

20 May 1980

STATINTL

MEMORANDUM FOR:

[REDACTED]

Deputy Director of Personnel,
Policy, Planning and Management

STATINTL

[REDACTED]

Office of General Counsel

STATINTL

FROM:

[REDACTED]

Chief, Legislation Division/OLC

SUBJECT:

Proposed "Executive Position
Management Act of 1980"

1. Attached for your information is the Office of Personnel Management's draft Bill to authorize Executive Schedule positions and to give the President authority to increase or decrease the number of such positions, subject to Congressional veto. Since the Bill defines "Executive Schedule position" (sec. 2(1)(B)(2)) to exclude positions in the Central Intelligence Agency, the Bill would have no impact on our personnel system.

2. The Office of Management and Budget has requested the views of the Central Intelligence Agency on this draft Bill. We will advise them that we have no objection to the Bill as currently drafted.

STATINTL

[REDACTED]

Attachment

United States of America
**Office of
Personnel Management** Washington, D.C. 20415

In Reply Refer To

March 25, 1980

Your Reference

Honorable James T. McIntyre, Jr.
Director
Office of Management and Budget
Washington, D. C. 20503

Attn: James M. Frey
Assistant Director, Legislative Reference

Dear Mr. McIntyre:

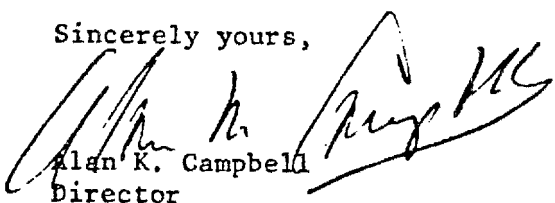
Attached is the legislative package to implement the plan for authorizing executive level positions which you sent to the President of the Senate and the Speaker of the House on December 27, 1979. Edward Preston, Assistant Director for Federal Personnel Policy, participated in drafting the plan which was submitted in response to the requirement in Section 414 of the Civil Service Reform Act of 1978 that:

"The President shall submit to the Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions."

While we still anticipate preparing evaluation guides for considering appropriate realignment of individual positions when they become vacant, these guides are not referred to in the proposed legislation in order to give the President flexibility. References in the law regarding the types of measures that would be developed or publication in the Federal Register would unnecessarily limit the actions of the President.

I believe that this legislation not only fulfills the requirement but a real need and I hope that it would be cleared and submitted to the Congress at an early date.

Sincerely yours,


Alan K. Campbell
Director

United States of America
Approved For Release 2001/08/09 : CIA-RDP89-01114R000300080017-8
Office of Personnel Management Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

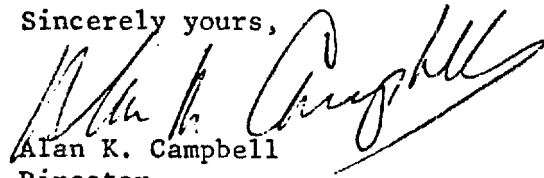
I submit for the consideration of Congress, and recommend favorable action on, the attached draft bill to provide for authorizing Executive Schedule positions in the executive branch and establishing the maximum number of such positions, to increase or decrease the number of such positions within the maximum number established and to adjust the levels of such positions. Also attached is a statement of purpose and justification for the proposed bill.

Section 414 of the Civil Service Reform Act required the President to transmit to the Congress by January 1, 1980, "a plan authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions." James T. McIntyre, Jr., Director of the Office of Management and Budget submitted a plan to you in a letter dated December 21, 1979. This draft bill will carry out that plan.

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

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

Sincerely yours,


Alan K. Campbell
Director

Attachments

A BILL

To provide for authorizing Executive Schedule positions in the executive branch and establishing the maximum number of such positions, to authorize the President to increase or decrease the number of such positions within the maximum number established and to adjust the levels of such positions, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United
2 States of America in Congress assembled, That this Act may be cited as
3 the "Executive Position Management Act of 1980".

