

**"INSTANT SLUMS"**

New housing built under the program in Elmswood, Mo., and Everett, Wash., became "instant slums" because the construction was so poor. Some of the homes began falling apart almost immediately.

In many areas, poor people who paid slum speculators premium prices for their homes had to desert them because they were uninhabitable.

In numerous cases investigators found "faulty plumbing, leaky basements, cracked plaster, faulty or inadequate wiring, rotten wood, lack of insulation, faulty heating units" and other defects in property that had been approved by FHA for sale to the poor.

**REVERSAL BY ROMNEY**

Touched to the quick, the Administration's Secretary of Housing and Urban Development, George Romney, at a press conference, accused Patman of releasing an "inaccurate, misleading and very incomplete report."

Later, Romney backwatered. After a meeting with 250 key FHA field personnel, he conceded the abuses are "more prevalent and widespread than previously evident." He ordered a suspension of the program, as applied to older houses, until the abuses are cleaned up and adequate safeguards are instituted.

Also, he said the new housing segment of the program is being checked "to determine what improvements may be necessary." Further, he promised action to root out fraudulent practices and to assist home buyers who were victimized. He blamed the situation in part on failure of Congress to provide adequate funds for an inspection staff.

Patman, who had earlier blasted Romney's attitude, hailed the HUD chief's newest move as doing "much to restore confidence" in housing programs administered by the agency. Patman urged speedy action to correct the deficiencies so that the suspension can be kept short.

**A STRONG SMELL OF SCANDAL**

When Rep. Wright Patman's House Banking Committee charged recently that a federal program to aid low and moderate-income families to purchase used homes had been badly abused by profiteers, Housing Secretary George Romney shrugged it off.

Mr. Romney said the report of the committee was "misleading, irresponsible and incomplete" and dismissed the suggestion of the committee that a national scandal might be in the making.

On Thursday of last week, Mr. Romney, after a hurriedly-called conference of the department's field personnel, held a press conference and announced the housing aid program was suspended.

"It is apparent that abuses in the program are more prevalent and widespread than had previously been evident," Mr. Romney said. He added that he didn't believe a national scandal existed, but said problems were of such magnitude to warrant a suspension of the used-housing portion of the aid program.

Mr. Romney's actions have raised more questions than they have provided answers, but hopefully the Secretary doesn't intend to let the matter rest there. If there had been fraud against the government of the United States and its citizens, Mr. Romney should leave no stone unturned to bring the guilty ones to just and to force redress for victimized home buyers.

**CAT OUT OF THE BAG MUCH TOO SOON**

Housing Secretary Romney has admitted his agency found some "shocking" cases of shoddy building having been foisted on his department by contractors engaged in federal "low cost" housing for the poor.

At the same time Mr. Romney flayed Rep. Patman, of Texas, for having made the scan-

dal public before Mr. Romney's office had an "opportunity to investigate the abuses."

And, one suspects, also had a chance to sweep the whole mess out of sight under the carpet.

**THE HOUSING PROFITEERS**

Confronted publicly the other day with a Congressional report charging "sheer fraud" by real estate speculators in a key housing subsidy program, Secretary of Housing and Urban Development Romney raised the roof. Regrettably, he did not look very carefully underneath it.

Instead, the Secretary angrily assailed the staff of the House Banking and Currency Committee for producing an "inaccurate, misleading and very incomplete" report and went on to protest that he was "shocked" by the conduct of Chairman Patman (D-Tex.).

Now Romney has conceded that the instances of wholesale profiteering by realty operators—on quickie sales of cheaply "renovated" houses to moderate and low-income families—are more prevalent and widespread than had previously been evident. He has suspended operation of the home ownership-subsidy program pending investigation and reform.

There is an opportunity, as a result, for a fresh, cooperative start by HUD and Congress on remodeling the program. More federal manpower seems to be needed; some assistance and training in elementary home maintenance may also be required. A joint effort instead of the split-level feud of recent days would be a real home improvement.

**GOVERNMENT-SPONSORED SWINDLE**

The FHA 235 program, by which the federal government has tried to assist the poor to become homeowners, was best summed up by Rep. Wright Patman of Texas, chairman of the House Banking and Currency Committee. "It lends itself to corruption," he said.

It does indeed. The story of the Gurley family of Paterson, which was "helped" by FHA 235 to buy for \$20,000 a house which had been purchased in 1969 for \$1,800 by a New Yorker, makes that clear. Now the family faces eviction from the house because it was unlawfully converted from a saloon to a dwelling by the former owner.

And the Gurley family is only one of many which have been victimized in this state and in other parts of the country under FHA 235. Obviously the sharpies couldn't do it all by themselves. They had to have help from representatives of the federal government.

Federal law enforcement authorities have been looking into the activities under FHA 235 in North Jersey for several months. A federal grand jury sitting in Newark has been hearing testimony. We will have to wait until the inquiry is finished to find out what the government intends to do.

The charge made by Housing Secretary George Romney that Rep. Patman acted irresponsibly in releasing the study of FHA shenanigans is shocking. There is nothing healthier for FHA 235 and Mr. Romney's bureaucracy than publicity about shortcomings like permitting a building which cost \$1,800 to be resold to a poor family for \$20,000. Mr. Romney damages his credibility and usefulness as an official when he rants about the irresponsibility of informing the public about that.

FHA 235 may have justification, although it is difficult to understand why the taxpayers should pay to help poor families buy homes when the same taxpayers are being forced to give up their own homes because of taxes. If poor people are to be helped to acquire homes, the federal government—to be specific, Mr. Romney's department—ought to see to it that they are not suckered into buying homes in municipalities where real estate values are falling and real estate taxes are rising out of sight. The government is

not helping a poor family by saddling it with a burden like that.

FHA 235 is another example of government do-good efforts which have been boons to those individuals in our society who are willing to enrich themselves on the misfortunes of others. Welfare is another example. It has made slumlording an extremely profitable enterprise.

**QUESTIONABLE INSURANCE POLICY TO PROTECT CORPORATE OFFICERS AND DIRECTORS AGAINST WRONGDOING**

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, last month, the Associated Press revealed that the Penn Central Transportation Co. had purchased a \$10 million insurance policy to protect the officers and directors of that company from charges of wrongdoing.

Such insurance, in my opinion, is against the public interest. The board of directors have a fiduciary responsibility to represent the stockholders honestly and fairly, and now it appears that the company paid for an insurance policy which effectively relieved the directors of their sworn duties.

After learning of this \$10 million policy for the Penn Central officers and directors, I asked the Chairman of the Interstate Commerce Commission, Mr. George Stafford, to investigate the matter. He has sent me an initial reply stating that Penn Central violated ICC rules in listing the insurance premiums as a business expense.

Mr. Speaker, I place in the RECORD a copy of the exchange of correspondence with Mr. Stafford:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., January 25, 1971.

HON. GEORGE M. STAFFORD,  
Chairman, Interstate Commerce Commission,  
Washington, D.C.

DEAR MR. STAFFORD: You have undoubtedly read the news stories in today's newspapers concerning the purchase of a \$10 million Lloyd's of London policy to protect the director's and officers of Penn Central from charges of wrongdoing. I strongly question the propriety of Penn Central paying out huge premiums on this insurance which was apparently designed to set up a wall of protection for the officers and directors against their stockholders and the public.

I urge that the Interstate Commerce Commission move immediately to investigate the circumstances behind this insurance and to determine its legality. It is also important that ICC discover who actually paid the premiums and whether it was charged off as a business expense or listed in some other fashion on the company's books.

In my opinion the existence of such an insurance policy would greatly reduce the incentive for the officers and directors to perform their duties in the public interest and in the interests of the stockholders. I would be most interested to learn whether ICC has any policy position on insuring officers and directors against charges of wrongdoing.

If you do not feel that existing legislation is sufficient to control this problem, I hope that you will forward without delay your suggestions for legislative remedies. I am sure that the Congress would look favorably on anything which would prevent such activity in the future.

I hope I can have a full report from you on the issues raised by this Lloyd's of London policy.

Sincerely,

WRIGHT PATMAN.

INTERSTATE COMMERCE COMMISSION,  
Washington, D.C., February 1, 1971.

Hon. WRIGHT PATMAN,  
Chairman, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR CHAIRMAN PATMAN: This is in reply to your letter of January 25, 1971, wherein you requested information with respect to insurance purchased by Penn Central to protect their officers and directors from charges of wrongdoing.

During the course of the current investigation of Penn Central, our staff has developed information concerning the policies referred to in your letter. We will be pleased to make our file available to a member of your staff at your convenience.

The premium was paid from Penn Central Transportation Company's funds and charged off as a business expense. This is in violation of our accounting rules. Although we do not have a regulation forbidding carriers from purchasing this type of insurance, it is our policy to require premium payments to be charged off as a nonoperating expense not chargeable to the consumer. Insofar as the legality of the insurance is concerned, the State of Pennsylvania recently passed legislation permitting companies incorporated in the state to pay the full premiums on directors' and officers' insurance.

Insurance of this kind is not uncommon in the transportation industry and generally protects officers and directors for wrongful acts, neglect, or breach of duty. Wrongful acts entered into for personal gain or resulting from dishonesty are not covered. This matter will be carefully evaluated during the course of the present investigation of Penn Central. Any recommended legislative remedies will be promptly submitted to the Congress.

Sincerely yours,

GEORGE M. STAFFORD,  
Chairman.

Mr. Speaker, apparently a number of States are considering an amendment to the Model Business Corporation Act which would permit corporations to buy insurance to protect their officers and directors against all types of criminal and civil wrongdoing. I have written Missouri Governor Warren Hearnes, Chairman of the National Governor's Conference, to let him know that there is a movement to push this law through various legislatures.

This new provision of the corporation law, in my opinion, is contrary to public policy and contrary to the best interests of stockholders and consumers. When Congress provided in Federal law for fines and liability for unlawful conduct, it did not intend that corporate officers and directors should defeat these laws through insurance. The fact that the insurance may be paid for by the corporation and thus its stockholders and ratepayers, compounds the evil. The proposed amendment, which has been urged by a group of corporate lawyers whose primary concern is protecting the officers and directors of large corporations, would sweep away at least 30 years of court decisions and State legislation prohibiting unlimited indemnification of corporate officers and directors against wrongdoing.

The only situations in which such of-

ficers' and directors' insurance may be proper is where the officer or director has been vindicated by a court or is guilty only of an honest business error not involving a violation of a statute.

As stated by the New York Supreme Court 30 years ago:

Liability to suits is considered a risk attendant on directorships, to be assumed, together with the more compensatory features of that office.

Mr. Speaker, I place in the RECORD a copy of my letter to Governor Hearnes:

FEBRUARY 8, 1971.

HON. WARREN E. HEARNES,  
Chairman, National Governors' Conference,  
Washington, D.C.

DEAR GOVERNOR HEARNES: I am writing to alert you and your fellow governors to a problem which has arisen under many state corporation laws.

As you know, the Model Business Corporation Act is sponsored by the Committee on Corporate Laws, Section of Corporation, Banking and Business Law of the American Bar Association. The Act has been adopted in whole or in part in many states. My alert to you is with respect to only one provision, Section 5(g) of the 1969 revision, which I believe undermines essential safeguards of federal and state law by authorizing a corporation of furnish its directors and officers with insurance against their own wrongful conduct.

The Committee on Banking and Currency learned of this problem through disclosure that the directors and officers of the Penn Central Transportation Company caused the corporation to purchase a \$10 million policy from Lloyd's of London indemnifying them personally against charges of wrongdoing.

Such insurance is authorized by Section 5(g), which apparently has been adopted in Delaware, Nevada, Oregon, Washington, Alabama, Georgia, Iowa, Pennsylvania, New Jersey, Utah and Louisiana and proposed in many other states. The section provides:

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. (Emphasis added.)

Thus, Section 5(g) permits the purchase by a corporation, out of funds belonging to stockholders, of insurance against all types of wrongdoing by the directors and officers. Included might be fines, penalties, judgments, settlements, court costs and expenses in defense of both civil and criminal actions against the directors and officers for violation of their duty to the stockholders and the public. Some of the federal statutes which would be undermined by such insurance are the Securities Act of 1933, the Securities Exchange Act of 1934, the Sherman Act, the Internal Revenue Code and various federal safety statutes imposing civil liabilities on responsible corporate officials.

I believe that the policy underlying comparable state statutes would also be impaired. In addition, state laws limiting direct indemnification by the corporation to its officers and directors to situations where the defendant has acted reasonably and in good faith, or where he has prevailed in litigation would be completely circumvented. Such safeguards are, in fact found in other subsections of Section 5 of the Model Business Corporation Act itself.

I am calling this matter to your attention so that in the event the above provision of the Model Business Corporation Act is in force or proposed in your state, you will be able to evaluate its propriety from a public policy point of view.

I am sending a copy of this letter to the Chairman of the Committee on Corporate Laws, Section of Corporation, Banking and Business Law of the American Bar Association.

With kindest regards and best wishes, I am

Sincerely yours,

WRIGHT PATMAN.

#### PRESIDENT'S PLAN TO CREATE FEDERAL EXECUTIVE OFFICE

(Mr. DULSKI asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. DULSKI. Mr. Speaker, on February 2, President Nixon sent a special message to the Congress in which he recommended the enactment of legislation to establish a new Federal executive service in the executive branch.

On the same day, the specific legislative proposal was transmitted by letter from Chairman Robert E. Hampton of the Civil Service Commission to the Speaker of the House.

Accompanying the proposal were rather extensive documents explaining the proposal and including a section analysis of the bill. The proposal was referred to my Committee on Post Office and Civil Service.

Today, the ranking minority member of our committee, Mr. CORBETT, and myself are joining in introducing the President's recommended bill.

#### BILL IS INTRODUCED

We have taken the initiative in introducing this bill as a matter of courtesy to the President to see that his recommendation is properly entered into the legislative process.

I have not had the proper opportunity to become as familiar as I would like with this extensive proposal. However, it is obvious that it represents a radical new concept in executive personnel management and quite likely will prove to be controversial in many aspects.

Nevertheless, I am confident that my committee will give the proposal careful consideration, and if the need can be established for what the President describes as "landmark" legislation, my committee will be up to the challenge.

We are certainly no strangers in this field as witness our "landmark postal reform legislation" and our "landmark Federal pay comparability legislation," both enacted in the last Congress.

I am including for the information of the Members the explanatory documents which accompanied the President's legislative proposal:

CIVIL SERVICE COMMISSION,  
Washington, D.C. February 2, 1971.

HON. CARL ALBERT,  
Speaker of the House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: President Nixon, in his message today to Congress, recommended enactment of a legislative proposal to establish a new Federal Executive Service in the executive branch.

Accordingly, we are forwarding for con-

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sideration by the Congress this request to establish such a new personnel "Service." In addition to the draft bill to amend Title 5, United States Code, to establish and govern the Federal Executive Service, we are enclosing a section analysis and a detailed explanatory document entitled "The Federal Executive Service."

There is a growing recognition that the success of Government programs depends on the effectiveness of men and women who manage them. There is increasing concern voiced by responsible leadership in and out of Government that the way in which the Federal Government manages its executive manpower, particularly its career executives, is not adequate. The calls for change have come from many quarters: Administration spokesmen, Members of Congress, political managers, career executives, Federal personnel managers, and the academic community.

The Civil Service Commission recognized the need for, and has now completed, a thorough review and analysis of the current executive manpower program. We have concluded that basic changes requiring new legislation are needed.

The proposed bill establishes in the executive branch a Federal Executive Service covering all positions previously established at grades GS-16, 17 and 18, and most of the other executives falling within the same pay range under other pay authorities (about 7,000 current executives). The coverage of the service is based on level of duties and on salary levels, not on individually classified jobs.

The coverage will be extremely broad in order to correct, as far as possible, the existing fragmentation of present appointment authorities and personnel systems. It includes all present and future groups of civilian executives in the executive branch, *except* those specifically excluded in the statute, and those subsequently excluded by the President. It establishes similar programs in non-executive branch agencies, except that there would be a direct relationship between those agencies and the Congress.

The personnel management system called for in the proposal is especially designed to meet the unique problems of executive level employment. It is characterized by a greater degree of managerial freedom than now prevails and a special concern for the employment and utilization of career officials.

One of the most important benefits anticipated from the Federal Executive Service is the elimination of many restrictions which have inhibited the flexible assignment and utilization of personnel as needed within their agencies. We expect that the removal of these constraints will bring about a significant increase in the mobility of executives within their departments and agencies. This new program should serve to erode narrow perspectives and parochial loyalties, and to foster broader experiences and outlooks on the part of executives. We believe such intra-agency mobility is a necessary first step toward increasing the mobility of executives across agency lines.

The Federal Executive Service also includes special features addressing the concerns expressed recently by the Congress that the number of upper level spaces have increased without regard to program priorities and budget allocations. Agency heads share that concern and the additional concern of the Congress that the authorizations of positions are becoming increasingly fragmented. The bill does away with the many special authorities and special quota provisions of the present system. The new system will be far more understandable to all and more easily managed.

