000).

--Providing State Election Laws to the Library of Congress to support the above surveys, (\$15,000).

--Application of computer technology to elections--building a compendium of computer program applications to election processes, (\$40,000).

--A cooperative project with the Council on Governmental Ethics Laws providing Clearinghouse services to the State Campaign Finance and Ethics agencies, (\$12,000).

An Advisory Panel of state and local election administrators advises the Commission on issues of mutual concern to them and on the development of projects and services designed to meet their needs.

All Clearinghouse studies and materials are made available to the public as well as to interested election administrators.

## PUBLIC DISCLOSURE DIVISION

FY 1982 Budget Request

The total FY 1982 budget request for the Public Disclosure Division is \$180,384 and seven permanent positions. (This represents no increase over FY 1980 and 1981.)

These resources are contained in Packages 3 and 7 of (Promote Disclosure Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

The Public Disclosure Division is responsible for the operation of the Public Records Office and for the timely, efficient processing of all documents and reports filed under the Act. This includes both the reports received directly by the Commission and copies of those reports filed with either the Clerk of the House or the Secretary of the Senate. The Division strives to make all documents available to the public within 48 hours of receipt and to promote the widest possible public disclosure of campaign finance activity.

Document Processing

During FY 1980, the Commission received, preserved and made public reports totaling more than 497,000 pages. This material was made available to over 20,000 persons who visited, wrote, or phoned the Commission to request specific reports. In addition, the Division responded to more than 17,500 requests for general information on the Act or the Commission.

The Act requires the Commission to make all reports public within 48 hours of their receipt--even those that are not filed directly with the Commission, but instead are filed with the Ex-Officio officers, the Clerk of the House and the Secretary of the Senate. Obtaining immediate public access to this large volume of documents during peak filing times requires the cooperation of both Ex-Officio officers as well as an efficient document-processing unit at the Commission.

Public Records Office

Campaign finance reports are made available for easy public review and/or copying in the Commission's "store front" Public Records Office on the ground floor of the FEC's offices at 1325 K Street, N.W., Washington, D. C. During peak filing periods in an election year, the office opens at 8:30 A.M. and remains open until 7 P.M. It is also open throughout the weekend (10:00-2:00 on Saturday, 12:00-4:00 on Sunday) to encourage maximum public use.

A staff of four to ten persons (size geared to public interest) assists visitors and researchers in locating files, reviewing computer indices and programs, and explaining the format of disclosure forms.

## DISCLOSURE/2

The office has access to daily updated computer printouts of FEC indices generated by the Data Systems Development Division. Files of advisory opinions, closed compliance cases (MURs), court documents and Commission publications are also available in the office to ensure easy public access.

## DATA SYSTEMS DEVELOPMENT DIVISION

FY 1982 Budget Request

The total budget request for the Data Systems Development Division is \$1,277,384. This would cover the following:

--Computer contract costs, \$735,530 (projected); and

--Personnel (16.72 permanent positions), travel, training, manuals, etc., \$541,854.

An additional \$296,775 covering 14 permanent and 7.5 temporary positions will be necessary for data entry and coding--functions that were previously the responsibility of the Reports Analysis Division.

The resources for this Division are contained in Packages 4, 6, 7, 8, 9, 10 and 11 (Obtain Compliance, Promote Disclosure, Provide Information, and Commissioners, Statutory Officers and Administration Decision Units) of the Commission's revised submission to Congress and OMB. The specific resources for operation and management of the Data Systems Development Division are contained in Package 6 (Commissioners, Statutory Officers and Administration Decision Unit). All other resources are allocated specifically to the programs they support and the respective Decision Units.

Duties

The Data Systems Development Division provides the automatic data processing (ADP) and computer services that are central to the Commission's ability to meet many of its statutory duties, especially in the area of public disclosure. In order to ensure that the Commission has timely access to the most up-to-date, efficient equipment at the lowest possible cost, Data Systems contracts for facilities management where one vendor has been responsible for all computer hardware located both at the FEC and at the vendor's site. The vendor is also responsible for systems software. Application programming (i.e., programs required for specific FEC purposes), however, is performed by FEC personnel.

The Commission's present computer contract was concluded through the RFP (Request for Proposal) process in FY 1979. It expires in FY 1985. Although by law agencies can only obligate funds for one year, the yearly costs of the contract were calculated on a six-year life cycle.