4 Sec. 2. Title 5, United States Code, is amended--

5 (1) by amending sections 5311-5314 to read as follows:

6 "\$5311. Purpose; applicability

7 "(a) It is the purpose of this subchapter to establish a system
8 for the orderly control, management, and compensation of Executive
9 Schedule positions, in order to ensure that--

10 "(1) the number of such positions is kept to the minimum needed;

11 "(2) the positions available are allocated among the agencies in
12 accordance with the needs of the Government; and

13 "(3) the positions are placed in the five levels of the Executive
14 Schedule in accordance with their relative importance to the Govern-
15 ment and to the Nation.

16 "(b) For the purpose of this subchapter--

17 "(1) 'agency' means an Executive agency, but does not include--

18 "(A) a Government controlled corporation; or

19 "(B) the General Accounting Office;

20 "(2) 'Executive Schedule position' means any office or position
21 which is--

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1 "(A) in an agency;

2 "(B) in the civil service; and

3 "(C) the rate of basic pay for which is equal to or
4 greater than (or which may be fixed by administrative action
5 at a rate equal to or greater than) the rate of basic pay now
6 or hereafter payable for level V of the Executive Schedule;
7 but does not include an office or position which is--

8 "(i) in the Senior Executive Service under section 2101a
9 of this title;

10 "(ii) subject to chapter 51 of this title, relating to
11 positions under the General Schedule and the Merit Pay System;

12 "(iii) subject to title IV of the Foreign Service Act of 1946,
13 as amended (22 U.S.C. §861 et seq.);

14 "(iv) subject to sections 105-107 of title 3, United States
15 Code;

16 "(v) subject to any provision of law limiting the rate of
17 pay that may be paid to such office or position to the rate
18 payable for GS-18; or

19 "(vi) under the Tennessee Valley Authority, the Central
20 Intelligence Agency, the National Security Agency, or the
21 Board of Governors of the Federal Reserve System (other than
22 an office or position in such agencies which is filled by
23 Presidential appointment).

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1 "§5312. The Executive Schedule

2 "There is hereby established the Executive Schedule, which consists
3 of five levels of positions, designated in descending order as level I,
4 level II, level III, level IV, and level V. The rate of pay for each
5 level is determined in accordance with section 5315 of this title and
6 section 225 of the Federal Salary Act of 1967 (2 U.S.C. §§351-361).

7 "§5313. Authority of the President; maximum number of Executive Schedule
8 positions

9 "(a) Notwithstanding any other provision of law, the President
10 may, subject to the provisions of this section, and except as provided
11 in section 5314 of this title, create, abolish, or change the level
12 (or maximum rate of pay, where applicable) of an Executive Schedule
13 position when such action is necessary to improve the management of
14 the executive branch of the Government.

15 "(b) The number of Executive Schedule positions in the executive
16 branch of the Government may not exceed at any time 7.5 percent of the
17 sum of--

18 "(1) positions in the Senior Executive Service;

19 "(2) positions in GS-16, 17, and 18 of the General Schedule;

20 "(3) scientific and technical positions under section 3104(a)
21 of this title; and

22 "(4) other positions in agencies which are not Executive
23 Schedule positions but which are equivalent to positions covered
24 by paragraph (1), (2), or (3) of this subsection.

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1 "(c) Each Executive Schedule position in existence on the
2 date of enactment of this section shall continue to be paid at
3 the rate payable for the level in which it is placed (or be
4 subject to the maximum rate to which it is limited) until changed
5 by the President under the provisions of this section.

6 "(d) Each Executive Schedule position established by the President
7 under this section shall be filled by Presidential appointment by and
8 with the advice and consent of the Senate unless such position is--

9 "(1) in level V of the Executive Schedule (except a
10 United States Attorney position); or

11 "(2) of a temporary or emergency nature.

12 "(e) The President may change the level of an Executive
13 Schedule position only when the position becomes vacant.

14 "(f) Except when it would be contrary to the interest of national
15 security, the President shall publish notice of each action under this
16 section in the Federal Register, and shall transmit to Congress in
17 January of each year a report listing each Executive Schedule position
18 and any changes made under this section during the preceding year.