A new and comprehensive reporting system will provide the President and the Congress with detailed information about executive manpower management which, heretofore,

was not readily available, thereby facilitating the Administration's overview of this vital resource. Furthermore, the interest in and responsibility of the Congress for monitoring executive employment and utilization and providing legislative oversight is fully recognized in the provisions for this stewardship report.

A detailed discussion of the provisions in the bill is contained in the accompanying documents. The general features of the proposal have been discussed at length with many interested groups in and outside the Government.

A similar letter is being sent to the President of the Senate.

The Office of Management and Budget advises that the proposed legislation is in accord with the program of the President.

By direction of the Commission.

Sincerely yours,

ROBERT E. HAMPTON,  
Chairman.

A PROPOSAL FOR IMPROVING FEDERAL EXECUTIVE MANPOWER MANAGEMENT

SECTION I.—SUMMARY OF KEY FEATURES OF THE PROPOSED FEDERAL EXECUTIVE SERVICE

**I. Coverage.**—The Federal Executive Service will include the approximately 7,000 civilian executives, with certain exceptions, now in grades GS-16, -17, and -18 and their equivalents in the executive branch. (The Appendix describes the size and make-up of the current civilian executive workforce.)

**II. Size:**

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

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

The Civil Service Commission will review agency requests in collaboration with the Office of Management and Budget and authorize the number of executives for each agency; and

The authorizations will be reported annually to Congress and become effective in 90 days.

**III. Career and Noncareer Categories of Executives:**

Appointments to the Federal Executive Service will be in two categories: Career and noncareer.

Noncareer appointments will be for executives whose employment will likely be of a temporary nature.

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

Each category will have a different type of appointment with different conditions of employment.

Noncareer executives will be appointed and removed at the pleasure of the agency head.

Career appointments must have prior approval of a Qualifications Board.

**IV. Establishing and Controlling Career and Noncareer Relationships:**

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

The aggregate Government-wide number of noncareer executives will be limited to no more than 25% of the total Federal Executive Service.

**V. Compensation Arrangements:**

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

The Civil Service Commission will establish a government-wide executive salary dol-

lar figure which may not be exceeded by the average executive salaries of individual agencies.

**VI. Assignments:**

Agencies may assign and reassign executives to any duties within the scope of the Service.

There will be no externally administered position classification system.

Career and noncareer executives may be used interchangeably.

**VII. Qualifications Boards:**

Qualifications Boards operating as agents of the Civil Service Commission must approve the qualifications of career executives prior to their initial appointment.

Members of Boards will be appointed from within and outside the Federal service.

**VIII. Employment Agreements for Career Executives:**

Employment of career executives will be governed by employment agreements;

Initial agreements will be for a period of three years. Agreements will be renewable for three-year periods;

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

If an agreement is not renewed and the executive is not separated under the "30 years of service" provision described above, the executive must be offered a GS-15 appointment in the competitive service with salary saving for two years. Thereafter, he will receive appropriate GS-15 salary with time in grade credit for his service at GS-15 and above;

In addition, if the agency does not offer an agreement renewal, the executive will be eligible for discontinued service retirement, if he meets the criteria or for severance pay;

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

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

He may appeal assignments to duties or locations which he believes were made for reasons other than the efficiency of the Government.

If a geographical move would result in undue hardships, the executive may decline and has the following options: GS-15 employment with 2 year salary savings; discontinued service retirement if eligible; or severance pay.

The executive may transfer to another agency to complete the period of an existing employment agreement.

**IX. Appeals.**—Career executives may appeal inappropriate assignments, violations of conditions of employment, and removal on charges to the Civil Service Commission which has authority to direct corrective action.

**X. Reports.**—The Civil Service Commission will submit an annual Stewardship Report to the Congress with current executive authorizations and projections for the coming year. As a minimum, the Report will contain for each agency and government-wide the number authorized for the Federal Executive Service and the career/noncareer ratio.

**XI. Effective Date:** The Service will become operative no later than one year after enactment of legislation.

During this period, operating procedures and regulations will be developed.

**XII. Transition:**

Executives with career appointments will be offered initial employment agreements

without the requirement of qualifications approval.

Career executives who do not accept initial employment agreements may continue in their current appointments.

Some executives now serve under noncareer executive assignment (NEA) appointments. They will be given noncareer appointments in the Federal Executive Service.

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

At their option, agencies may offer employment agreements to these executives without the requirement of qualifications approval. If the individual accepts an employment agreement, he will receive a career appointment in the Federal Executive Service.

If the agency does not offer an agreement or if the executive does not accept the agreement, he may remain in his present appointment, retaining his current rights and privileges.

#### XIII. Excluded Groups of Executives:

Agencies within the executive branch having excluded groups will be encouraged to review and adopt appropriate features of the Federal Executive Service.

Agencies outside the executive branch having excluded groups will be required to establish their own executive services.

#### SECTION II.—BACKGROUND

In 1966, the executive branch took an important first step to establish a modern executive manpower program for the Government. This effort, the Executive Assignment System, established by Executive Order 11315, November 17, 1966, was designed to meet the need for personnel of the highest attainable qualifications to staff General Schedule positions at grades 16, 17, and 18 in the executive branch.

The Executive Assignment System was introduced to bring about improvements as rapidly as possible within the legal authorities already available to the President and the Civil Service Commission. In addition, as charged under the Executive order, the Commission initiated a study of operations under this System with a view to recommending basic changes for its improvement, including changes in legislation if necessary.

The objectives of the Executive Assignment System emphasized the responsibility of top agency management for hiring, assigning, and developing Government executives. Within this policy, the program was designed to assure a systematic approach to:

Agency and government-wide planning to meet present and future executive manpower requirements;

Providing the means whereby agency heads could select the most capable candidates available from the entire Federal service or from outside Government;

Giving incumbent executives and rising professionals greater opportunity to achieve their full potential for contributing to our Nation's progress and for career advancement, personal recognition, and success; and

Encouraging the development of executives committed to the overall purposes of Government as a whole as well as to those of a single agency or program.

These were sound objectives. The joint efforts of agencies and the Civil Service Commission to find executive talent and expand development opportunities have produced results beneficial to both management and the executives themselves.

One critical need was an ability to find and compare high quality people quickly to fill executive vacancies or to staff new programs.

This capability now exists through the Federal Executive Inventory. It is an automated government-wide inventory containing background information on more than 30,000 executives in grades GS-15 through -18 and their equivalents in other salary systems. Since it was established in November 1967, over 4,400 individuals have been referred to agencies for their consideration in filling about 1,200 positions.

The Executive Inventory also provides a unique source of information for understanding the composition and characteristics of the Federal executive workforce. It makes possible a variety of analyses as a basis for planning to meet the Government's future executive staffing needs.

While these results are a good beginning, many problems remain and new challenges are emerging. The increasing complexities and rapid changes facing society bring new responsibilities to Government executives.

There is a growing recognition that one way to insure the success of public programs is to enhance the effectiveness of the men and women who manage them; and there is increasing concern that more should be done to improve the authorities under which the Federal Government manages its executive manpower. The calls for review come from many quarters: Administration spokesmen, members of Congress, political executives, career executives, Federal personnel managers and the academic community.

In response to this concern, and drawing on 3 years of operating experience with the Executive Assignment System, the Civil Service Commission conducted a comprehensive study of current executive manpower practices and results. The study was conducted with the assistance of an advisory committee of agency personnel directors. The results of the study are:

A restatement of objectives for a modern executive manpower program.

An analysis of the problems to be overcome in meeting these objectives.

A proposal for a new approach to the management of executive resources requiring legislative change.

#### SECTION III.—OBJECTIVES

The goal of Federal executive manpower management must continue to be to provide the right number of executives with the right skills and attitudes, in the right places, at the right time, motivated to perform in the most effective way. Operating experience with the current program and recommendations of interested publics demonstrate the need for a redefinition of objectives within this broad goal.

To meet the Government's leadership needs in today's world, an effective executive manpower program must:

Require that top agency executives carry out their responsibility for executive manpower management and assist them in doing so;

Insure that executives who have responsibility for Government programs have commensurate authority over their executive resources in proper balance with the needs of the Government as a whole and the long-run needs for a career workforce;

Provide the quantity and quality of talent required by: forecasting needs; recruiting and developing potential talent at all levels; maintaining a pool of talent; and keeping it motivated;

Insure that the executives in the Federal Government are responsive to public policy as enunciated by the President and the Congress and responsive to the top political management of the Government, at all times;

Provide individual executives with opportunities to achieve their full potential for

contributing to the Nation's progress and for personal growth, recognition, and work satisfaction;

Assure that high quality employees at entry level and at the midmanagement level perceive that they can rise to the top and get important and influential jobs with reasonable security; and

Provide a central source to review, analyze, and make recommendations on all aspects of executive manpower management, including a means for the President to hold agency heads accountable for the management of their executive manpower resources.

#### Major problems

The study highlighted several problems as barriers to effective executive manpower management. Not all agencies face all these problems, nor do they exist in the same degree in the agencies which do have them.

If it is agreed that these are the major executive manpower problems facing the Government as a whole, then it is essential that action be taken to correct them. Any changes in the ways in which executive manpower is managed must address itself to these problems.

The problems are:

1. Government executives (both career and noncareer) must cope with a variety of constraints on their decisions to organize programs and on hiring, assigning, and removing their key subordinates (both career and noncareer). While such restrictions may have served a purpose in the past, today they frequently inhibit the executive from accomplishing his objectives. New systems are required which remove the unneeded constraints and let executives operate more effectively, recognizing that the Congress will continue to serve as an "overseer."

Over a dozen personnel programs govern the selection, pay, assignment, and tenure of executives. Many agency heads must deal with several of these personnel programs. They may receive manpower authorizations under a number of different laws and regulations. They may pay executives under different pay systems. They often must consider a variety of career rights when they want to take any actions affecting their key subordinates. The results are:

Opportunities for friction among members of different programs;

Difficulties in assigning people into and out of different programs;

Unnecessary administrative loads; and  
Continuing frustrations for new executives who try to understand and use these systems.

Another problem is that each personnel program carries a number of prescriptive and restrictive requirements that greatly reduce the executives' staffing and unnecessarily restrict his authority to decide how programs will be administered. These requirements affect every aspect of personnel management: position authorizations, position classification, qualifications of nominees, pay, promotions, assignments, and retirement. Many of these rules no longer serve the best interests of the public. The results are:

Difficult distinctions among grade levels at GS-16, -17, and -18;

Undue emphasis on prestige and status factors in determining grade levels;

Meaningless distinctions among positions designated as career or noncareer;

As unwillingness of agency heads to fill important executive posts labeled as "career" with individuals whom they don't know well and whom they fear will become "locked in";

An appeals system for reduction-in-force actions unsuited to the executive workforce; and

Inflexible authorities for paying executives that lead to inequities in individual situations within an agency or across agency lines.

Finally, agency heads are faced with severe

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limitations on the numbers of executives they may hire because of the various quotas limiting the number of executive positions. These ceilings do not allow the Civil Service Commission or the agencies to assign executive resources to changing program needs on a timely and rational basis.

2. Executive manpower planning is grossly inadequate. There is almost a complete lack of planning to identify and meet future executive manpower needs and to explore and develop sources of supply. Both short-range and long-range planning are needed at the agency level and for the Government as a whole.

This lack of planning hampers executive recruitment and executive development efforts. With only a few exceptions, agencies are not forecasting executive needs—either to replace the executives they now have, or to meet changing demands resulting from modifications in program size or emphasis. For example:

Agencies have only general ideas of the number and kinds of executives to be replaced over the next five years because of retirement, death, transfer, or resignation;

The sources of supply to meet future executive needs on either a short- or long-range basis have not been identified. Legislation for new programs is typically proposed and approved with no analysis of the sources of the necessary management talent; and

Executive manpower resource planning is not incorporated into program planning. Program and financial plans are not supported by the appropriate analyses of executive manpower requirements.

3. Political executives, Congress, the general public, and academics express concern that the bureaucracy (both the system and the people) is not responsive to new political and program direction.

The issue is "how to insure that the bureaucracy reflects public policy expressed through the political process."

Unnecessary friction between career and political executives frequently accompanies changes in Administrations or administrations.

The new agency head is confronted by complicated and constraining personnel systems. He finds it difficult to look immediately to the career "bureaucracy" to help him with these problems because rightfully or not, he sometimes perceives them as part of the problem.

New agency heads perceive that many of their key subordinates are "locked in," and that they have no control over who does what work. Moreover, they feel they cannot appoint new men because they cannot easily establish new positions.

Fast staffing actions tend to undermine the confidence of new agency heads, especially where career employees have been placed into political jobs and political "types" into career jobs.

Present personnel systems do not adequately recognize the value of providing to agency heads a reasonable number of "their own men" to serve as advocates. This is not necessarily a partisan issue, but it is essential to building a unified and harmonious management team.

4. Agency heads must confront a great variety of pressures concerning whom they choose for their executive positions.

The growing trend to the greater professionalization of top management continues to have an increasing impact on manpower management at the executive level. Alliances develop among professionals in and out of Government to:

Influence program direction and size; and  
 Maintain professional credentials in the staffs of agencies.

Other staffing pressures come from such sources as:

Interest groups, for their advocates;

Partisan sources, to reward party faithful; and

Congress, for constituent representation.

While on the one hand these pressures are designed to influence staffing so that programs will be conducted in ways that agree with the desires of the groups exercising the pressures, on the other hand, the success of programs frequently depends upon the support of the pressure groups. Therefore, the agency head needs some way to accommodate to these pressures.

5. The Government has no assurance that the best available executive talent is being identified, developed, and utilized. It is generally agreed that the demand for high quality leadership talent in the society as a whole is already greater than the supply. Some leaders feel that important public programs frequently do not meet their objectives partly because some of the executives in those programs lack sufficient managerial skill. The Government must be prepared to develop the talent it needs now and will need in the future.

This problem has several important dimensions:

Many career executives feel frustrated because they cannot look ahead confidently to progression and career growth in the programs or organizations that interest them and to which they believe they can make their best contributions. Neither can they or their agencies assess their opportunities or plan their development and training;

Closely related to the above is the lack of clearly identified career fields, promotion ladders, or career development programs. Thus, clear career goals are not available as a basis to recruit, develop and train executives;

A meaningful way has not been found to assess and communicate the quality of an executive's performance or to predict future performance. Thus, agency heads who are trying to fill executive vacancies frequently cannot identify potentially high quality talent and systematically develop this potential; and

In most agencies systematic training and development of executives has not been made an integral part of the total management process. Thus, executive development frequently lacks institutionalized continuity and adequate attention by top agency executives.

6. Currently, there is inadequate centralized leadership and responsibility for management of executive resources. Under present arrangements, the President undoubtedly finds it difficult to hold his appointees accountable for this. The Government as a whole lacks a system to insure effective, integrated, and coordinated management of executive manpower resources across agency lines. The causes underlying this problem are:

Manpower resources, particularly executive resources, do not receive the degree and level of management attention that is devoted to financial resources. No single agency has responsibility for monitoring the total results of executive manpower management. The Civil Service Commission's responsibilities do not encompass several important personnel program areas; moreover, the Commission has only limited responsibility for other programs; and

There is no systematic review and analysis to determine the government-wide effectiveness of the management of executive manpower. The President does not receive periodic reports of the stewardship of this resource, nor does he receive systematic recommendations for needed improvements.

SECTION IV.—A PROPOSAL FOR A NEW FEDERAL EXECUTIVE SERVICE WITH PURPOSES AND JUSTIFICATION

To respond to the deeply felt needs for major improvements in the use of the Gov-

ernment's executive manpower resources, it is proposed to establish a Federal Executive Service with the features described below.

#### Coverage

The Federal Executive Service will include all civilian executives now in the range of the General Schedule grades 16, 17, and 18 and certain other executives falling within the same range under other pay authorities. This coverage will include about 7,000 current executives. (The Appendix describes the size and make-up of the current civilian executive work-force.) From this base, future adjustments of the size of the Service will be made and justified.

The coverage of the Service will be based individually classified jobs. It will include on level of duties and on salary levels, not on all present and future groups of civilian executives in the executive branch, *except* those specifically excluded in the statute establishing the Service and those subsequently excluded by the President.

The coverage will be extremely broad in order to correct, as far as possible, the existing fragmentation of present appointment authorities and personnel systems.

This broad coverage and elimination of duplication will:

Allow new executives to understand easily and quickly the personnel management system governing their executive manpower;

Simplify and reduce the variety of redundant administrative procedures which now accompany executive staffing;

Eliminate differences in rules governing pay, rights, fringe benefits, and recruiting which often cause misunderstandings among executives in the same organization;

Eliminate the preferential treatment previously given to some programs in requests for executive manpower resources when needs no longer exist;

Foster a government-wide career outlook on the part of executives and potential executives;

Increase opportunities for executive mobility among agencies and programs; and  
 Permit the Administration and the Congress to exercise a more comprehensive and systematic overview of executive manpower management.