The Data Systems Development Division expects to begin the preliminary as a result of the analysis of needs performed by an outside consultant in FY 1982. This outside analysis will provide the base for developing the computer needs of the Commission which will be translated into a Request for Proposal (RFP) in FY 1984. The Division is responsible for drawing up the necessary specifications. With the approval of the Commission and General Counsel, the Division selects potential contractors and negotiates the terms for the production of data processing services (including system software and maintenance of in-house computer systems equipment). On-going duties of the Division include the following:

## DATA/2

- Ensuring that the terms and performance standards provided for in contracts with private vendors for the procurement of data processing services are fully satisfied;
- Scheduling and managing computer resources and staff time so that needed information will be available to each Commission division on a timely basis;
- Identifying, defining and developing the appropriate data processing requirements of each division to ensure maximum use of this capability;
- Training Commission staff in the proper use of systems, indices and listings in order that maximum utilization may be made of existing capabilities;
- Production of the Reports on Financial Activity (RFA) that are released periodically throughout election cycles.

In addition, the responsibility for data entry was transferred to the Data Systems Development Division from the Reports Analysis Division at the end of FY 1980. The data coding staff will also be transferred to Data Systems in FY 1981. Thus, all data entry and coding, as well as computer programming and analysis, will be consolidated in the Data Systems Development Division by the end of FY 1981. <sup>1/</sup>

Disclosure System

To continue to satisfy the Commission's disclosure responsibilities under 2 U.S.C. 438(a)(3), the Commission must have the resources to maintain its existing system which provides current reports on the following:

- The filing status of federal candidates, political committees and those who make independent expenditures;
- A cumulative index of reports and statements filed under the Act as well as the cross indices required by law;
- The financial status of authorized committees, unauthorized committees and those who make independent expenditures;
- Itemized contributions by individual donors;
- Unreconciliable fund transfers;
- Statistical information necessary to compile the Reports on Financial Activity (RFA).

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<sup>1/</sup> The Administration Division performs its own data entry for day-to-day administrative operations or housekeeping programs.

DATA/3

It would be virtually impossible for Commission staff to index, cross-reference and promptly make public disclosure reports without the computerized disclosure system. It has also proved invaluable in providing timely responses to requests for information, including FOIA requests, received by the Public Records and Press Office.

#### Data Entry Procedures

Teams of coding specialists and data entry personnel code and enter the data from reports into the computer system. Summary information such as microfilm location, gross receipts, gross expenditures, type of report, etc. is entered promptly upon receipt of the report. Itemized information (e.g., individual contributions of \$500 or more) is usually entered into the computer system within 90 days of receipt of the report. During FY 1980, 423,835 reported items were entered into the data base.

The data entered is checked twice for possible error. First, a computer printout is visually compared against the report itself. Errors are immediately corrected. Subsequently, the report is checked against a computer-generated "error listing" that uses predetermined logic tests to spot possible problems. For example: Is the total amount of itemized contributions on Schedule A greater than the total amount listed on the summary page?

Because of dwindling resources and an ever-increasing volume of campaign transactions, the Commission has twice been forced to reduce the amount of data entered into the system. Originally, the staff entered all itemized contributions, i.e., all contributions in excess of \$100 (pre 1979 Amendment reporting threshold). When the burden became too great for the small staff to handle, especially during peak election periods, the threshold for entry was raised to \$200. Recently, the Commission has been forced to raise the threshold to \$500, even though itemization is required for all contributions in excess of \$200. The resources requested in the FY 1982 budget proposal would retain \$500 as the entry level. In FY 1982, it is estimated that 350,000 transactions will be entered in the data base.

#### Public Financing

Through the efforts of the Data Systems Development Division the 1980 Presidential primary candidates participating in the matching fund program for the first time were able to submit certification requests on magnetic tape. Several candidates took advantage of this innovation. The Commission staff found that the use of computer assistance further expedited the threshold eligibility and certification process.

#### Central Referencing Indexing System (CRIS)

A major priority of the Commission in FY 1982 will be the development and implementation of the Central Referencing Indexing System (CRIS). Some developmental work has been performed on this system, but the schedule has been continually delayed due to limited staff resources and budgetary constraints. The CRIS system will provide the Commission with a central

DATA/4

indexing system to track Commission documents such as: minutes of official Commission meetings, compliance matters (MURs), litigation, advisory opinions, audit reports, correspondence and other internal Commission documents. This program is complemented by the comprehensive indexing program envisioned by the General Counsel's office in FY 1982 for cross-referencing regulations, advisory opinions, and enforcement actions.

#### Administration

It is extremely doubtful that the Commission could have achieved the degree of administrative self-sufficiency it has without a computerized system for payroll, accounting and budget execution, personnel, inventory, and mail control. The development and maintenance of these computer systems have allowed a relatively small administrative staff to meet fully the needs of the entire Commission.

## ADMINISTRATION DIVISION

FY 1982 Budget Request

The total budget request for the Administration Division is \$2,313,082 and 25 permanent positions.