19 "§5314. Treatment of independent regulatory agencies

20 "(a) If the President should determine that an Executive Schedule
21 position in an independent regulatory agency should be created, abolished,
22 or changed in level under section 5313 of this title, he shall transmit
23 to the Congress a message proposing such change and the change shall
24 become effective unless, before the end of the first period of 30
25 calendar days of continuous session of the Congress after the date on

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1 which the message is transmitted, Congress adopts and the President
2 approves joint resolution disapproving the change or, in the event the
3 President returns the joint resolution to Congress with his objections,
4 two-thirds of each House of Congress agree to pass and approve the
5 joint resolution. The continuity of a session is broken only by an
6 adjournment of the Congress sine die, and the days on which either
7 House is not in session because of an adjournment of more than 3 days
8 to a day certain are excluded in the computation of the 30-day period.

9 "(b) Subsections (c)-(i) of this section are enacted by Congress--

10 "(1) as an exercise of the rulemaking power of the Senate
11 and the House of Representatives, respectively, and as such they
12 are deemed a part of the rules of each House, respectively, but
13 applicable only with respect to the procedure to be followed in
14 the House in the case of joint resolutions described by this
15 section; and they supersede other rules only to the extent that
16 they are inconsistent therewith; and

17 "(2) with full recognition of the constitutional right of
18 either House to change the rules (so far as relating to the proce-
19 dure of that House) at any time, in the same manner, and to the
20 same extent as in the case of any other rule of that House.

21 "(c) If the committee, to which has been referred a joint
22 resolution disapproving the change recommended by the President, has
23 not reported the joint resolution at the end of 10 calendar days after
24 its introduction, it is in order to move either to discharge the committee

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1 from further consideration of the joint resolution or to discharge the
2 committee from further consideration of any other joint resolution with
3 respect to the same change which has been referred to the committee.

4 "(d) A motion to discharge may be made only by an individual
5 favoring the joint resolution, is highly privileged (except that it
6 may not be made after the committee has reported a resolution with
7 respect to the same recommendation), and debate thereon is limited
8 to not more than 1 hour, to be divided equally between those favoring
9 and those opposing the joint resolution. An amendment to the motion
10 is not in order, and it is not in order to move to reconsider the vote
11 by which the motion is agreed to or disagreed to.

12 "(e) If the motion to discharge is agreed to, or disagreed to,
13 the motion may not be renewed, nor may another motion to discharge
14 the committee be made with respect to any other joint resolution with
15 respect to the same change.

16 "(f) When the committee has reported, or has been discharged from
17 further consideration of, a joint resolution with respect to a change,
18 it is at any time thereafter in order (even though a previous motion
19 to the same effect has been disagreed to) to move to proceed to the
20 consideration of the joint resolution. The motion is highly privileged
21 and is not debatable. An amendment to the motion is not in order, and
22 it is not in order to move to reconsider the vote by which the motion
23 is agreed to or disagreed to.

24 "(g) Debate on the joint resolution is limited to not more than 2
25 hours, to be divided equally between those favoring and those opposing
26 the joint resolution. A motion further to limit debate is not debatable.

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1 An amendment to, or motion to recommit, the joint resolution is not in
2 order, and it is not in order to move to reconsider the vote by which
3 the joint resolution is agreed to or disagreed to.

4 "(h) Motions to postpone, made with respect to the discharge from
5 committee, or the consideration of, a joint resolution with respect to
6 a change, and motions to proceed to the consideration of other business,
7 are decided without debate.

8 "(i) Appeals from the decisions of the Chair relating to the
9 application of the rules of the Senate or House of Representatives, as
10 the case may be, to the procedure relating to a joint resolution with
11 respect to a change are decided without debate.";

12 (2) by repealing sections 5315-5317;

13 (3) by redesignating section 5318 as section 5315; and

14 (4) by amending the analysis of chapter 53 by striking out the items
15 relating to sections 5311-5318 and inserting in lieu thereof the
16 following:

17 "5311. Purpose; applicability.

18 "5312. The Executive Schedule.

19 "5313. Authority of the President; maximum number of
20 Executive Schedule positions.

21 "5314. Treatment of independent regulatory agencies.

22 "5315. Adjustments in rates of pay.".

23 Sec. 3. Title 3, United States Code, is amended--

24 (1) in sections 105(a)(2)(A), 105(c)(1), 106(a)(1)(A), and
25 106(a)(2), by striking out "of section 5313 of title 5"; and

1 (2) in sections 105(a)(2)(B), 106(a)(1)(B), 107(a)(1)(A),
2 107(a)(2), and 107(a)(1)(B)(i), by striking out "of section 5314 of
3 title 5".