Many of the personnel systems which now operate under special authorities will be included in the new Federal Executive Service. These special authorities were originally established to give particular agencies flexibilities for special purposes at specific points in time. The new Federal Executive Service will contain enough flexibilities to make it appropriate to encompass these separate systems.

#### Exclusions within the executive branch

Seventeen groups of executives within the executive branch will be excluded from the Federal Executive Service, because they have unique problems or needs that make their inclusion under a general Federal Executive Service infeasible at this time. The groups are:

- Executive Levels I-V.
- The Foreign Service of the United States.
- The Foreign Information Service.
- The Peace Corps.
- The Postal Field Service.
- United States Attorneys, and the Federal Bureau of Investigation, Department of Justice.
- Hearing Examiners.
- Atomic Energy Commission.
- Central Intelligence Agency.
- Tennessee Valley Authority.
- The National Science Foundation.
- The Council of Economic Advisers.
- The Department of Medicine & Surgery, Veterans Administration.
- Federal Deposit Insurance Corporation.
- Federal Reserve Board.
- Panama Canal Company.
- Canal Zone Government.

The Office of the Comptroller of the Currency, and the Office of the Assistant Secretary (International Affairs), Treasury Department.

*Agencies outside the executive branch*

In addition, executives in agencies outside the executive branch will be excluded. They are:

General Accounting Office.  
Library of Congress.  
Government Printing Office.  
Architect of the Capitol.  
Botanic Garden.  
Tax Court of the United States.  
Administrative Office of the United States Courts.

District of Columbia Government.  
These will be excluded because the Federal Executive Service:

Will be established to provide a more unified, capable and harmonious management team for the President in his role as head of the executive branch; and

Assumes the need for a total coordination of executive resource management with the management of other resources in relation to the programs being managed—a task the President cannot perform for the agencies outside the executive branch.

In addition, for positions now subject to Civil Service Commission purview in agencies outside the executive branch, the proposal contemplates establishing an Executive Service in each agency to be administered by that agency.

This will permit flexible interchange of executives among all branches of the Government even though the executive branch does not have operational responsibilities for the other systems.

*Size of the Federal Executive Service*

The Federal Executive Service will initially consist of approximately 7,000 individuals. The size of this group will change from time to time because of changes in program requirements. No changes will result solely from establishing the new Service.

Centralized position classification by the Civil Service Commission will no longer be used as a basis for authorizing executive resources, establishing pay grades for individuals, controlling assignments, or establishing qualifications of individuals. This will:

Eliminate the existence, in practice, of two personnel systems, one for positions and one for people, which frequently are not in harmony with each other;

Permit an agency and the Administration to consider the overall leadership needs of the agency or program rather than individual position requirements;

Allow more equitable distribution of executive resources among agencies;

Permit the utilization of executives on the basis of broad career qualifications rather than on the basis of narrow professional specialization;

Eliminate grade as a status factor and substitute the prestige of membership in the Federal Executive Service; and

Permit each agency to assign individuals flexibly to whatever duties are required and appropriate.

In lieu of centralized position classification, the agencies and the Civil Service Commission in collaboration with the Office of Management and Budget will have the responsibility to plan for and relate executive manpower requirements to overall program needs and priorities.

Agencies will annually review their executive manpower needs and request an authorized number of executives. The Civil Service Commission will review these requests in collaboration with the Office of Management and Budget and authorize a number for each agency.

These reviews will consider each agency's total requirements, not just changes. There will be no assumption that the same needs continue from year to year.

The annual request of the agencies; the joint review of the Civil Service Commission and the Office of Management and Budget; and the Civil Service Commission's final authorizations will be based on such factors as:

The current level of program and budget.  
The current level of executive staffing.  
Anticipated program and budget requests.  
Pending legislation.  
The level of work to be done.

The Commission will annually report the authorizations to the Congress. The authorizations will become effective 90 days after the report.

The purpose of this arrangement of request, justification, and review will be to:

Require that the Civil Service Commission, in conjunction with the agencies, relate executive manpower requirements to expanding or contracting needs;

Require that all program changes and legislation be accompanied by plans for meeting executive manpower requirements;

Assure that agency executive manpower planning is in consonance with the agency's program and financial plan as approved by Office of Management and Budget in the program review and budget process; and

Assure that both within the agencies and government-wide, executive manpower is more effectively allocated in accordance with the program priorities established by the President and the Congress.

The new and comprehensive reporting system to the Congress will be provided to:

Permit the current Administration to improve and make more meaningful the overview of executive manpower management; and

Allow the appropriate Committees of the Congress to offer guidance to the agencies and the Administration through the legislative oversight process.

The Civil Service Commission after collaboration with the Office of Management and Budget will also have authority to adjust the size of the Service authorized any agency for one year for emergency purposes. This authority will be subject to the following controls:

Changes may be made only for special circumstances clearly unanticipated at the time of the annual authorization;

The Commission must notify the Congress of its use of this authority and give its reasons; and

The Commission may not increase the authorization in any one year by more than 1% of the total authorization.

*Career and noncareer categories of executives*

The members of the Federal Executive Service will be in two appointment categories; career and noncareer.

Each category will have a different type of appointment with different conditions of employment.

*Noncareer*

A noncareer category will be established in the Service to accommodate the agency's need for three different kinds of executives whose employment will likely be of a temporary nature as described below:

Executives whose relationships to the agency head require an interdependence based on such factors as program philosophy, political agreement or personal confidence;

Executives who work on relatively short-term projects; and

Executives whose employment is more oriented toward their professions or occupations than to particular employers. These are the highly mobile people who move freely in and out of private employment, universities, private practice, and government in pursuit of their specialized interests (the so-called "in and outers").

Noncareer appointments will be made at the discretion of the agency head and serve at his pleasure.

Such appointments will not be subject to prior approval or review by a qualifications review board (see later discussion).

Agency heads will be given the authority to approve the qualifications of noncareer executives so that they will have the flexibilities they need to:

Accommodate to a reasonable degree the many staffing pressures they face; and

Hire a limited number of assistants with political or personal relationships or who agree on program philosophy.

*Career*

The career category will be composed of executives whose general employment outlook and expectations are oriented toward Federal service generally.

The majority will probably come from lower levels of Federal career employment through the promotion process.

A small number will enter laterally from outside the Federal career service expecting to make Federal employment a career in the future.

To make long-term Government service attractive and highly prestigious, considerable emphasis will be given to strengthening career appointments and to establishing an open and public review process for entry into the Service.

Career appointments will be made strictly on the basis of merit and fitness.

Provision will be made for merit entry into the career category from all sources; i.e., from the ranks of the General Schedule, from other Federal Government personnel systems, from the noncareer category, and from outside the Federal service.

All career appointments will be reviewed and approved by a Qualifications Board prior to appointment (see later discussion).

Assignments will not be designated as career or noncareer. This will overcome the following difficulties:

It is very difficult to make realistic distinctions between career and noncareer assignments.

Drawing clear lines between policy development and administration of policy on an individual position basis frequently cannot be done realistically.

There are tremendous pressures to exempt positions from the career service despite the real content of the jobs, especially when new positions in new programs are established on a projected basis.

Designation of positions as noncareer has restricted job opportunities for career executives.

In many agencies, noncareer positions have been grouped at the top of the executive structure with the career positions grouped at the lower levels.

Many competent career executives consider assignments to noncareer positions undesirable because of the complete loss of security that goes with such assignments.

Designation of positions as career and noncareer curtails the use of a flexible management structure and the flexible use of people within that structure.

*Establishing and controlling career and noncareer relationships*

In lieu of designating an authorized position or list of duties as career or noncareer, each agency will be authorized a ratio of career/noncareer executives.

This will be done to allow an agency to build a management team that includes:

Executives to provide the continuity and experience needed by modern Government programs;

Executives in whom management has special confidence because of a personal or political relationship, or because of the executive's program philosophy; and

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Executives with specialized skills for short-term public projects or with only a temporary interest in a Government assignment or program.

The use of the career/noncareer ratio will accommodate a wide variety of problems now faced by agency heads. It will provide:

A mix of the skills of career professionals and appointed officials;

An opportunity for agency heads to make reasonable accommodations to requests for appointment of political party constituents, interest group advocates, academics, and professional group members; and

A means for the Congress and the Administration to ensure that the executive staffs of the agencies can be made responsive to the public will expressed through the political mandate.

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

The aggregate government-wide number of noncareer executives will be limited to no more than 25% of the total Federal Executive Service.

Agencies will annually review their current ratios and justify continuing or changing them.

After a review of the requests and justifications, the Commission will authorize specific agency ratios.

The Commission will not apply a uniform or set ratio to all agencies.

The ratios of individual agencies will vary greatly depending on the type of program involved, the characteristics of the executive workforce, and the degree of involvement in controversial and sensitive public programs.

As with size authorizations, the ratios will become effective 90 days following the Commission's annual report to Congress.

The present ratio of career to noncareer executives in the General Schedule is approximately 76% to 24%. Experience indicates that limiting the percentage of noncareer appointments to not more than 25% of the executive workforce will provide a very satisfactory and realistic arrangement to meet executive staffing requirements on a government-wide basis.

It will permit a wide variation of the ratio from agency to agency in recognition of program needs.

It will provide a mix of career and noncareer executives throughout the top organizational structures of agencies rather than a bunching of the career group at the bottom of the executive levels as it is now in many agencies.

#### Compensation arrangements

Agency heads will have authority to set and adjust the salaries of career and noncareer appointments to the Federal Executive Service according to their judgement of the value of the individual to the organization and the responsibilities and duties he carries.

This will allow the Government to be competitive in attracting and keeping high talent.

It will remove the restriction on entry pay rates.

It will allow the career executive appointed from a lower level within Government to be paid on a comparable basis with those appointed from outside the Government.

It will allow salaries to be set within broad limits in accordance with the estimate of a person's worth and how the agency intends to use him.

It will allow pay increases to reward outstanding performance.

It will recognize the need at the executive level for a different pay concept than the present automatic, periodic pay increases.

It will eliminate the disparities in com-

penation systems and requirements affecting similar types of executives in the same agency.

Agency heads may increase salaries. However, as an inducement to potential career executives inside and outside of the Government to accept the conditions applicable to the Federal Executive Service, the salaries may not be reduced.

This pay protection will be part of the compensation for the obligation to serve wherever assigned either organizationally or geographically.

It will provide a stability of income to make the Service more attractive.

It recognizes that in those salary systems where agencies can presently reduce salaries, they practically never do so.

Agency authorities will be limited to an authorized salary range for the Federal Executive Service.

The Civil Service Commission after collaboration with the Office of Management and Budget will recommend the range as part of its overall salary recommendation.

This range will approximate that which has been encompassed by General Schedule positions in grades GS-16/18 in the past.

In addition, agencies will be required to manage their executive salaries so that an average salary will be maintained within the limits designated by the Civil Service Commission after collaboration with the Office of Management and Budget.

The Civil Service Commission after collaboration with the Office of Management and Budget will establish a dollar figure within the executive salary range for application to all agencies. Without specific authorization this dollar figure may not be exceeded by the average salary levels within individual agencies.

The Commission after collaboration with the Office of Management and Budget may authorize exceptions to this requirement for particular agencies which have special executive staffing circumstances, such as:

Agencies with only a few executives so that an average becomes meaningless; and

Agencies which have unique responsibilities that have resulted in average executive salaries near the top of the present GS-16/18 range.

This salary device:

Will prevent escalation of all salaries to the top of the range; and

Will achieve reasonable equity and uniformity throughout the Government.

To provide equity for the Federal Executive Service, executives will automatically receive comparability pay increases and other fringe benefits when they are authorized for other Federal employees.

#### Assignments

Agency heads may assign and reassign career and noncareer executives to any duties anywhere (organizationally or geographically) which properly fall within the scope of the Service (duties higher than those classifiable at GS-15 or the equivalent).

The Federal Executive Service will not provide for a government-wide system of position classification. Agencies will devise and operate their own organization and position management systems.

Duties to which executives are assigned will not be designated "career" or "non-career." Career and noncareer executives will be used interchangeably.

Executives may appeal, to the Civil Service Commission, reassignments to duties or locations which the executives believe were made for reasons other than the program efficiency of the Service.

In this way agencies will have the flexibility to use people based on where they are most qualified to serve or most needed, rather than on salary structure, position structure, tenure rules, or classification distinctions.

It will allow a mix of career and noncareer

executives above the GS-15 level throughout the organizational structure of agencies.

Executives may be used on the basis of broad career qualifications rather than on the basis of narrow professional specialization or political background. Thus, agency heads will be able to accommodate to shifting personal relationships in accordance with individual talents and qualifications.

Agencies will be able to organize and structure executive relationships to accommodate to the needs of particular agency programs.

#### Qualifications boards

The Federal Executive Service will give particular attention to the needs for special arrangements to insure high quality appointments to the career service.

Agency heads will continue to select their career executives, but their appointments will be subject to the prior approval of a Qualifications Board.

This feature will insure that the Federal executive manpower management program:

Recognizes the long-run implications of career appointments for carrying out public programs;

Maintains the confidence of the public that decisions on career executive appointments will be based only on objective consideration of the needs of the Government and not to favor special groups or individuals;

Encourages agency heads to select on the basis of the best qualified;

Gives agency heads a means to resist unreasonable interest-group pressures on staffing;

Assures high quality membership in the Federal Executive Service by screening out weaker nominees; and

Makes appointment to the Federal Executive Service a matter of high prestige.

The Civil Service Commission will establish the Qualifications Boards. These Boards, acting as agents of the Commission, must give prior approval to agency selections for initial career appointment in the Federal Executive Service.

The approval of a Board will not be required for:

Noncareer appointments.

Renewals of employment agreements (discussed later).

Assignment or reassignment to duties within the agency.

Transfers to the Federal Executive Service in another agency.

Incorporation into the Federal Executive Service of present career executives upon implementation of this proposal.

The Boards will be established as agents of the Civil Service Commission in order that they may be appointed and serve as objectively as possible.

Members will be highly qualified experts in their own occupations and generally known and accepted as such.

Members will be appointed from within and outside the Federal service so that varying points of view will be represented and so that the decisions of the Boards will not be unduly influenced by any particular groups. Outside members will be paid for their services.

A number of separate Boards based on broad career programs or occupational areas will be established so that each Board will be composed of adequate program and professional expertise.

Board members will provide a high degree of personal knowledge of the kinds of people needed, who should be considered for career appointments in the Federal Executive Service, and where they are located.

The Qualifications Boards will be charged with the responsibility for insuring that initial career appointments are made with a view to the long-run needs of the Service. They will take into account:

The potential of the individual for long-term contributions in broad career areas: Short-term staffing pressures will not be allowed unduly to influence career selections; these should be met through appointments to the noncareer category; Such broad and thorough career consideration at the time of appointment will make it unnecessary for the Qualifications Boards to review subsequent reassignments of members of the Federal Executive Service.

The nominee's past and present performance to insure that he has as great a likelihood of being successful in the Federal Executive Service as possible.

#### *Employment agreements for career executives*

The employment of a career executive in the Federal Executive Service will be governed by an employment agreement between the executive and the agency.

This agreement will recognize the special nature of career appointments and the need to provide attractive and stable career opportunities for the career service as viewed by entry-level and mid-level employees.

The agreement will be founded upon mutually understood conditions of service agreed to by the agency in offering employment and by the career executive in accepting the employment.

A fixed-term employment agreement will be provided to:

Avoid the perception on the part of agencies and executives that incumbents are "locked in" to particular jobs or levels;

Assure that retention of executives is based on merit rather than tenure and longevity by providing periodic reviews of incumbents at the termination of their employment agreements;

Establish a clear obligation on the part of the Government to use executives productively during the period of their agreements regardless of the types of sensitive or controversial programs with which they have been or are involved;

Give executives realistic and practical employment and salary protection for fixed periods of time and to avoid: The perception that reduction-in-force actions can be and are designed to get around the legalistic procedures now used to provide security; Unrealistic situations where executives must appeal against the management team of which they are a part.

Give agencies a greater means of assuring that executives are responsive to public policy; and

Assure that high-quality employees at entry level and at the mid-management level perceive that they can rise to the top and get important and influential jobs with reasonable security.

The initial employment agreement will be for a period of 3 years.

Initial agreements will be made without regard to the person's age or eligibility for optional retirement (age 62 with 5 years of service; age 60 with 20 years of service; age 55 with 30 years of service).

Unless three years would carry the executive past the time of mandatory retirement (age 70 with 15 years of service), in which case the initial agreement would terminate on that date.