The resources for this Division are contained in Packages 6 and 11 (Commissioners, Statutory Officers, and Administration Decision Unit) of the Commission's revised submission to Congress and OMB.

Duties

Because the FEC is a small agency, it has proven more cost-effective to have centralized procurement procedures for supplies and other administrative expenses. Of the total amount requested for this Division, \$1,740,412 (75 percent) is for space rental, equipment rental, supplies, postage, telephone and telegraph charges, motor pool and other similar expenses.

The Commission's administrative services are nearly self-sufficient. Prior to FY 1978, the General Services Administration provided the Commission with support for payroll, accounting and disbursing operations. The Commission assumed responsibility for the entire payroll system on April 3, 1978. On August 25, 1978, the Office of Management and Budget approved the Commission's Fund Control Statement and on September 20, 1978 the Accounting Principles and Standards were approved by the Comptroller General. Thus, the Commission has been able to respond to the support needs of Commission staff more rapidly and efficiently as a result of this acquired self-sufficiency since January 1979.

The Commission, however, still relies on GSA to fulfill its space, communications and building maintenance needs as required by existing law and regulations. Utilization of GSA for these services has proved to be extremely costly and time-consuming.

Office of Planning and Management

The Office of Planning and Management is responsible for preparing an agency-wide management plan implemented at the beginning of each Fiscal Year that allocates Commission resources to each program. Throughout the year, the office monitors the actual operation of agency programs and compiles work measurement reports that are subsequently used to estimate the resources needed to handle a given volume of work in various Commission programs. This monitoring program is called the Management Information System (MIS). The Office of Planning and Management submits monthly management reports to the Commission. Should the burden on a particular Commission program be greater than had been estimated at the beginning of the Fiscal Year, the MIS enables the Commission to spot the problem early and re-allocate whatever resources are available to handle it.

ADMIN/2

Planning and Management is also responsible for preparing Commission budget submissions to the Office of Management and Budget and the Congress.

Rent Increase

The FEC rents five of twelve floors (47,920 square feet) in a building located at 1325 K Street, N.W., Washington, D. C. One other government agencies occupy the other seven floors.

The Commission has received notice that the rent for the space it presently occupies will increase from \$7.71/sq. ft. to \$12.02/sq. ft. or an increase of more than \$200,000 (56%) in FY 1982. Thus, the increase in rent expenses for the Commission from FY 1981 to FY 1982 does not involve any new space.

## AUDIT/APPENDIX A

<u>Candidate</u>	<u>Date Audit Commenced</u>	<u>Fieldwork</u>	<u>Report Released</u>
Anderson	6/2/80	6/2/80-6/27/80	12/18/80
Baker	5/5/80	5/5/80-6/18/80	12/18/80
Brown	5/5/80	5/5/80-6/13/80	12/15/80
Bush	7/22/80	7/22/80-8/29/80	2/4/81
Carter	8/18/80	8/18/80-9/19/80	1/21/81
Crane	3/24/80	3/24/80-4/30/80 5/12/80-6/18/80 <u>1/</u>	11/14/80
Dole	3/27/80	3/27/80-4/30/80	12/16/80
Kennedy	9/15/80	9/15/80-1/9/81	_____ <u>2/</u>
LaRouche	6/9/80	6/9/80-8/8/80	_____ <u>2/</u>
Reagan	8/25/80	8/25/80-9/26/80	2/2/81

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1/ Fieldwork was completed in two phases due to Committee moving its headquarters.

2/ Audit reports not yet publicly released.

## APPENDIX B

## OFFICE OF GENERAL COUNSEL CASELOAD

## Caseload --FY 1978

<u>Program</u>	<u>In-Process Beginning FY</u>	<u>Begun During Fiscal Year</u>	<u>Completed During FY</u>	<u>In-Process End of FY</u>
External Enforcement	43	71	88	26
Internal Enforcement	42	231	160	113
Offensive Litigation */	2	13	2	13
Defensive Litigation	9	8	7	10
Advisory Opinions	21	100	107	14

## Caseload--FY 1979

<u>Program</u>	<u>In-Process Beginning FY</u>	<u>Begun During Fiscal Year</u>	<u>Completed During FY</u>	<u>In-Process End of FY</u>
External Enforcement	26	154	144	36
Internal Enforcement	113	237	270	80
Offensive Litigation */	13	16	8	21
Defensive Litigation	10	10	8	12
Advisory Opinions	14	81	83	12

## Caseload--FY 1980

<u>Program</u>	<u>In-Process Beginning FY</u>	<u>Begun During Fiscal Year</u>	<u>Completed During FY</u>	<u>In-Process End of FY</u>
External Enforcement	36	108	80	64
Internal Enforcement	80	163	132	111
Offensive Litigation */	21	14	15	20
Defensive Litigation	12	21	8	25
Advisory Opinions	12	123	119	16

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\*/ Excluding non-filer litigation.