4 Sec. 4. (a) Title 20, United States Code, is amended by inserting
5 after section 46a a new section 46b, as follows:

6 "46b. Executive positions

7 "The Secretary, with the consent of the Board of Regents,
8 may appoint, establish the duties, and fix the compensation for
9 four positions at rates not to exceed the rate payable for level IV
10 of the Executive Schedule."

11 (b) The analysis of chapter 3 of title 20, United States Code,
12 is amended by inserting after the item relating to section 46a the
13 following:

14 "46b. Executive positions."

SECTION ANALYSIS

To accompany a draft bill
To provide for authorizing Executive Schedule positions in the executive branch and establishing the maximum number of such positions, to authorize the President to increase or decrease the number of such positions within the maximum number established and to adjust the levels of such positions, and for other purposes.

The first section of the draft bill would provide a popular title for the draft bill, the "Executive Position Management Act of 1980."

Section 2 of the draft bill would make various amendments to subchapter II of chapter 53 of title 5, United States Code, relating to the Executive Schedule. Clause (1) of section 2 would amend sections 5311 through 5314 of title 5 by completely replacing the existing content of those sections with new language.

The revised section 5311 would set forth the purpose and applicability of the revised subchapter II of chapter 53 of title 5.

Subsection (a) of section 5311 would state that the purpose of subchapter II of chapter 53 is to provide for the orderly control, management, and compensation of Executive Schedule positions, in order to ensure that the number of Executive Schedule positions is kept to the minimum needed; that the positions are allocated among the agencies in accordance with the needs of the Government; and that the positions are placed in the five levels of the Executive Schedule in accordance with their importance to the Government and the Nation.

Subsection (b) of section 5311 provides definitions that would determine the coverage of the revised subchapter.

Clause (1) of subsection (b) would define "agency" to mean an Executive agency (which is defined in section 105 of title 5), but would not include a Government controlled corporation or the General Accounting Office.

Clause (2) of subsection (b) would define "Executive Schedule position" to mean any office or position which is in an agency, in the civil service, and the pay for which is equal to or greater than the rate of pay for level V of the Executive Schedule (or which may be fixed by administrative action at a rate equal to or greater than the rate for level V). However, "Executive Schedule position" would not include any position in the Senior Executive Service, the General Schedule, the Merit Pay System, or the Foreign Service. Also excluded would be positions in the White House Office, the Office of the Vice President, the Domestic Policy Staff, or the Office of Administration in the

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Executive Office of the President. Any position subject to a provision of law limiting the rate that may be paid such position to the rate payable for GS-18 would be excluded, as would positions (other than Presidential appointees) in the Tennessee Valley Authority, the Central Intelligence Agency, the National Security Agency, and the staff of the Board of Governors of the Federal Reserve System.

The revised section 5312 would reestablish the Executive Schedule, which would continue to consist of five levels, designated in descending order as levels I, II, III, IV, and V. Pay for the Executive Schedule would continue to be set as at present.

Revised section 5313 would set forth the authority of the President under the revised subchapter, and establish a maximum number of Executive Schedule positions.

Subsection (a) of section 5313 would empower the President to create, abolish, or change the level (or maximum rate of pay) of an Executive Schedule position when he considers such action necessary in order to improve the management of the executive branch of the Government. He would have this power notwithstanding other statutes establishing Executive Schedule positions or fixing rates of pay for those positions, but he could exercise this power only in accordance with the other provisions of section 5313, and except as provided in revised section 5314 (discussed below).

Subsection (b) of section 5313 would set a maximum number of Executive Schedule positions, thus limiting the President's power to create new positions. The maximum number permitted at any time would be 7.5 percent of the total of positions in the Senior Executive Service; positions in grades GS-16, 17, and 18 of the General Schedule; scientific and technical positions under section 3104(a) of title 5; and other similar positions in agencies.

Subsection (c) of section 5313 would provide that existing Executive Schedule positions would continue in existence, at the same level, unless changed by the President under subsection (a).

Subsection (d) of section 5313 would provide that any new Executive Schedule positions created by the President would be filled by Presidential appointment by and with the advice and consent of the Senate. The only exceptions to this general requirement would be positions in level V of the Executive Schedule (other than positions of United States Attorney, which would all be subject to the general requirement) and positions of a temporary or emergency nature.