A period of three years will be provided:

To insure that the initial agreement will be long enough to attract high quality people and long enough to allow reasonable productivity on the part of the incumbent; and

To provide a reasonable time for management to observe the performance of incumbents and reach a judgement as to whether their employment should be continued.

During the period of an employment agreement the agency will agree:

To assign the career executive for the whole period to duties properly falling within the scope of the Service;

Not to reduce the career executive's salary; Not to remove the career executive except for offenses calling for adverse action procedures. A career executive may not be removed in consequence of a reduction-in-force or reorganization;

To provide training and career development opportunities based on individual and organizational needs, the program of the President, and congressional concern and interest; and

This provision recognizes the need for the continuing, long-term development of executives to meet the Government's needs and helps overcome the short-term perspective of many agencies faced with immediate pressures for program success.

The career executive who accepts appointment into the Federal Executive Service will be governed by a number of features designed to encourage positive executive manpower management.

To allow mobility, and preclude unnecessary restrictions on personal employment choices, the career executive may:

Resign from the Federal Executive Service at any time;

Transfer to any agency or employment group excluded from the coverage of the Federal Executive Service;

Transfer to the Federal Executive Service in another agency. In this case, to insure periodic review of all Federal Executive Service appointees, his new agreement may only be for a period of time equal to the remaining time of his old agreement. Thereafter, his employment agreement may be renewed by the new agency;

Retire or be retired for medical disability; and

Retire if eligible.

The executive recognizes that he will be required to serve in whatever capacity he will be needed in the organization and wherever he will be needed geographically.

He will be protected by a requirement that any duties he is given must fall properly within the scope of the Federal Executive Service.

He may appeal assignments to duties or locations which he believes were made for reasons other than the efficiency of the Government.

If the acceptance of a geographical move results in undue hardship, an executive will be able to decline the move and choose one of the following options:

GS-15 employment with 2 years salary saving;

Discontinued service retirement if eligible; and

If not eligible for retirement benefits, he may resign and receive severance pay.

If an employment agreement is not renewed after a geographical move, the executive will be able to move back at the expense of the Government to his location at the time he entered into his initial employment agreement.

By his entry into the Federal Executive Service, the executive will accept the responsibility to continue his development both as an executive and as a professional within his field. At the time of his consideration for an employment agreement renewal, the agency will take into account the effort and progress the executive has made in his own continuing development.

Agencies will be encouraged to strengthen their executive manpower management program by establishing boards within the agencies to assist them in reviewing nominees for initial executive appointments or renewal of agreements.

#### *Renewal of employment agreements*

A number of specific arrangements will be provided to give the agency flexibility in continuing the employment of a career executive upon the expiration of an employment agreement and for protecting the individual should he or the agency not wish to renew the agreement.

To give the agency as much flexibility as possible, it may offer an employment agreement renewal for three-year periods until the executive becomes eligible for mandatory retirement.

The agency may offer renewal, and the executive may decline. In that case:

If the executive has completed 30 years of service and is otherwise eligible for an annuity, the agency may involuntarily separate the executive from the service;

If the executive is not separated from the service under the "30 years of service" provision described above, the agency must offer the executive a bona fide continuing position for which he is qualified at the GS-15 level in the competitive service. This offer may not cause adverse actions to any employee already serving in a GS-15 appointment; and

The agency must (as under present statutes) continue paying the employee for two years at the rate of his last salary in the Federal Executive Service.

The agency may choose not to renew an agreement. In that case:

If the executive has completed 30 years of service and is otherwise eligible for an annuity, the agency may involuntarily separate the executive from the service;

If the executive is not separated from the service under the "30 years of service" provision described above, the agency must offer the executive a bona fide continuing position for which he is qualified at the GS-15 level in the competitive service with two years of salary saving; and

If the executive does not accept the GS-15 appointment, he will be separated by the expiration of his agreement. This will be considered an involuntary separation.

If he will be eligible for discontinued service retirement, he will be entitled to those benefits (age 50 with 20 years of service, any age with 25 years of service).

Otherwise, he will be eligible for "severance pay" benefits.

If the executive accepts GS-15 employment:

He will have two years of saved salary; When the saved salary period expires he will continue in his GS-15 employment at whatever salary step would be appropriate on the basis of total time served at grade GS-15 or above; and

While serving at GS-15, he will be subject to all protections and conditioning of employment applicable to all other GS-15's serving in the competitive service.

#### *Appeals*

As with all personnel systems, the Federal Executive Service will have a means, independent of management, for its members to appeal and seek relief if they feel the agency has not met its obligations or is acting contrary to official requirements.

The present rights to appeal adverse actions and involuntary disability retirement will be included;

In addition, for those rare cases when an executive feels that the agency has not met its obligations under the employment agreement regarding assignments, utilization or conditions of employment, the executive may, as a last resort, seek adjudication and redress; and

To assure an independent and objective hearing the appeals will be made to the Civil Service Commission which will be given final administrative authority to take corrective action if it finds the appeals should be sustained.

#### *Stewardship report to the Congress*

A provision for a stewardship report to Congress and a congressional review will be made in recognition of the historical and appropriate interest of the Congress in the authorization and allocation of executive resources and in the general management of the Government's executive manpower.

An annual report of agency and govern-



ment-wide authorizations including career and noncareer ratios will provide the Congress with periodic opportunities to review and influence the Government's executive manpower program.

This report will also be the means by which the general public will be periodically informed of the actions its Government is taking in the management of executive resources. The report will provide the openness of information that is the foundation of an effective merit system.

The Civil Service Commission will make this detailed report showing the following information for each agency and government-wide.

The current and projected size of the Federal Executive Service.

The current and projected ratios of career to noncareer appointments within the Service.

The current and projected salary cost of the Service.

The current and projected distribution of salaries and the average salaries.

The Civil Service Commission's actions and supporting justifications in authorizing appointments for emergency needs.

Information on the overall program for management of the Government's executive manpower resources which might be helpful to the Congress in exercising its general oversight.

Career development activities.

Training activities and plans.

Analytical studies.

After 90 days following the submission of the report to Congress and in the absence of contrary action decided upon through the legislative oversight process, the agency size and ratio authorizations may be implemented.

*System responsibility placed in the central personnel agency*

The administration of the Federal Executive Service will be placed in the Civil Service Commission for the following reasons:

To fix leadership responsibility for the development and operation of a positive personnel program for the upper levels that will:

Interrelate manpower management throughout all levels from professional entry to the executive levels by defining career fields and patterns of progression and insuring that developmental and training opportunities required for career progression will be provided.

Insure that manpower resources, particularly executive resources, will receive comparable top management attention to that given other resources so that:

Manpower requirements will be related to program plans, priorities, and pending legislation; and

Staffing needs will be projected and sources of supply will be developed.

To enlarge the overview of the central personnel agency and give it more responsibility for stewardship and responsiveness to Congress and the Administration. This will:

Establish a single focal point for the President to manage and control the utilization of the great majority of the Government's executive resources.

Provide a unified source that will:

Be a single authority accountable for executive resource stewardship; and

Assure government-wide consistency in the application of the various regulations of the Federal Executive Service.

To encourage a government-wide outlook on the part of agency management so that there will be:

A government-wide approach to executive manpower management; and

Increased opportunity for mobility of executives and potential executives among agencies and programs.

#### Effective date

The Federal Executive Service will come into being and the operating provisions will become effective no later than one year after enactment of the proposed legislation. During this period, operating procedures and regulations will be developed.

The Civil Service Commission will be authorized to issue such regulations as will be necessary to carry out the legislation.

#### Transition to the Federal Executive Service

##### Executives with career appointments

To give present career executives maximum opportunity to participate in the Federal Executive Service, all present career executives will be offered employment agreements:

All career executives may take 3-year agreements if that does not carry them beyond mandatory retirement. If they are subject to mandatory retirement before three years, they may take agreements for periods up to mandatory retirement; and

Career executives accepting employment agreements will be exempt from the requirement of qualifications approval provided the agreement offer is accepted within a reasonable time to be established by implementing regulations.

To insure that any rights or protections presently enjoyed by career executives will be preserved, executives:

May choose not to take an employment agreement, but to continue under their current appointments with all of their rights and privileges;

Thus, incumbents will not be forced to make a change; and

In the event of reduction in force, there will be no competition between executives in the Federal Executive Service and those holding other types of appointments.

To avoid inequities and hardship, the Civil Service Commission will have authority to regulate the details of the transition and to correct administrative errors and oversights in complying with its regulations.

##### Executives With Excepted Appointments

The status of executives now serving under noncareer executive assignment (NEA) appointments will not change. They will be given noncareer appointments in the Federal Executive Service.

All of the protections of other executives serving in positions which are excepted from the competitive service will be preserved:

Because some of these appointments are actually career types of appointments (e.g., some attorneys in Schedule A), the agency, at its option, may offer individual executives career appointments with employment agreements without the requirement of qualifications approval; and

Those other executives who may not be offered an employment agreement and those who do not accept an agreement, will be protected by being allowed to remain under their present appointments. They will retain all of the rights and privileges of those appointments.

#### Application to excluded groups

Because the features of the Federal Executive Service merit consideration for executive manpower management programs throughout the Federal Government, executive branch agencies with excluded groups will be encouraged to consider the adoption of appropriate features.

Because the Civil Service Commission now has responsibilities for certain personnel functions for executives in agencies outside of the executive branch, provision will be made for those agencies to establish their own executive services, with the agency head as the regulatory, administrative, and reporting authority.

This will be done because:

Executive manpower management should be integrated with the management of other

resources in relation to the programs being managed. Since, outside of the executive branch, the agency head will determine his program plans and receive his resource authorizations in a direct relationship with Congress, it is more appropriate for that agency head to deal directly with the Congress on the administration of his executive service;

Similar executive services in the executive, judicial, and legislative branches will facilitate the exchange of executives throughout the Government; and

There no longer will be new positions at GS-16, -17, or -18 established anywhere in the Federal service, in or out of the executive branch.

Appeals will continue to be heard and finally adjudicated by the Civil Service Commission.

So that any Federal agency will be able to have the benefit of the best executive manpower management services available, the services to be provided by the Civil Service Commission, such as the Executive Inventory, will be made available to any agency.

#### SECTION V.—OPERATION OF THE FEDERAL EXECUTIVE SERVICE

Determining the size of the FES would begin within individual agencies, where reviews of executive manpower needs would be conducted annually. To make their request for executives consistent with the relative importance and priority of agency programs, agency reviews would be based on such factors as:

Current level of program and budget;  
Current level and nature of executive staff;

Anticipated program and budget requests;  
Pending legislation; and  
Nature and level of the work to be performed.

Agencies would submit to the CSC on or about February 1 their requests for:

Number of executives required;  
Career/noncareer ratio; and  
Proposed average salary.

The CSC, after collaboration with OMB, would authorize a maximum number of executives, a career/noncareer ratio and an average salary ceiling for each agency.

The ratio of noncareer could not exceed 25 percent of the authorized FES total government-wide, but it would vary from agency to agency.

Except as specifically authorized, the average salary for an individual agency could not exceed the government-wide figure.

The CSC would report its authorizations to Congress on April 1. The authorizations would become effective in 90 days, unless Congress acted to the contrary.

Agencies could appoint (hire) executives from inside or outside of Government up to the numbers authorized and in accordance with the career/noncareer ratio.

Agencies would not have to justify appointment of individual executives based on centrally approved position classifications—instead, agencies would develop tailored position management systems.

Individual executives could be paid salaries anywhere within the salary range for the Federal Executive Service—but the agency would have to stay within its authorized average salary ceiling.

Agencies would have complete authority to hire and remove *noncareer* executives.

Agencies would appoint *career* executives according to the following procedures:

Following an intensive search based on merit principles, the agency would make a selection subject to approval by the CSC.

Agencies would be encouraged to establish and utilize internal boards for recruiting and qualifications review.

Candidates from both inside and outside Government could be selected.

Within the CSC, selections would be presented to the appropriate qualifications board for approval prior to formal appointment by the agency head.

There would be 15-20 qualifications boards, based on occupations.

As agents of the CSC, each board would operate government-wide for the occupations within its cognizance, and be composed of recognized leaders in the Government, academic and private sectors.

The boards would review the agency's selectee in terms of:

How the agency identified likely candidates;

The selectee's potential for long-term contributions to the Federal service;

The appropriateness of his qualifications compared to the qualifications needed to carry out the agency's programs (and the qualifications on which recruiting was based); and

His professional qualifications and stature in the occupation.

Qualifications boards would not review assignments following appointment, or renewal appointments.

Agencies would have maximum flexibility in the assignment of executives.

Career and noncareer executives could be assigned to duties interchangeably—positions or duties would not be designated as career or noncareer.

All executives could be assigned whenever needed, regardless of the nature of the duties, or their organizational or geographic location, provided the duties were of executive calibre, and assignments were not made arbitrarily or capriciously. There would be a procedure whereby executives could appeal if they felt these latter provisions were not met.

Career appointments would be made on the basis of 3 year, renewable employment agreements, which would obligate the agency:

Not to reduce the executive's salary for the three-year period (although increases would be allowed at the agency's discretion);

Not to separate the executive except for cause, or to demote him from executive status by reduction-in-force or assignment of inappropriate duties; and

(The executive would agree to serve whenever needed, as described above and could resign or retire (if eligible) at any time.)

When the agreement expired, the agency would have the option of offering the executive a renewal—for 3 years. The number of renewals would be limited only by the executive's reaching the mandatory retirement age.

Each agency would administer the renewal process in the manner most appropriate to its needs.

A formal review would not be mandatory; renewals could be handled informally.

Agencies would be encouraged to set up advisory boards to advise and assist the agency head as to the renewal of individual employment agreements.

If the agency chose not to offer a renewal, or if such an offer were made and declined by the executive, the agency may involuntarily separate the executive from the service if he has completed 30 years of service and is otherwise eligible for an annuity. In all other cases, the agency would have to offer the executive a continuing GS-15 position in the career service (without displacing any other employees). He would then be paid for two years at the rate of his last FES salary, before reverting to the appropriate rate of the GS-15 schedule.

Executives who chose not to continue employment as an executive or as a GS-15 and are not separated by the agency under the "30 years of service" provision, could elect op-

tional or discontinued service retirement, if eligible, or separation with severance pay.

NOTE.—This proposal presupposes maximum emphasis on the use of talent files within the agency and on a government-wide basis; on a greatly increased attention to managerial and professional development of executives; and on a much improved system of effective executive appraisal. These program approaches are not detailed as part of the FES proposal since their accomplishment does not depend on legislative system changes.

THE FEDERAL EXECUTIVE.—(UNDER CURRENT PERSONNEL SYSTEMS)

There is always some confusion about who is a Federal executive. No adequate definitions exist, but salary level is a frequently used criterion. Thus, "Federal executives" could mean all of the full-time employees of the executive branch who earn as much as the beginning salary (\$26,547) of a General Schedule grade 16. The table below shows the numbers of civilian executives for various personnel programs who would meet that criterion.

TABLE 1  
(As of Oct. 1, 1970)

Personnel program	Number	Percent
Executive level (levels 1-V)	580	5
General schedule (GS 16-18) <sup>1</sup>	5,679	52
Public Law type <sup>1,2</sup>	1,244	12
Foreign Service (FSO and FSR levels 1 and 2)	2,117	19
Other <sup>3</sup>	1,265	12
Total	10,903	100

<sup>1</sup> The focus of attention of the existing Federal executive manpower program and the executive assignment system is on the 6,941 General Schedule and Public Law type positions which comprise 64 percent of the total.

<sup>2</sup> The nature of this universe of 6,941 positions is better understood when they are broken down by type of authorization (Government-wide quota, nonquota, etc.) and by career/noncareer. Of the 1,244 Public Law type positions, 814 are in the competitive career service. The distribution of the 5,697 positions in the General Schedule is shown in table 2.

<sup>3</sup> Certain limited scientific and professional positions involved in research and development activities requiring the services of specially qualified persons and paid at special salary rates not less than GS-16 or more than GS-18.

<sup>4</sup> Consists primarily of positions in TVA, AEC, Department of Medicine, and Surgery of VA, and the Postal Field Service.

TABLE 2.—GENERAL SCHEDULE POSITIONS IN GRADES 16-18<sup>1</sup>  
(As of Oct. 1, 1970)

Authorities	Total		Excepted/Noncareer					Total
	Number	Percent	Competitive career	NEA	Schedule A	Schedule B	Other	
Government-wide quota	2,734	48	1,839	491	339	3	62	895
Defense quota	407	7	320	34	48	5		87
Nonquota	1,953	34	1,831	35	44	11	32	122
Special authorities	603	11	344	1	11		247	259
Total	5,697	100	4,334	561	442	19	341	1,363

<sup>1</sup> GS-16=4,054 (71 percent), GS-17=1,175 (21 percent), GS-18=468 (8 percent).