## APPENDIX B, p.2

<u>Program</u>	<u>Caseload--FY 1981 */</u>			
	<u>In-Process Beginning FY</u>	<u>Begun During Fiscal Year</u>	<u>Completed During FY</u>	<u>In-Process End of FY</u>
External Enforcement	64	42	35	71
Internal Enforcement	111	42	30	123
Offensive Litigation**/	20	8	8	20
Defensive Litigation	25	9	12	22
Advisory Opinions	16	36	43	9

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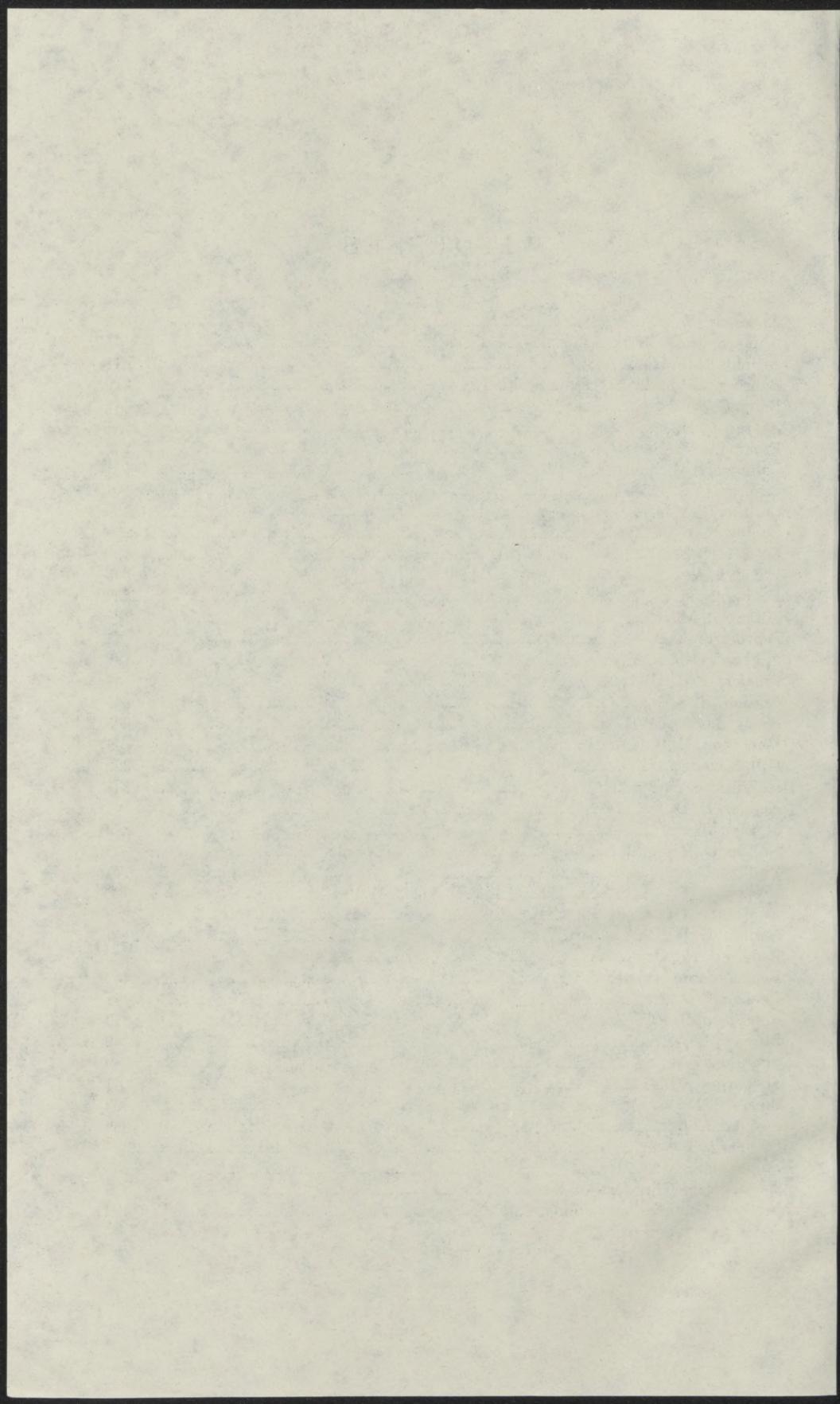
\*/ As of March 25, 1981.

\*\*/ Excluding non-filer litigation.

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