Subsection (e) of section 5313 would provide that the President could change the pay level of an Executive Schedule position only when the position is vacant.

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Subsection (f) of section 5313 would require the President to publish in the Federal Register notice of each action he takes to create, abolish, or change the pay level of an Executive Schedule position. He would also be required to transmit to Congress in January of each year a report listing every Executive Schedule position and any actions he has taken during the previous year to create, abolish, or change the level of Executive Schedule positions. These requirements for notice and reporting would not apply in any case where they would be contrary to the interest of national security.

The revised section 5314 would establish a special provision governing actions taken by the President to create, abolish, or change the level of Executive Schedule positions in independent regulatory agencies. Under subsection (a) of section 5314, if the President decided any such action was appropriate, he would be required to transmit a message proposing the action to Congress. The action would take effect unless both Houses of Congress disapprove the action before the end of the first period of 30 calendar days of continuous session of Congress and the President approves the disapproval or in the event the President disapproves the joint resolution, both Houses of Congress again pass the joint resolution by a two-thirds majority in each House. Subsections (b) through (i) of section 5314 would establish, as an exercise of the rulemaking powers of the Senate and House of Representatives, rules for the timely consideration of such a proposed action by the President. These rules are essentially identical to those presently provided in law for consideration of an alternative to the normal Federal pay comparability adjustment (5 U.S.C. 5305(d)-(k)) and for consideration of a Presidential reorganization plan (5 U.S.C. 908-912).

Clause (2) of section 2 of the draft bill would repeal sections 5315 through 5317 of title 5, United States Code.

Clause (3) of section 2 would redesignate the present section 5318 of title 5 as section 5315, without making any change in the substance of that section.

Clause (4) of section 2 would amend the analysis of chapter 53 of title 5 to conform to the amendments made by clauses (1) through (3).

Section 3 of the draft bill would amend title 3, United States Code, to conform to the amendments made by section 2.

Section 4 of the draft bill would amend title 20, United States Code, to authorize the Secretary of the Smithsonian Institution, with the consent of the Board of Regents of that Institution, to appoint, establish the duties, and fix the compensation for four positions at rates not to exceed the rate for level IV of the Executive Schedule. The Smithsonian Institution presently has two positions in level IV of

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the Executive Schedule and two positions in level V. Since the Smithsonian Institution is not subject to the management control of the President, and therefore would not appropriately be included under the President's Executive Schedule position management authority, this section is included to preserve to the Smithsonian its existing four Executive Schedule positions.

STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill

To provide for authorizing Executive Schedule positions in the executive branch and establishing the maximum number of such positions, to authorize the President to increase or decrease the number of such positions within the maximum number established and to adjust the levels of such positions, and for other purposes.

Purpose

The purpose of this bill is to amend title 5 of the United States Code to provide a plan for authorizing executive level positions in the executive branch as required under Section 414(b)(2) of the Civil Service Reform Act of 1978.

Justification

The men and women in the Executive Schedule are the top leadership in the executive branch of the Federal Government, providing the closest and most important assistance and advice to the President. The members of the President's Cabinet, pursuant to Article II, section 2, of the Constitution of the United States, function at the pleasure of the President. The other individuals in Executive Schedule positions either direct independent agencies, serve as members of boards and commissions, or act as assistants to other appointees in the Executive Schedule.

Considerable attention has been paid to establishing an orderly system for the employment of civil service executives "to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality." (5 U.S.C. 3131). However, up to now the establishment of the top leadership positions has occurred on a case-by-case basis. Each position has been authorized by legislation and this has led to inconsistencies and inflexibility. For example, individual positions have been burdened with outmoded titles such as "Assistant Directors of the Bureau of the Budget." Most positions have been listed in sections 5312, 5313, 5314, 5315, and 5316 of title 5 of the United States Code, but many others have not.

In order to provide regularity rather than to continue a disorderly case-by-case approach to the creation of Executive Schedule positions; in order to provide flexibility rather than be confined by the inflexibilities of specific legislative provisions; in order to provide rational control based on a balance of comprehensive legislative oversight, program needs, and published guidelines, rather than continue the process of uneven responses to various interests, this plan is proposed for authorizing executive level positions.