Explanation of Terms:

**Competitive/Career:** The "competitive service" refers to those positions where the rules of the Civil Service Act regarding entry into service must be followed. The "career service" is a generic term used to refer to those positions and incumbents governed by Civil Service Commission rules and regulations concerning recruitment, development, promotion, and tenure. This narrow definition does not take into account many career type personnel systems or positions which are excluded from the Civil Service Act. All positions are considered to be "Competitive/Career" unless specifically exempted under the various procedures for doing so.

**Excepted/Noncareer:** Those positions and incumbents specifically exempted from the competitive service by law or regulation.

**Government-wide Quota:** The number of positions authorized by the Congress and allocated to agencies by the Civil Service Commission. It is a ceiling on the number of positions which may be established.

**Defense Quota:** A special allocation of positions for exclusive use by the Defense Department.

**Nonquota:** Congress has authorized certain types of positions that may be established outside the government-wide quota. These nonquota positions may be authorized for professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine.

**Special Authorities:** These are positions specifically earmarked by legislation for particular programs or organizations.

SECTION ANALYSIS

To accompany the draft bill to amend title 5, United States Code, to establish and govern the Federal Executive Service, and for other purposes

The bill is divided into six sections. Section 1, which is divided into ten paragraphs, amends title 5, United States Code, to establish and govern the Federal Executive Service. Sections 2 through 6 are not amendments of title 5, but contain provisions needed for the transition from the Executive Assignment System to the Federal Executive Service. The separate sections, paragraphs, and subparagraphs of the bill are discussed hereinafter.

Section 1

**Paragraph (1)** adds a reference to 5 U.S.C. 3143(c) in 5 U.S.C. 1305 so that the Civil Service Commission is authorized to perform all actions regarding hearing examiners paid under the newly added section 3143(c) that it has been performing with respect to hearing examiners paid under the General Schedule.

**Paragraph (2)** adds a new subsection (f) to 5 U.S.C. 1308, "Annual reports," which requires an annual stewardship report by the Civil Service Commission to Congress on the Federal Executive Service. This annual stewardship report serves three important purposes. First, it will fully inform Congress on the operation of the Federal Executive Service for the previous fiscal year. Second, it will fully inform Congress as to the proposed scope and operation of the Federal Executive Service for the coming fiscal year. This will enable Congress to maintain an informed and positive legislative oversight over the Federal Executive Service. Third, the detailed and comprehensive nature of the stewardship report required by the new subsection will serve to inform the general public of the actions that its Government is taking, and proposes to take, with respect to the management of its executive resources.

The stewardship report is required to be submitted before April 1 of each year in order that Congress will have a full 90-day

period to review it before the end of the fiscal year in which it is submitted and the start of the next fiscal year during which the newly proposed number of executive appointments, ratios, and executive pay average are to be applicable.

Under the new section 1308(f)(2), the Civil Service Commission allocations of the number of proposed executive appointments, the ratios of career to noncareer appointments, and the executive pay average are effective 90 days after the submission of the report.

Paragraph (3) is the "heart" of the bill. It makes several amendments to chapter 31 of title 5, United States Code, which establish and govern the Federal Executive Service. Paragraph (3) is divided into five subparagraphs, two of which are technical (subparagraphs (A) and (B)) and three of which are substantive (subparagraphs (C), (D), and (E)). They are explained separately as follows:

#### Subparagraph (A)

Subparagraph (A) will amend the chapter analysis of chapter 31 (some refer to it as the "table of contents") so that it will properly reflect the content of the chapter after the bill is enacted. As shown in the amended chapter analysis, a new subchapter has been added to chapter 31 of title 5, United States Code, which contains all permanent statutory provisions concerning the Federal Executive Service.

#### Subparagraph (B)

Subparagraph (B) will insert a new subchapter designation for the present provisions of chapter 31. This is a technical necessity caused by the new division of the present chapter into two subchapters creating a need for a new subchapter designation covering the provisions that were in the chapter before its amendment by the bill.

#### Subparagraph (C)

Subparagraph (C) would repeal 5 U.S.C. 3104 concerning the employment of specially qualified scientific and professional personnel. Section 3104 is a special employment authority which (together with 5 U.S.C. 5361) authorizes the filling of the positions described therein at GS-16, 17, and 18 of the General Schedule. As the General Schedule will no longer contain GS-16, 17, or 18, and as all such positions are now authorized by and paid under the provisions of this bill, the section is no longer necessary.

#### Subparagraph (D)

Subparagraph (D) would delete from 5 U.S.C. 3109, "Employment of experts and consultants; temporary or intermittent", the reference therein to 5 U.S.C. 5332, "The General Schedule", and in lieu thereof include a reference to 5 U.S.C. 3139 which is the new statutory pay authority for executives. This amendment means that the rate of pay for experts and consultants may not exceed the daily equivalent of the highest rate payable to a member of the Federal Executive Service.

Under 43 Comp. Gen. 509 it was held that experts and consultants in the fields of physical and natural sciences, engineering, and medicine could be paid at the rate of GS-16, 17, or 18 as there was no numerical limitation on positions of those types or those grades; whereas all other experts and consultants were limited to the equivalent of the highest rate for GS-15. Under the new subchapter II of chapter 31 of title 5 there will be no distinctions between the types of executives who may be appointed in the Federal Executive Service. Also, 5 U.S.C. 5108 which contained the language that distinguished positions in the fields of physical and natural sciences, engineering, and medicine from other positions will be repealed by this bill. Because of the absence of these distinctions, and in recognition of the need

to adequately pay all experts and consultants, the pay maximum has been made the same for all experts and consultants. Agencies will, of course, still decide the correct pay rate on the basis of the individual expert's or consultant's qualifications.

#### Subparagraph (E)

Subparagraph (E) will add a new subchapter II to chapter 31 of title 5, United States Code. The new subchapter establishes and provides for the administration of the Federal Executive Service. The new subchapter contains thirteen sections which are discussed separately hereinafter.

§ 3131. *Purpose.* This section states the purpose of the subchapter and, in addition, the purposes of the Federal Executive Service.

§ 3132. *Definitions.* Paragraph (1) of § 3132 defines "agency." The definition covers each executive agency as defined in 5 U.S.C. 105 (except the General Accounting Office which is excluded by § 3132(1)(1) and each military department as defined in 5 U.S.C. 102. The military departments are mentioned specifically so that they may make executive appointments independently of the Department of Defense just as they may now do with regard to positions in GS-16, 17 and 18. The General Accounting Office is specifically excluded as it is the only non-executive agency included in the defined term "executive agency" in 5 U.S.C. 105 (by reason of 5 U.S.C. 104(2)). The paragraph excludes the twelve agencies named in clauses (i) through (xii), the two offices in the Treasury Department named in clause (xiii), and the Federal Bureau of Investigation named in clause (xiv), as one (the General Accounting Office) is outside the executive branch and the others have separate personnel systems for their executive-level employees which, by reason of the unique nature of their missions, are not suited for coverage under the Federal Executive Service and (with the exception of the United States Postal Service and the Federal Bureau of Investigation) presently have no positions allocated in GS-16, 17, or 18.

Paragraph (2) of § 3132 adds a definition of the term "executive" for convenient usage and for the purpose of limiting the use of the term in subchapter II of chapter 31 of title 5, United States Code, to executives paid at a rate that is not less than the sixth rate of GS-15 of the General Schedule and not more than the rate for level V of the Executive Schedule. These are essentially the same dollar amounts that now are fixed for GS-16 through GS-18 of the General Schedule. The definition serves as a means of excluding from the subchapter and from the Federal Executive Service the incumbents of the positions specified in subparagraphs (A) through (H) of § 3132(2).

Subparagraphs (A) through (G) are self-explanatory. Subparagraph (H) authorizes the President to issue regulations which exclude an employee or a group of employees from the Federal Executive Service on any one of three bases. An exclusion may be based on national security interests, foreign relations, or a finding that an employee or group of employees perform unique functions that cannot be readily adapted to the Federal Executive Service programs.

§ 3133. *The Federal Executive Service.* This section describes the make-up of the Federal Executive Service. The Service is made up of the executives (both career and noncareer) whose appointments are authorized under 5 U.S.C. 3134. There are no "positions" centrally established or authorized, as that term is commonly used, in the Federal Executive Service. After an executive is appointed in the Service he is given an assignment by the agency and is subject to the organization management system of the agency in which he is appointed.

§ 3134. *Authorization of executive appointments and ratios.* Subsection (a) of § 3134 requires that each agency examine its executive manpower needs and submit a written request to the Civil Service Commission, in accordance with regulations prescribed by the Office of Management and Budget and the Civil Service Commission, for authority to appoint a specific number of executives in the agency within the Federal Executive Service. This request is required to be based on the following factors:

- (1) the current level of budget and program activity in the agency;
- (2) the current level of executive staffing in the agency;
- (3) the anticipated agency program activity and agency budget requests;
- (4) pending legislation;
- (5) the level of work to be done in the agency; and
- (6) such other factors as may be prescribed from time to time by the Office of Management and Budget and the Civil Service Commission.

When this examination by an agency of its manpower needs is made, the Commission under its regulatory authority in § 3142, will require that the examination expressly cover the need to continue the number of executive appointments heretofore authorized.

Subsection (b) of § 3134 requires that each agency shall include in the request for executive appointment authority referred to in § 3134(a), the number of appointments requested that it proposes to fill by career appointment and the number it proposes to fill by noncareer appointment. Subsection (b) fixes the total percentage of noncareer appointments throughout the entire Federal Executive Service at a maximum of 25%, but expressly authorizes the Civil Service Commission to vary the ratios of career to noncareer appointments within separate agencies as the differing needs of the agencies require. This means, for example, that Agency A may have need for only a relatively few noncareer appointees and, accordingly, within that agency the Commission would authorize a ratio of 90% career executives to 10% noncareer executives. On the other hand, Agency B may have a legitimate need for relatively more noncareer executives in which case the Commission would authorize a ratio for Agency B of 60% career executives to 40% noncareer executives. At the same time that individual agency ratios are being authorized by the Commission, the Commission has the responsibility to ensure that the total number of noncareer executives throughout the Federal Executive Service does not exceed 25%.

Subsection (c) empowers the Civil Service Commission to determine when, within each year, the agency request for executive appointments and the ratios will be submitted and in what form that submission will be made. As 1308(f) of title 5, United States Code, requires the Commission to submit its annual stewardship report before April 1 of each year, the date by which the Commission will require each agency to submit its request will be fixed at a reasonable point before that April 1 date to allow for the preparation of the annual stewardship report. The Commission may, if it considers it appropriate and beneficial, require different agencies to report at different times.

Subsection (d) requires that the Commission, after its receipt of each agency's request for a specific number of executive appointments and a ratio, review the request and determine whether the request is justified and appropriate. In reaching its determination, the Commission will collaborate with the Office of Management and Budget in the Executive Office of the President. This collaboration recognizes the fact that executive manpower needs flow from approved programs and budgets.

Subsection (e) provides the Civil Service Commission with a limited authority to adjust, after collaboration with the Office of Management and Budget, the number of executive appointments and ratios in the Federal Executive Service when required by emergency circumstances and needs that were not foreseen when the annual stewardship report was submitted to Congress. The statutory limitation on this emergency authority is that the Service may not be enlarged more than 1 percent in a single fiscal year. As it is contemplated that the initial size of the Federal Executive Service will be 7,000 (approximately the current number of GS-16, 17, and 18 and Public Law 313-type employees), the maximum number of additional executive appointments that the Commission could include in the Service in one fiscal year in an unforeseeable emergency would be approximately 70. Whenever any adjustment of either the number of executive appointments or the ratios is made under this subsection, the Commission is required to include full information concerning the adjustment in its next annual stewardship report to Congress.

§ 3135. *General authority to appoint executives; characteristics of career and non-career appointments.* The first subsection of § 3135 specifies that the head of the agency in which an executive is to be appointed has authority to determine whether the executive will receive a career or a noncareer appointment. The placing of this exclusive authority with agency heads is one of the paramount new features of the Federal Executive Service. If a career appointment is to be made, the appropriate review and approval procedures of a Qualifications Board, as contained in section 3136, must be followed.

Paragraphs (1) and (2) of § 3135(a) state the considerations that an agency head uses to decide whether a particular appointment is to be career or noncareer. This decision does not necessarily determine the nature of the assignment into which the executive is placed. The decision relates solely to the type of appointment to be made. Career appointments are for executives who are expected to make a career in Government; they are generally equivalent to the incumbents of positions that were in the competitive service in GS-16, 17, and 18 of the General Schedule before the establishment of the Federal Executive Service. Noncareer appointments are for executives in whom management has special confidence because of a personal or political relationship or because of the executive's program philosophy. This group also includes executives with specialized skills for short-term public projects or with only a temporary interest in a Government assignment or program. The noncareer executives are generally equivalent to the incumbents of positions that were in the excepted service in Schedule C and noncareer executive assignment positions in GS-16, 17, and 18 of the General Schedule before the establishment of the Federal Executive Service.

Subsection (b) sets forth the characteristics of the career executive appointee. Such an appointee is not required to serve a probationary or trial period as the recruitment and selection procedures required for such an appointment serve to guarantee that these appointees are exceptionally well qualified, making the principle of the probationary or trial period inapplicable to them. Also, it is expected that the vast majority of career appointments will be given to individuals who have served considerable periods of time in lower grade levels in the competitive service. The career executive is, from the first day of his appointment, in the competitive service and has a competitive status. This means that he is immediately covered by the adverse action procedures set out in 5 U.S.C. 7501 and 5 CFR Part 752 by reason of the fact that those procedures apply to an individual "in the competitive service" (see 5

U.S.C. 7501). Paragraph (3) of subsection (b) of § 3135 is included so there will be no doubt that a career executive who is a veteran (i.e., a preference eligible as defined in § 2108(3) of title 5 of the United States Code) is covered by the job protection provisions of section 14 of the former Veterans' Preference Act (now subchapter II of chapter 75 and § 7701 of title 5, United States Code) from the first day of his career appointment in the Federal Executive Service.

Subsection (c) of § 3135 contains the characteristics of the noncareer executive. Such a noncareer appointment does not place the appointee in the competitive service nor does it entitle him to a competitive status. The noncareer executive has no fixed tenure and he "serves at the will of the appointing authority". The quoted words are identical to those which appear in 5 U.S.C. 3323(b) relative to a reemployed annuitant. By reason of the inclusion of these words in § 3135(c), a preference eligible executive serving under a noncareer appointment is not entitled to the job protection benefits of section 14 of the former Veterans' Preference Act (now principally in 5 U.S.C. 7512 and 7701) regardless of how long he has served in such an appointment. By the same token, a non-veteran noncareer executive has no job-protection benefits. The decision to effect the separation of a noncareer executive (veteran or nonveteran) is exclusively that of the agency head. The reasons or bases for the agency head's decision are not reviewable by the Civil Service Commission or any other administrative authority, except when the separated noncareer executive contends that the separation was based on discrimination because of his "race, color, religion, sex, or national origin" in violation of the policy of the United States expressed in 5 U.S.C. 7151, or his "marital status" or "physical handicap" as referred to in 5 U.S.C. 7151 and 7153. An allegation of political discrimination, e.g., that the separation of the noncareer executive was based on political reasons, does not afford a basis for the Commission or any administrative authority to review the separation action taken by the head of the agency.

The noncareer executive does not serve under an employment agreement of any type and he has no continued employment guarantee. This means that the head of the agency in which the noncareer executive is employed may increase or decrease the non-career executive's pay at will and without advancing any reason so long as the pay remains within the limits set out in 5 U.S.C. 3139. In addition, the absence of a continued employment guarantee means that regardless of how long a noncareer executive serves in such an appointment, or series of them, he is not entitled, when separated, to placement elsewhere in the agency or in the Government service, and he is not entitled to severance pay under 5 U.S.C. 5595. (The incumbents or these positions will be excluded from severance pay entitlement by the Civil Service regulations issued under 5595 just as those regulations now exclude positions filled by noncareer executive assignment and positions in Schedule C, see 5 CFR 550.701(b) (8) revised as of January 1, 1970.) It should also be noted that regardless of how long an executive serves under a noncareer appointment, or series of them, he is not entitled, if reduced in pay, to saved pay under 5 U.S.C. 5337 as he is not (as required by § 5337(a) (1)) "reduced in grade from a grade of the General Schedule."

§ 3136. *Career appointments.* Subsection (a) of § 3136 governs the recruitment and selection of candidates for career appointments in the Federal Executive Service. The high caliber of these candidates is assured by the dual requirements in paragraphs (1) and (2) of § 3136(a). The recruiting program is required to reach all sectors (private as well as governmental) and must evidence that the best

talent available was considered. For the purpose of section 3136 the term "outside the civil service" includes, in addition to the private sector, State and territorial governments, any political subdivision of either a State or territorial government, and the government of the District of Columbia. Subsection (a) of § 3136 requires the Civil Service Commission to assist every agency in its recruiting and selecting activities. The Commission's assistance is to assure that the agency has before it for its consideration and selection the best talent available after a broad-base recruitment effort. The Commission will make full use of its Executive Inventory and all other Commission resources in aiding agencies under subsection (a) of § 3136.