What is an Executive Level Position?

It is clear that positions covered by sections 5311 to 5317 are in the Executive Schedule. However, even within these sections there have been several anomalies. These include outmoded titles and positions in agencies that no longer exist but whose title 5 authorizations were not repealed.

Moreover, many positions exist that are paid at rates equal to various rates of the Executive Schedule, or at rates not to exceed various rates in the Executive Schedule, or are otherwise considered executive level positions even though not placed in the Executive Schedule, per se. For orderly management, all such positions should be considered part of the Executive Schedule.

Number of Executive Schedule Positions

There has been no overall limitation on the number of Executive Schedule positions. The number had been increasing steadily, until 145 Executive Schedule positions were moved into the Senior Executive Service (SES), and came under the numerical limitations provided for that Service. The number of SES members is set biennially by a zero-based determination of need within a statutory overall limitation. The number of SES positions established following this determination, added to the positions that have been allocated and established in General Schedule grades 16 to 18, to positions authorized for specially qualified personnel in scientific and professional positions carrying out research and development functions, and to equivalent positions in executive branch agencies which have executive level positions, will serve as a base from which the need for Executive Schedule positions will be determined. The appropriate proportion of leaders in the Executive Schedule to the number of top civil servants should be set so that Government-wide, the number of Executive Schedule positions could not exceed 7.5 percent of the top civil service positions.

The exact number would be established by the President, within this limitation, after consideration of the Executive Schedule positions necessary to carry out authorized programs.

Levels of Executive Schedule Positions

Though this legislation is intended to provide order, flexibility, and rational control of numbers to the Executive Schedule, the legislation is not designed to completely restructure the executive level system. The existing five levels would continue, and all positions currently filled would continue as they are at present. However, as the Commission on Executive, Legislative, and Judicial Salaries wrote in its report on December 2, 1976, ". . . a significant number of Federal Government jobs, both in the supergrades and Executive Levels, are evaluated

erroneously." The problems in the supergrades were taken care of through the provisions of the Senior Executive Service. This bill will alleviate the problems in the executive levels.

The President will be able to create, abolish, or change the level (or maximum rate of pay, where applicable) of an Executive Schedule position when such action is necessary to improve the management of the executive branch of the Government. The positions would be placed in the five levels of the Executive Schedule in accordance with their relative importance to the Government and to the Nation.

Effect on Current Executives

There will be no adverse effect from the passage of this bill on any incumbent of an Executive Schedule position. The President could not reduce the level of a position while an incumbent is serving in it. The turnover in these positions, since they are almost all political advisers to the President and accept the positions on a short term basis, is generally quite rapid. Therefore, it is possible both to safeguard the employment conditions of the incumbents and to anticipate the application of the provisions of this bill to Executive Schedule positions within a reasonably short timespan.

Congressional Oversight

The maximum number of executive level positions is a function of the number of lower level executive positions. This latter number is controlled at its upper limit by legislation, and actual allocations to agencies are based on program needs and are subject annually to Congressional oversight. Limiting the number of executive level positions to a percentage of the number of lower level executives permits rapid adjustment to emergency needs, while placing an effective brake on unbridled increases of top executives.

Each position established by the President under the provisions of this Act would be filled by Presidential appointment by and with the advice and consent of the Senate, unless the position is in level V of the Executive Schedule (except a U.S. Attorney position), or of a temporary or emergency nature.

Except when it would be contrary to the interest of national security, the President would publish notice of each change in the Federal Register and would transmit to Congress annually a report listing each Executive Schedule position and any changes made during the preceding year. If the President should propose a change involving an independent regulatory agency, he would transmit to the Congress a message proposing such a change and the change would become effective unless both Houses of Congress adopt a joint resolution disapproving the change within the first period of 30 calendar days of continuous session and the President approves the disapproval, or, in the event the President disapproves the joint resolution, both Houses of Congress again pass the joint resolution by a two-thirds majority in each House.

Date

ROUTING AND TRANSMITTAL SLIP

20 MAY 1980

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Initials Date

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2. DD/PPPM

3. C/SIS/SUPPORT

4. DD/PPPM/P&E

5.

(copy made) 20 MAY 1980

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Prescribed by GSA
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