Subsection (b) of § 3136 requires each agency which selects a candidate for career executive appointment to submit documentation that establishes his qualifications, and which shows the nature of the recruitment effort made, to a Qualifications Board. Except as provided in subsection (d) of § 3136, which is discussed subsequently herein, an agency may not make a career appointment to a position in the Federal Executive Service without the prior approval of a Qualifications Board.

Subsection (c) of § 3136 requires that an employment agreement be entered into between the employing agency and the candidate approved by a Qualifications Board before a career appointment to a position in the Federal Executive Service may be effected.

Subsection (d) of § 3136 authorizes career appointments in the Federal Executive Service without the approval of a Qualifications Board under two conditions. The first condition is when the appointment is by transfer from one career appointment in the Federal Executive Service to another career appointment in the Service. The second condition is when the appointment is by a renewal employment agreement entered into not later than 1 year after the executive's separation from, or the expiration of, a previous employment agreement. The 1 year limitation is to assure that the former executive's qualifications are current. If he is out of the Federal Executive Service for more than 1 year, his current qualifications must be evaluated again by a Qualifications Board.

§ 3137. *Employment agreements.* Subsection (a) provides for two types of employment agreements. The first employment agreement entered into by an executive is the initial employment agreement and each employment agreement entered into thereafter by that executive is a renewal employment agreement.

Subsection (b) of § 3137 fixes the employment period for an initial employment agreement at 3 years, except when the executive covered under the agreement is required to be separated sooner than 3 years by operation of the mandatory separation provision of the retirement statute. That statute, 5 U.S.C. 8335, requires the separation of an employee who becomes 70 years of age and who has completed 15 years of service, provided he served under the retirement system for at least 1 year within the 2 years immediately preceding his separation (5 U.S.C. 8331(b)). An executive separated because of age may be reappointed under a renewal employment agreement, but if this is done he serves at the will of the appointing authority by reason of 5 U.S.C. 3323(b).

Subsection (c) of § 3137 fixes the employment period for a renewal employment agreement at 3 years unless his separation in less than 3 years is required by operation of 5 U.S.C. 8335. However, when a renewal employment agreement is made by reason of a transfer from an initial employment agreement, the employment period may run only to the date the initial employment agreement would have ended.

Subsection (d) of § 3137 sets out 6 specific provisions obligating an agency with respect to every employment agreement (initial or renewal). Paragraph (1) requires that an agency shall not assign an executive to duties and responsibilities that are not truly of an executive caliber. For example, an agency could not assign an executive to duties properly classifiable at grade GS-15 or below of the General Schedule.

Paragraph (2) obligates the agency to provide the executive with training and career development opportunities. These have the dual purpose of enhancing the individual professional and managerial development of the executive and promoting the program needs of the agency.

Paragraph (3) bars an agency from reducing the pay of a career executive during a period of continuous service in the Federal Executive Service. This means that a career executive's initial rate of pay may not be decreased during his continuous service in the Federal Executive Service, and if an agency increases an executive's pay during his employment period he must continue to be paid at that higher rate of pay for the remainder of his continuous service in the Federal Executive Service.

Paragraph (4) prevents an agency from separating an executive during an employment period except for "cause" or when the Civil Service Commission finds that because of physical disability he is not able to perform useful and efficient service in the executive position. A separation for "cause" is, generally, a separation due to delinquency or misconduct. The term used, "for such cause as will promote the efficiency of the service" comes from 5 U.S.C. 7501 and 7512 which relate to adverse actions taken against employees in the competitive service and preference eligible employees (veterans for example). No other separations of executives during the employment period are permitted.

Paragraph (5) specifies that an executive is free to leave his current executive appointment at any time by resignation, transfer to other employment either within or outside the Federal Executive Service, or by retirement either for disability or by optional retirement.

Paragraph (6) obligates the agency, when the employment agreement for an executive expires, to either continue him in the Federal Executive Service under a renewal employment agreement, place him in a GS-15 position in the competitive service with saved pay for 2 years as required by 5 U.S.C. 3140 (b) and (c), or (when he has completed 30 years of service) separate him for retirement purposes under 5 U.S.C. 3140(a).

Subsection (e) of § 3137 requires that each employment agreement shall require the executive to agree that he will accept any assignment of duties that is a bona fide executive assignment. Such an assignment may be at any geographical location selected by the agency and the executive must agree to go to whatever location the agency selects. An agency's failure to give an executive a proper executive assignment is cause for an appeal to the Civil Service Commission under the newly created 5 U.S.C. 7702. An executive's failure to accept a valid executive assignment at a different geographical location is cause for the agency to separate the executive. However, in the event that a geographical move would entail undue hardship, by mutual agreement the executive may be placed in a position at grade GS-15 or below with 2 years salary saving, or he may be separated and receive severance pay or discontinued service annuity. If the executive and the agency cannot agree that a hardship exists, the executive may appeal to the Civil Service Commission whose decision will be binding. Regulations will be issued by the Civil Service Commission to carry out this provision. In the absence of a hardship situation, if the

agency separates an executive for failing to move geographically, such a separation would not entitle the separated executive to either severance pay under 5 U.S.C. 5595 or a discontinued service annuity under 5 U.S.C. 8336(d). Subsection (e) also requires the executive to agree to participate in those training and career development activities which his agency decides will enhance his individual proficiency as an executive and will promote the agency's program needs.

§ 3138. *Qualifications Boards.* Subsection (a) of § 3138 requires the Civil Service Commission to establish Qualifications Boards as the agents of the Commission which will review the qualifications of candidates for career appointments in the Federal Executive Service, to determine that the candidate an agency has selected for appointment is among the most highly qualified of the candidates considered. The Board, in each case, in addition to reviewing the qualifications of the candidates, will review the agency's recruitment effort to make certain that it encompassed the full, broad-base coverage required by the newly added § 3136(a) of title 5, United States Code. If a Qualifications Board finds that the recruitment effort was not sufficient, or that the candidate is not among the most highly qualified, it will not approve the selection made by the agency and the agency will have to extend its recruiting effort, select another candidate, or present additional evidence to the Board supporting its selection.

Under subsection (b) of § 3138 the Commission may establish different Qualifications Boards for different programs, professions, and executive occupations. For example, a Board made up of managers or executives from both Government and the private sector, while qualified to pass on the qualifications for a candidate for a career executive appointment whose experience and background is in management, would not have the necessary expertise to pass on the qualifications of a candidate whose experience and background is in one of the sciences (e.g., medicine, physics, mathematics). Separate Boards—composed of specialists in separate fields—are essential to assure a truly informed review of each candidate's qualifications.

The Commission is responsible for appointing as members of each Qualifications Board individuals who are established to be experts in their field and are recognized as such by their colleagues. Board members who are employees of executive agencies (other than the Civil Service Commission) may serve on a reimbursable detail under 31 U.S.C. 686. Board members employed by the government of the District of Columbia may also serve on a reimbursable detail with subsection (b) of § 3138 constituting the specific authority for that reimbursement. All other Board members are appointed as experts or consultants under 5 U.S.C. 3109 and their pay is fixed by the Civil Service Commission at a daily equivalent that does not exceed the maximum payable to an executive under newly established 5 U.S.C. 3139.

§ 3139. *Pay.* There are no "positions" in the Federal Executive Service and, accordingly, no "class" or "class of positions" as those terms are used with regard to positions covered by the General Schedule. The pay of a member of the Federal Executive Service is fixed by the agency in which he is employed. The agency has the authority to fix an executive's pay at any rate it selects within the minimum and maximum rates established by § 3139(a) so long as the pay of all executives in the agency does not exceed the executive pay average explained hereinafter. An executive's pay is based on such factors as his value to the agency, his duties and responsibilities in the assignment given him by the agency, and his job performance. The only restriction on the agency's general authority to fix the pay of the individual execu-

tives it employs is the statutory prohibition which prevents the average pay of all executives within the agency exceeding the executive pay average established by the Civil Service Commission after collaboration with the Office of Management and Budget. The executive pay average cannot be exceeded by an agency except when the Civil Service Commission determines that special executive staffing circumstances within a particular agency justify a higher average pay for that particular agency. Provision is made for automatic pay increases for executives whenever there is an increase in the sixth rate of GS-15 as long as the increase does not exceed the executive-pay ceiling set out in the section.

§ 3140 *Continued employment guarantees; separation benefits.* Each subsection of § 3140 spells out the particular employment guarantees and separation benefits applicable to the different situations that may arise when a career executive's employment agreement (either an initial employment agreement or a renewal employment agreement) expires.

Subsection (a) covers the situation in which an executive has 30 years of service creditable for retirement purposes under 5 U.S.C. 8332 at the time of the expiration of his employment agreement. In that situation the agency may, at its election, separate the executive from the service without making him an offer of a continuing position in GS-15 as explained in the comment relative to subsection (b) of this § 3140. Such a separation is an involuntary separation for the purposes of 5 U.S.C. 8336(d) and the executive so separated is entitled to an annuity under that subsection or any other subsection of 5 U.S.C. 8336 is otherwise eligible.

Subsection (b) covers the situation in which the employment agreement expires and the agency either does not offer the career executive a renewal employment agreement or makes such an offer but the executive elects not to enter into the renewal employment agreement and (in the case of an executive with 30 years of service) the executive is not separated under subsection (a) of this § 3140. In this situation, the agency is obligated to offer the career executive continued employment in a GS-15 position in the competitive service in the agency. The offer must be to a continuing position which means one that there is reasonable cause to believe will last indefinitely. An offer to place the executive in what is known to be a temporary job or one that is known to have but a limited duration will not meet the statutory requirement in § 3140(b). In addition, as will be spelled out in the regulations of the Civil Service Commission authorized by § 3142, the Commission will require that the offer of the GS-15 position be made at such a time in advance of the expiration of the employment agreement that the executive has a reasonable opportunity to consider the offer (e.g., the nature of the position offered, the work surroundings including the geographical location, and all other facets one takes into consideration in deciding whether to accept an offer of permanent employment) and so that he may enter on duty in the GS-15 position without a break in service.

Note that the offer of the GS-15 position to the executive must not cause the displacement or reduction in grade of any agency employee already serving in GS-15.

Subsection (c) of § 3140 deals with the placement of the executive in the proper rate and step of GS-15 when he accepts the offer of such a position made under subsection (b). Paragraph (1) assures that the executive will, at the minimum, have his Federal Executive Service pay rate saved for 2 years from the date he enters on duty in the GS-15 position. He may, however, by reason of the required-service-credit benefit

in paragraph (1) be entitled to a higher rate of pay in the GS-15 position than he was receiving immediately before his career executive employment agreement expired. For example, assume that before the executive entered the Federal Executive Service he was in the 5th step of GS-15 being paid \$27,483 per annum and he had been in that step for 52 calendar weeks. Under 5 U.S.C. 5335 (a) (2) and (3) the waiting period for a step increase from steps 5 and 6 is 104 calendar weeks and from step 7 it is 156 calendar weeks. The executive accepts an appointment in the Federal Executive Service at \$29,000 and he remains in the Service for 6 years with the same pay throughout his career in the Service. When his employment agreement expires he is entitled to count both his previous service in GS-15 not previously used for step increase purposes (which means the 52 calendar weeks he had to his credit when he left that grade) and his 6 years' service (312 calendar weeks) in the Federal Executive Service toward the waiting period in GS-15. Therefore, the returned, former executive would be credited, first, with the 104 calendar weeks to take him from step 5 to step 6; then with the 104 calendar weeks to take him from step 6 to step 7; and then with the remaining 156 weeks which would take him from step 7 to step 8. Thus, he would return to grade GS-15 at step 8 with a pay rate of \$29,907 which is higher than his rate in the Federal Executive Service immediately before his employment agreement expired.

The former executive will be entitled under § 3140(c) (1) to the saved pay for 2 years so long as he meets the conditions in subparagraphs (A) and (B), and (C) of paragraph (1) of that subsection which are identical to those in the regular pay saving section, 5 U.S.C. 5337.

Under § 3140(c) (2), when the period of saved pay ends the former executive has the right to be placed in the step of GS-15 that he would have been in had his service in the Federal Executive Service been in that grade, plus full credit for any previous service he may have had in that grade which he has not already used for step increase purposes. This provision is needed for those former executives who, under § 3140(c) (1), retained their last executive pay rate during the two-year period of saved pay.

Subparagraph (3) of § 3140(c) is needed by reason of the fact that members of the Federal Executive Service are not rated on acceptable level of competence but such a determination is needed for normal step increase purposes when the former executive enters the GS-15 position. Also, in order to prevent any misunderstanding over the effect in a pay increase the executive may have received in the Federal Executive Service, such an increase is deemed not to have been "an equivalent increase" for periodic step increase purposes (5 U.S.C. 5335(a) (A)). These are technical provisions needed to prevent any delay in the former executive's attaining the step in GS-15 to which § 3140 is intended to entitle him.

Subsection (d) of § 3140 covers the situation in which an agency does not offer an executive a renewal employment agreement and the executive declines the agency's offer of a position in GS-15. When that occurs, the executive is entitled to either a discontinued service annuity or severance pay provided he meets the regular requirements for either of those benefits. In order to make this entitlement clear, paragraphs (1) and (2) specify that the separation of an executive in this situation is "involuntary".

Subsection (e) of § 3140 applies to the situation in which the agency offers the executive a renewal employment agreement which he declines; then the agency offers him a competitive service continuing position at GS-15 which he declines. In such a case,

subsection (e) makes clear that the executive is not entitled to either a discontinued service annuity or to severance pay.

§ 3141. *Report to Congress.* § 3141 supplements the new 5 U.S.C. 1308(f) which requires an annual stewardship report to Congress on the Federal Executive Service. As expressly provided in the last sentence of this section—and as specified in 5 U.S.C. 1308(f) (2)—the authorized number of appointments, ratios and executive pay average become effective 90 days after the stewardship report to Congress.

§ 3142. *Regulations.* This section authorizes the Civil Service Commission to prescribe regulations necessary to carry out the purposes of subchapter II of chapter 31 of title 5, United States Code, except § 3143. Section 3143 is excepted from the general regulatory authority of the Commission as portions of that section cover agencies in the judicial and legislative branches as well as agencies in the executive branch. It is not considered appropriate for a personnel-system regulatory provision, such as this section is, to extend to judicial and legislative agencies when it is evident that with regard to the subject matter here covered the full control of such nonexecutive agencies properly belongs outside the executive branch.

§ 3143. *Executive management outside the Federal Executive Service.* The government of the District of Columbia and each agency in the judicial or legislative branch in which there are positions the basic pay for which is at an annual rate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule and which are not paid under either the General Schedule nor under the Executive Schedule but, instead, under a regulatory counterpart to the new section 3139 which would be in effect by reason of section 6(b) of the Act (the approximate pay range of GS-16 through GS-18 of the General Schedule in effect immediately before the enactment of this bill) are required, by subsection (a) of § 3143, to issue regulations which, to the maximum extent possible, adopt for that government and those agencies a program for executive recruitment, selection, employment, and subsequent placement that is like the statutory Federal Executive Service program. Under this requirement the government of the District of Columbia and each agency would make a recruitment effort for career executive candidates like that required for candidates for career appointment in the Federal Executive Service. The government and the agency would fix an authorized number of executive appointments, the ratio of career to noncareer appointments, the pay for executives, and the continued employment guarantees and separation benefits all in a like manner to that required by the statute for the Federal Executive Service. The government or an agency could not pay one of its executives more or less than the pay rate specified in the new 5 U.S.C. 3139; and the ratio of career to noncareer executive appointments could not be less than a ratio authorized in or under 5 U.S.C. 3134(b).

The government of the District of Columbia and each judicial and legislative agency (including the General Accounting Office) having a regulatory program under § 3143(a) would be required under this section to submit a stewardship report to Congress (like that required of the Civil Service Commission by the new 5 U.S.C. 1308(f) (2)) for the purpose of authorizing the number of executive appointments, the ratios of career to noncareer appointments, and the executive pay average for the coming fiscal year.

Subsection (b) of § 3143 requires the Civil Service Commission, at the request of the government of the District of Columbia or a judicial or legislative branch agency having a regulatory program of executive management under § 3143(a), to give that govern-

ment or the agency advice and assistance which may include the use of one or more of the Commission's Qualifications Boards and the Executive Inventory maintained by the Commission. As some nonexecutive branch agencies have only a small number of executives, the use of the Qualifications Boards established by the Civil Service Commission is intended to provide a prompt and economical means of assuring that high quality executive candidates are selected for appointment under the regulatory program.

Subsection (c) will constitute the pay authority for hearing examiners appointed under § 3105 of title 5, United States Code, who are not paid under the General Schedule. Hearing examiners will continue to be paid under this subsection just as they are paid at the present time but as there will no longer be any GS-16 or GS-17 grade in the General Schedule this subsection is necessary to provide a pay authority.

Paragraph (1) of subsection (c) is essentially the same as 5 U.S.C. 5362, the authority under which the Civil Service Commission fixes the pay of hearing examiners who are paid under the General Schedule. Under paragraph (1) the Commission, rather than the agency employing the hearing examiner, will continue to fix the pay of hearing examiners "independently of agency recommendations or ratings".

Paragraph (2) of subsection (c) places the same minimum and maximum limits on the Commission's pay authority in paragraph (1) of subsection (c) as are placed on members of the Federal Executive Service by the new § 3139. At present under the General Schedule, no hearing examiner is in GS-18 but it is possible that the duties and responsibilities of a hearing examiner could at some future time justify the Commission in fixing the pay of a hearing examiner as high as the present GS-18 rate. The new paragraph (2) would permit pay at that rate if warranted.

Paragraph (3) of subsection (c) supplies the Civil Service Commission with the authority necessary to enable it to create a regulatory pay system for hearing examiners that is like the one in existence today under the General Schedule.

Subparagraph (A) of paragraph (3) will require the Commission to establish the grades of difficulty for hearing examiner positions. This means that the Commission, following the principles in 5 U.S.C. 5101 (equal pay for substantially equal work; pay variations in proportion to substantial differences in work responsibility, qualification, requirements, and the hearing examiner's contribution to the efficiency and economy of the service) will prepare and publish in its regulations the bases for grading hearing examiner positions. These are needed since the bases for grading GS-16, 17, and 18 of the General Schedule (5 U.S.C. 5104(16), (17), and (18)) will be repealed by the enactment of the bill. The bases for the hearing examiner pay rates will be like the present bases for GS-16, 17, and 18 modified as appropriate for the duties and responsibilities of hearing examiners. No hearing examiner will be increased or decreased in pay by reason of the bases which the Commission will prescribe under this subparagraph.

Subparagraph (B) of paragraph (3) requires the Civil Service Commission to include in the regulations that control the pay of hearing examiners not paid under the General Schedule provisions that will govern the rate for new appointments, the rate on change in position or type of appointment, periodic increases in pay, and pay saving. As required by the subparagraph, these regulatory provisions must be consistent with the present provisions in the sections of title 5 of the United States Code cited in the subparagraph. This will assure that even though those statutory provisions are no longer ap-

pliable to hearing examiners paid under this § 3143(c), they will continue to have all the benefits of those statutory job classification and pay-rate-fixing provisions.

Subsection (d) of § 3143—while not mandatory—urges or encourages the agencies exempted from subchapter II of chapter 31 of title 5, United States Code, to adopt as many features of the Federal Executive Service program as can be used by such an exempted agency. In addition, under this subsection, if an exempted agency needs assistance from the Civil Service Commission (such as the use of a Qualifications Board or the Commission's Executive Inventory), the agency is entitled to request and receive that assistance.

This subsection (d) of section 3143 is the last provision in the newly added subchapter II of chapter 31 of title 5, United States Code.

Paragraph (4) makes necessary amendments to chapter 33 of title 5, United States Code, to enable the Federal Executive Service program to operate.

Subparagraph (A) makes a significant amendment to § 3302 which will enable the President to include in the Civil Service Rules (Title 5, Code of Federal Regulations, Chapter I, Subchapter A) exceptions from several specified sections of title 5, United States Code, necessary for the operation of the Federal Executive Service. The need for the excepting authority for each section of title 5 referred to in the newly added § 3302 (3) is explained as follows:

§ 2951. The Federal Executive Service program has its own specific reporting requirement (5 U.S.C. 1308(f)), hence, there is no need for 5 U.S.C. 2951 to apply to it;

§§ 3304 and 3305. The Federal Executive Service Program has a review-of-qualifications procedure designed specifically for executive procurement and selection. Therefore, the competitive-examination requirements in these sections would not be applicable to the program;

§ 3306. Apportionment is not applicable to promotion actions. Since the majority of appointees to the career executives group will come from employees already in the competitive service to whom apportionment does not apply in a consideration for promotion, it would not be appropriate to apply it to the small number of persons selected from outside;

§ 3308. The prohibition against minimum educational requirements would not be appropriate to the professional types of assignments given members of the Federal Executive Service and, hence, 5 U.S.C. 3308 should not be applicable;

§ 3309. Candidates for the Federal Executive Service are not "graded" in the usual sense of competitive civil service examinations, accordingly, it is not possible to give additional "points" for veteran's preference in the selection and review process established for the Federal Executive Service program. This is especially so since the majority of appointees to the career executive group will come from those already in the competitive service and who presently do not receive veterans' preference points for promotion consideration.

§ 3311. All experience that a candidate has which relates to his qualifications for appointment as an executive will be reviewed, including any military or nonpaid experience, and used to determine if he is one of the most highly qualified candidates considered. Thus there is no need for 5 U.S.C. 3311.

§ 3313-3315a. Since the usual type of civil service competitive examinations are not used to determine the qualifications for candidates for the Federal Executive Service there are no "registers" or "employment lists" for such candidates and therefore these sections of title 5 would not be appli-

cable to the Federal Executive Service program.

§ 3316. The only means of entry into the Federal Executive Service are those specified in subchapter II of chapter 31 of title 5, United States Code. This means that "reinstatement", as that term is used with respect to other competitive service appointments, is not applicable to the Federal Executive Service.

§§ 3317 and 3318. Since these sections apply to the certification and selection for competitive appointment from registers, and since no registers are established under the Federal Executive Service qualification-review process, these sections would not be appropriate for the Federal Executive Service program.

§ 3320. The Federal Executive Service does not include the government of the District of Columbia and, accordingly, 5 U.S.C. 3320 has no applicability to the Service.

§ 3321. As explained hereinbefore, there is no probationary period for executives selected for appointment in the Federal Executive Service. Because of that fact, this section (5 U.S.C. 3321) would have no applicability to the Federal Executive Service.

§ 3322. Career appointments in the Federal Executive Service are made under employment agreements of 3 years' duration. As the concept of temporary, indefinite, or permanent employment in a particular position is inconsistent with the use of employment agreements under the Federal Executive Service program, 5 U.S.C. 3322 has no proper applicability to the Service.

§ 3341. This section which controls "details" within an Executive department, or a military department would not be applicable to members of the Federal Executive Service for two reasons. First, members of the Federal Executive Service do not occupy "positions" as that term is used for other civil service purposes and a detail is made between different positions. Second, members of the Federal Executive Service are required to agree to accept any proper assignment of duties and responsibilities which would make 5 U.S.C. 3341 meaningless to those executives.

§ 3361. "Promotion", to which 5 U.S.C. 3361 relates, is a change of an employee from a lower graded position to a higher graded position (see 5 CFR 210.102(b)(11)). As members of the Federal Executive Service do not occupy positions, 5 U.S.C. 3361 would be inapplicable to them. Moreover, as provided in 5 U.S.C. 3139, the pay of an executive is not based on "position" but on other statutory factors which make the promotion-examination concept in 5 U.S.C. 3361 not relevant to the Service.

Subparagraphs (B) and (C) will repeal sections 3324 and 3325 of title 5, United States Code (and amend the analysis of chapter 33 of that title to evidence their repeal). These sections are repealed as there will no longer be any positions in GS-16, 17, or 18 by reason of the amendment of the General Schedule by this bill, and because 5 U.S.C. 3104 (to which § 3325 refers) will be repealed by this bill as explained hereinbefore. The repeal of these two sections, which have been referred to as special "super-grade" authorities, is part of the statutory plan, which will be accomplished by this bill, to abolish all special authorities to fill these executive-type positions and concentrate the authorities and the controls under this legislation. The accomplishment of this plan will significantly simplify executive management control within government.

Paragraph (5) amends the definition section of chapter 42 of title 5, United States Code, relative to "Performance Rating" to exclude from that chapter members of the Federal Executive Service and employees under an agency program of executive management (a regulatory program under 5 U.S.C. 3143(a)). This amendment will exclude

these executives from the performance rating provisions of chapter 42. This exclusion is based on the fact that a uniform performance rating system for executives would not be in keeping with the basic concepts of the Federal Executive Service program. Each agency will have to establish effective and tailor-made processes to determine the quality of the performance of its executives. If an executive's job performance is poor he will be removed for inefficiency. If his performance is adequate but not up to the high level expected his employment agreement will not be renewed. If his performance is of a high quality his pay may be raised. An executive cannot be involved in a reduction in force, therefore, there is no need to rate him for the purposes of 5 U.S.C. 3502(a)(4) which refers to the use of "efficiency or performance ratings" as a reduction-in-force retention factor.

Paragraph (6) makes amendments to chapter 51 ("Classification") of title 5, United States Code, to accommodate the new Federal Executive Service program.

Subparagraph (A) of paragraph (6) will amend 5 U.S.C. 5102(c)(25) to delete the reference to GS-18 (as that grade is deleted from the General Schedule by this bill) and to insert in lieu thereof a reference to grade GS-15 (the new maximum grade in the General Schedule). The words "by a statute other than this chapter" are used instead of "by other statute" for better precision and clarity.

Subparagraph (B)(i) of paragraph (6) will amend 5 U.S.C. 5104 by deleting the reference to GS-18 (as there will be no GS-18 in the General Schedule after the enactment of this Act) and, in lieu thereof, inserting a reference to GS-15 which will—after enactment—be the top grade in the General Schedule.

Subparagraph (B)(ii) of paragraph (6) will repeal paragraphs (16), (17), and (18) of 5 U.S.C. 5104. These three paragraphs describe the classes of positions the duties of which warranted placement of a position in GS-16, 17, or 18. As there will be no General Schedule grades at GS-16, 17, and 18, these statutory position-description provisions are no longer necessary.

Subparagraph (C) of paragraph (6) will repeal 5 U.S.C. 5108, the basic statutory provision governing the classification of positions at GS-16, 17, and 18. Section 5108 is no longer necessary because there will be no General Schedule grades GS-16, 17, and 18 after the bill is enacted, and there will be no need to fix and distribute numbers of positions at grades GS-16, 17, and 18 as the Federal Executive Service program will supply a better and more efficient basis for creating executive-level appointment authorities.

Subparagraph (D) of paragraph (6) will repeal that part of 5 U.S.C. 5109 which was a statutory pay fixing authority for the GS-18 position of the Director of the Bureau of Retirement, Insurance, and Occupational Health of the Civil Service Commission. That position will be covered under the Federal Executive Service.

Subparagraph (E) of paragraph (6) will repeal 5 U.S.C. 5114 which required the Civil Service Commission and other agency authorities to make reports to Congress on positions in grades GS-16, 17, and 18. The section is unnecessary both by reason of the fact that the General Schedule will no longer include GS-16, 17, and 18, but also by reason of the fact that Congress will be fully informed as to the operation of the Federal Executive Service under 5 U.S.C. 1308(f) and under 5 U.S.C. 3143(a) by the new provisions in subchapter II of chapter 31 of the United States Code.

Subparagraph (F) of paragraph (6) will amend the analysis of chapter 51 of title 5, United States Code, to show that sections

5108 and 5109 of that chapter have been repealed.

*Subparagraph (G)* of paragraph (6) will amend section 5115 by deleting the reference therein to section 5114 of title 5, United States Code, which will be repealed by section 1(6)(E) of the bill.

*Paragraph (7)* makes several amendments to chapter 53 ("Pay Rates and Systems") of title 5, United States Code, needed by reason of the creation of the Federal Executive Service.

*Subparagraph (A)* of paragraph (7) will amend 5 U.S.C. 5304 ("Presidential policies and regulations") to include therein a reference to subchapter II of chapter 31 of title 5 of the United States Code (the subchapter governing the Federal Executive Service). This amendment will include the Federal Executive Service among the pay authorities which the President considers in fixing policies and regulations relating to such matters as pay comparability with private enterprise, the adequacy of Federal statutory pay structures, and the relationship of Federal statutory pay rates and private enterprise pay rates.

*Subparagraph (B)* of paragraph (7) will amend the General Schedule set out in 5 U.S.C. 5382 by repealing all references therein to GS-16, 17, and 18 and the annual rates for those grades. By reason of the creation of the Federal Executive Service by this Act—and the other statutory pay fixing provisions of this Act—there is no need for grades GS-16, 17, and 18 in the General Schedule.

*Subparagraph (C)* of paragraph (7) will repeal 5 U.S.C. 5361 which was a special pay fixing authority for the scientific and professional positions established under 5 U.S.C. 3104 (5 U.S.C. 3104 will also be repealed by this bill, as explained hereinbefore). Because of the new Federal Executive Service program there is no need for special pay fixing provisions such as 5 U.S.C. 5361 as the positions covered by that section will either be in the Federal Executive Service or under an agency program of executive management after the enactment of the bill.

*Subparagraph (D)* of paragraph (7) will amend 5 U.S.C. 5362 so that it applies only to hearing examiner positions that are paid under the General Schedule. The majority of hearing examiners appointed under 5 U.S.C. 3105 are in grades higher than GS-15 and, after the enactment of this bill, those higher paid hearing examiners will have their pay fixed by the Civil Service Commission under newly added 5 U.S.C. 3143(c) making 5 U.S.C. 5362 applicable only to hearing examiners in General Schedule positions.

*Subparagraph (E)* of paragraph (7) will amend 5 U.S.C. 5363 by deleting the reference therein to GS-18 and inserting in lieu thereof a reference to the maximum rate payable under newly added 5 U.S.C. 3139. This is a technical amendment needed by reason of the repeal of the GS-18 grade and pay rate.

*Subparagraph (F)* of paragraph (7) will amend 5 U.S.C. 5364 to include therein a reference to the maximum rate of pay payable under the Federal Executive Service program. This amendment is required because of the repeal of those provisions in the General Schedule that related to GS-16, 17, and 18. That repeal would leave this section incomplete which makes it essential to supplement it by the inclusion therein of the reference to the maximum Federal Executive Service pay rate.

*Subparagraph (G)* of paragraph (7) will amend the analysis of chapter 53 of title 5, United States Code, to show the repeal of 5 U.S.C. 5361.

*Paragraph (8)* will amend 5 U.S.C. 5595(a)(2) relative to severance pay to delete an obsolete reference to GS-18 and, in lieu thereof, include a reference to the maximum rate payable under newly added 5 U.S.C.

3139; and by including a reference to members of the Federal Executive Service in 5 U.S.C. 5595(a)(11). The latter insertion is needed because members of the Federal Executive Service have a definite limitation on their appointment (3 years) and if they are not excepted from 5 U.S.C. 5595(a)(2)(11) none of them could receive severance pay as is intended under the newly added 5 U.S.C. 3140. The first amendment is a technical one made necessary by the repeal of the General Schedule reference to GS-18.

*Paragraph (9)* would amend 5 U.S.C. 7154 (which prohibits discrimination because of race, color, creed, sex, or national origin in classification and pay fixing) to include a reference to the Federal Executive Service and other pay fixing authorities in subchapter II of chapter 31 of title 5, United States Code. This amendment is essential as the incumbents of the positions formerly in GS-16, 17, and 18, who were governed by this section 7154, are now in the Federal Executive Service and, of course, are still fully deserving of this type of statutory protection. The section is also amended to delete a reference to 5 U.S.C. 3324 which this bill would repeal.

*Paragraph (10)* would amend chapter 77 ("Appeals") of title 5, United States Code, by adding a new section 7702 to provide for appeals to the Civil Service Commission by members of the Federal Executive Service and employees under a regulatory program of executive management established under the newly added 5 U.S.C. 3143(a) who have the equivalent of career tenure, who feel their employing agency has violated the employment agreement (either initial or renewal) under which they are serving. The appeals that may be filed under this added section 7702 could relate to such things as an assignment of duties alleged to be of a nonexecutive character or separation from employment during an employment agreement.

The section is patterned after 5 U.S.C. 7701 which has, since 1944 served as the statutory basis for the appeals of preference eligibles. Paragraph (10) also amends the analysis of chapter 77 of title 5, United States Code, to show the newly added 5 U.S.C. 7702.

#### Section 2

Section 2 is a transition section which will enable the present incumbents of positions in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, to either enter the Federal Executive Service or an agency program for executive management or continue under the appointment held immediately before the effective date of the bill. Any needed transition provisions for an agency program for executive management will be issued under the regulatory authority in new section 3143(a) and will provide the same rights as set out below.

*Subsection (a)(1)* is applicable to career and career-conditional employees who were in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, immediately before the effective date and who are not excluded from coverage under the new subchapter 11 of chapter 31 of title 5, United States Code. These career and career-conditional employees have a choice between remaining in the employ of the agency under the same appointment they held before the Federal Executive Service was created or entering the Federal Executive Service in their employing agency. If such an employee elects to enter the Federal Executive Service he will be given an initial employment agreement for 3 years as specified in the new §3137 of title 5, United States Code, without having his qualifications reviewed or approved by a Qualification Board. The entry into the Federal Executive Service of such an employee will have no effect on any of his Federal employment rights or benefits such as leave, retirement, life insurance, and health benefits.

If the employee elects to remain in the agency under the appointment he held before the Federal Executive Service was created, he is entitled to retain that appointment (with the same rights and benefits) until such time as he leaves it by transfer, retirement, resignation, death or whatever.

*Subsection (a)(2)* of section 2 applies to employees who were in the excepted service immediately before the effective date of the bill. It distinguishes between two types of excepted employees paid in the GS-16, 17, or 18 pay range.

The first type is the excepted employee who, prior to the effective date, was in no sense a "career" employee, i.e., an employee in Schedule C or serving under a noncareer executive assignment. This type of noncareer, excepted employee had no true tenure before the effective date and, under this subsection (a)(2), he would be entitled to the same type of appointment, a noncareer appointment.

The second type includes all other excepted employees regardless of whether they were excepted by statute or under Schedule A or B. Any of this second type of excepted employees may, at the election of his employing agency, be offered a career appointment. It is to be emphasized that this is an option of the employing agency, not a right of the excepted employee. The employee who accepts the agency's offer becomes a career appointee without having his qualifications reviewed or approved by a Qualification Board. If the former excepted employee accepts a career appointment, he has all the rights of any other career appointee. If such an excepted employee accepts a career appointment it will have no effect on his rights or benefits such as leave, retirement, life insurance, and health benefits.

If an agency does not elect to offer this second type of excepted employee a career appointment or if the employee does not wish to accept such an appointment, the agency is required to allow him to remain in its employ in the same excepted appointment he held immediately before the effective date of the bill with no change in his tenure and no loss of any employment-protection benefits he had immediately before that effective date. This means that if this excepted employee had protection under 5 U.S.C. 7512 and 7701, he retains that protection. In addition, if he was paid under the General Schedule, he will be paid in the future in the same manner under section 2(b) of the bill rather than under the new 5 U.S.C. 3139 applicable to members of the Federal Executive Service.

*Subsection (a)(3)* of section 2 authorizes the Civil Service Commission to prescribe regulations to carry out the purposes of section 2. The subsection expressly requires that the regulations include an appellate procedure so that an employee who believes his agency has not given him a right to which he believes he was entitled under the section will be able to have an outside authority review the matter and, when warranted, direct that appropriate corrective action be made. Agencies are required, by section 2(a)(3), to take whatever corrective action the Commission recommends in an appeal under the section.

*Subsection (b)* of section 2 (except the provision concerning the Federal Bureau of Investigation) establishes a temporary pay-fixing authority for incumbents of positions that were in, or paid at a rate of, GS-16, 17, 18, and P.L. 313-type positions immediately before the effective date of the bill, but who choose not to enter the Federal Executive Service or an agency program of executive management or who are occupying positions in the excepted service which were not brought under the FES or an agency program by the agency. The subsection is required because after the effective date there



will be no General Schedule grades above GS-15.

Paragraph (1) of subsection (b) defines the coverage of the subsection and paragraph (2) constitutes the necessary express authority to allow agencies with administrative pay-fixing authority to continue that authority after the bill is enacted for the positions covered.

Subsection (b) (2) (B) is a special pay-fixing authority for the Federal Bureau of Investigation which allows the Director of that Bureau to fix the pay of 140 positions in the Bureau by administrative determination without regard to the other provisions of the Act put within the same rate limits.

In lieu of GS-16, 17, and 18, paragraph (3) of subsection (b) creates three new grades (Grade 16, Grade 17, and Grade 18) which have identical annual rates and steps to those in the present GS-16, 17, and 18. It is essential to keep in mind that this provision (indeed all of section 2 and section 3 of the bill except those provisions referring to the Federal Bureau of Investigation) is temporary legislation—not part of title 5, United States Code, which contains only permanent legislation—which will remain in effect only so long as positions of the type referred to in paragraph (1) of subsection (a) exist.

The remainder of paragraph (3) of subsection (b) of section 2 is designed to continue the pay-fixing system for the former GS-16, 17, and 18 positions so long as they exist and are filled. These positions require the Civil Service Commission to issue regulations establishing a pay-fixing system so that employees who occupy positions in Grades 16, 17, and 18 after the effective date will continue to be paid in the same manner as they were before that effective date. These regulations will have the full weight and effect of statute and pay determinations made in accordance with the regulations will be binding on all administrative, certifying, payroll, disbursing, and accounting officials. In the regulations, the Commission will include provisions that will govern employees in Grades 16, 17, and 18 with respect to the rate of pay on change of position or change in type of appointment, periodic and additional step increases, and pay saving. Each of these regulatory provisions will give to the Grade 16, 17, or 18 employee the same rights and benefits he had when he was paid under the General Schedule. It is the legislative purpose in including section 2 (b) to ensure that the employees who are placed in Grades 16, 17, and 18 by the enactment of this bill will continue to be paid on the same basis and under an identical pay-fixing system as they were being paid under the General Schedule immediately before the effective date of the bill.

#### Section 3

Section 3 (a) repeals all statutes and other authorities which authorized positions in, or paid at a rate of GS-16, 17, and 18, and positions of a P.L. 313-type, immediately before the effective date of the Act, and, concurrently, authorizes each such position to be continued under the authority of this subsection (a). These positions are to be continued under the authority of section 3 (a) until they are brought into the Federal Executive Service or under an agency program of executive management. Most of the positions to which this section refers are positions held by employees immediately before the effective date in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, who, under authority of section 2 of the bill, elect not to enter the Federal Executive Service but, instead, retained their position in the new Grade 16, 17, or 18. When those employees leave these positions, the duties of these positions will be performed by members of the Federal Executive Service or employees under an agency program of executive management, but until that occurs this section

3 (a) serves as the legal authority to continue the position at whatever grade it was in (but without the "GS" title) immediately before the effective date of the Act. As expressly provided in section 3 (a) (2), subsection (a) does not apply to the administrative pay-fixing authority provided the Federal Bureau of Investigation in section 2 (b) (2) (B) of the bill.

Subsection (b) of section 3 is an "accounting" provision which requires a report on the positions continued under section 3 (a). This report will disclose to the Civil Service Commission the exact number of these positions—and the former authority under which they existed before the effective date of the bill—so that control can be maintained over them in the future. By the use of this subsection the Commission will be able to determine just when all these positions are eliminated.

#### Section 4

Section 4 is included to make positive that the enactment of the bill will not decrease the pay, allowances, compensation, or annuity of any person.

#### Section 5

Section 5 is the usual severability provision.

#### Section 6

Section 6 (a) sets the general effective date of the Act at the start of the first fiscal year that begins 270 days following the date of enactment. This period of time is needed to allow the Civil Service Commission and the agencies time to prepare for the changes that will be brought about in the area of executive management by the enactment of the bill. During this period the Commission will establish Qualifications Boards required by the new 5 U.S.C. 3138. Also, during this period the Commission will prepare the regulations authorized by section 2 (b) which will govern pay fixing for the newly created Grades 16, 17, and 18 and do such other things as are necessary to make the bill operational.

Section 6 (b) sets the effective date of the stewardship reporting provisions 90 days earlier than the general effective date of the Act. This earlier effective date for those provisions will enable the Civil Service Commission and the agencies having regulatory programs of executive management to prepare and submit the required report prior to the general effective date so that on that general effective date the necessary number of executive appointments, ratios, and executive pay averages will be authorized.

### FASCELL PROPOSES AMENDMENT FOR DIRECT ELECTIONS

(Mr. FASCELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FASCELL. Mr. Speaker, I am today again introducing legislation designed to avert the kind of constitutional crisis which threatened our Nation in the last presidential election. The amendment to the Constitution which I am proposing would provide for the direct election of the President and the Vice President of the United States.

Our colleagues will recall that this measure was approved in the House by a significant margin of 339 to 70 in the last session of Congress. In fact, few issues have commanded the widespread support which the direct election amendment has enjoyed, and yet not been enacted.

Polls show that over 80 percent of the American people favor this reform. The

President of the United States has said that he supports direct election and would urge the States to ratify an amendment to that end if the bill won congressional approval. And even such diverse interests as the U.S. Chamber of Commerce and the AFL-CIO have joined in backing this legislation.

There is good reason for the unity of feeling.

In 1968, the shift of just a few thousand votes in selected areas of the country, out of a total of more than 68 million cast, would have thrown the presidential election into the House of Representatives. We could again have had a President who did not receive the greatest number of votes cast. Or we could have a President who was the winner in popular votes, but still indebted to a third candidate for his victory in the electoral college.

Fortunately these possibilities did not become realities, but there could be no more graphic demonstration of the degree to which the electoral college has outlived its usefulness and, indeed, mutated into a potentially antidemocratic institution.

Mr. Speaker, let me congratulate our colleagues for their wisdom in approving this proposal by an overwhelming margin in the 91st Congress.

For those who have opposed this amendment in the past for whatever reasons, let me offer the observation that we have flirted with disaster and been spared.

For everyone concerned with making government more democratic and responsive to the will of the people, let us join in the support of this necessary and overdue reform.

### SYRACUSE CHINA—CENTENNIAL

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. HANLEY. Mr. Speaker, one of the interesting habits of people from the central New York and Syracuse areas, especially when traveling, is the quick inspection of the bottom of their dinner plates. Actually, this small gesture has become the trademark of people looking for a trademark. It is a matter of considerable pride to these central New Yorkers that Syracuse china has become the hallmark of fine dinner service throughout the Nation.

This year Syracuse china, the first and finest in true American chinaware, celebrates its centennial year. The story of its development dates from very modest beginnings over 100 years ago, long before true, vitrified china was produced in America.

Back in 1841, W. H. Farrar started a small pottery on what is now called West Genesee Street, in Syracuse. By using local clays, Mr. Farrar produced whiskey jugs, butter crocks and mixing bowls in stoneware, along with clay animals in brown glazed pottery. Withing a few years the Empire Pottery Co. was organized to take over the Farrar Pottery, and "white ware" for table use was added to the line.

But it was not until 1871 that the Onondaga Pottery Co. was organized to take over the Empire Pottery Co. This was the company that was destined to become the Syracuse China Corp., and gain international fame within the century.

The new company started by producing a heavy duty earthenware called ironstone in a small factory on Fayette Street. As acceptance of its product grew, the company found it necessary to improve and enlarge its manufacturing facilities. In 1880, a new plant was built on the site of the old. This was enlarged on three successive occasions, trebling the factory's capacity.

Things really began to happen in the 1880's. In 1885, semiporcelain ware was produced which guaranteed no crackle or craze—the first such china made in the United States. And, by 1891, Onondaga Pottery went into full production of thin translucent dinnerware—marketed for the first time as Syracuse china. As America's first true vitrified china, the new Syracuse china was heralded throughout the country. At the World Columbian Exposition in 1893 it received the High Award Medal and 11 years later the Grand Prize Medal was awarded to Syracuse china at the Louisiana Purchase Exposition in St. Louis.

As the business pace picked up the company branched out further and built its third and final addition at the Fayette Street site. In 1921, construction of a new plant, on Court Street, was begun. Here china was produced for commercial use, in restaurants, hotels, hospitals, colleges, and universities.

In 1928, an ivory body dinner and hotelware was perfected and the company's commercialware division was on the way to its present standing as leader in the industry. "Econo-Rim" production and the Syratone process of decorating followed in 1933.

From this point on, a never ending program of research and experimentation yielded scores of new techniques in designing, making, and decorating both household and commercial chinaware. Such research even made possible a unique wartime product. During World War II the company developed a completely nondetectable landmine and fuse, using Syracuse china as one of its basic components. The first of its kind to be perfected, this outstanding contribution to the defense effort was recognized by a special citation from the War Department.

The defense effort did not retard research or production of goods for the consumer, however. By 1945, the company came out with Airlite china, the first ever used on passenger airlines. Since that time the company has continued to be a major supplier and innovator to the airline food service.

Since World War II, major innovations in the industry have come from the top-notch ceramic engineers and research personnel at Syracuse China. Principal among these was the introduction of the Winthrop shape, a completely new concept for the industry. The Winthrop shape, introduced in 1950, marked the first time any manufacturer produced

the interrupted edge to the commercial market, a design feature that up to then was limited to the production of household ware.

By this time Syracuse China was the recognized leader in the industry. In fact, the product name had become so well known and widely accepted, that the company's name was officially changed to Syracuse China Corp. in 1966, and the longstanding name of Onondaga Pottery Co., became a matter of historical record.

One hundred years after the founding of the Onondaga Pottery Co., Syracuse China covers some 21 acres and holds the uncontested first place in the commercial chinaware industry. As the largest manufacturer of commercial chinaware in the United States, its quality products can be seen throughout the United States and Canada—in the finest restaurants, well-known colleges and universities, and various health care centers. Its famous ceramic engineers and research personnel continually test products and formulas and investigate product development, stresses and strains on products and the design of new shapes. According to President William R. Salisbury, the Syracuse China Corp. looks on 1971, not only as a year for centennial celebration, but, as the "beginning of further growth and leadership in quality products, customer service, product design, innovations, and technical know-how."

#### THE BUDGET OF THE UNITED STATES

(Mr. BURKE of Massachusetts asked and was given permission to address the House for 1 minute, to revise and extend his remarks and to include extraneous matter.)

Mr. BURKE of Massachusetts. Mr. Speaker, if someone were to tell me that the budget of the United States would make interesting reading—indeed exciting reading—then I think I would be understandably skeptical. Even more so if someone were to argue that the budget made interesting bedtime reading. I have always thought I was safe in assuming that there was quite a difference between hard facts and cold figures and a work of fiction. Most people would agree that a budget should be a matter of hard facts and cold figures than a work of fiction. Now, however, after reading the President's economic message and going over his budget, I am forced to reexamine these traditional and supposedly safe assumptions. Apparently what was universally true a week ago, can no longer be taken for granted. The truth is that in all likelihood, Mr. Nixon's budget will go down in history more as a work of fiction than anything else—albeit not a work of first rank and definitely not to be confused with a work of art.

Already the book reviews are describing the budget as being more Alice in Wonderland than a realistic projection of likely income and blueprint of reasonable expenditures. While at first hearing such a combination as Lewis Carroll and a Republican administration budget might seem incongruous, closer examination reveals the budget is clearly a mixture of relatively few hard figures

and many soft dreams—to borrow from another review. Another way of putting it is that the budget is long on promises and short on concrete and realistic assumptions.

Now, lest this get a little forced, let me admit at the outset that much of this discussion would be unnecessary if the President had been willing to describe and admit the budget to be what it was—a plan of deficit spending for an economy in deep trouble—instead of trying to resort to the elaborate disguise of referring to it as a self-fulfilling budget. When the President goes so far as to deny that his budget will create the \$11.6 billion deficit that it is clearly creating, if followed, the President invites upon himself this kind of treatment. The President creates a new credibility gap each time he argues that the budget will spend itself so silly that it will end up in the black instead of the red.

Oh, I know it must be difficult for a Republican President, presiding once again in this century over a serious economic situation, to admit that he is resorting to nothing more than old-fashioned New Deal pump priming and relying on—horror of horrors—such a subversive and un-American device as neo-Keynesian, post-Galbraithian deficit spending. Even if important party contributors were to accept this revolutionary situation for what it is worth, the President is still understandably embarrassed about having to make such a complete turnabout from his slavish devotion a short 12 months ago to a rigidly balanced budget to his crusading zeal for a deliberately unbalanced budget. Thus, this elaborate attempt to cover up what has taken place—nothing more than a refusal to admit defeat. Instead of confessing that by spending the ways the budget recommends, the Nation runs the serious risk of adding to its already sizable debt burden, the President prefers to confuse his pious hopes with reasonable expectations. Instead of being honest and admitting that by spending money the Government does not have—and worse, the Government will not have in the foreseeable future based on the economic facts of life—he is hopeful of turning things around economically and sparking off a much-needed economic upturn, the President tries to perform a sleight of hand, substituting a 4-percent unemployment figure for the existing 6-percent-plus figure of the moment.

After deliberately conducting his economic policy for 2 years in such a way as to insure a higher level of unemployment in this country than when he took office, the President is now wishing away his hard-won unemployment figures with the drop of a few billion dollars into the economy. Just wishing for a full employment surplus does not bring it about. Just pulling a \$1.065 trillion figure for the gross national product out of the air does not mean there is any real likelihood that it can be achieved this coming fiscal year. The consensus outside the rarified atmosphere of close administration circles tends to settle on a more realistic figure, in the neighborhood of \$1.045 or \$1.050 trillion. Similarly, pulling a \$229.3 billion revenue figure out