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96th Congress }
1st Session }

COMMITTEE PRINT

{ COMMITTEE
PRINT NO. 96-2

LEGISLATIVE HISTORY OF THE CIVIL
SERVICE REFORM ACT OF 1978

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES



MARCH 27, 1979

VOLUME NO. I

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WASHINGTON 1979

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96TH CONGRESS
2^D SESSION**H. R. 11280**

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1978

Mr. NIX (for himself and Mr. DERWINSKI) (by request) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To reform the civil service laws.

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

SHORT TITLE

- 4 SECTION 1. This Act may be cited as the "Civil Service
5 Reform Act of 1978".

- 6 SEC. 2. The table of contents is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

- Sec. 101. Merit system principles; prohibited personnel practices.

(1)

TABLE OF CONTENTS—Continued

TITLE VII—MISCELLANEOUS

- Sec. 701. Savings provisions.
 Sec. 702. Authorization of appropriations.
 Sec. 703. Powers of President unaffected except by express provisions.
 Sec. 704. Technical and conforming amendments.
 Sec. 705. Effective dates.

1 FINDINGS AND STATEMENT OF PURPOSE

2 SEC. 3. It is the policy of the United States that—

3 (1) the merit system principles which shall govern
 4 in the competitive service and in the executive branch
 5 of the Federal Government should be expressly stated
 6 to furnish guidance to Federal agencies in carrying out
 7 their responsibilities in administering the public business
 8 and prohibited personnel practices should be statutorily
 9 defined to enable Government officers and employees to
 10 avoid conduct which undermines the merit system prin-
 11 ciples and the integrity of the merit system;

12 (2) Federal employees should receive appropriate
 13 protection through increasing the authority and powers
 14 of the independent Merit Systems Protection Board in
 15 processing hearings and appeals affecting Federal
 16 employees;

17 (3) the authority and power of the Special Counsel
 18 should be increased so that the Special Counsel may
 19 investigate allegations involving prohibited personnel
 20 practices and reprisals against Government employees
 21 for the lawful disclosure of information concerning vic-

1 lation of law or regulations and to bring disciplinary
 2 charges against agency officials and employees who
 3 engage in such conduct;

4 (4) the function of filling positions and other per-
 5 sonnel functions in the competitive service and in the
 6 executive branch should be delegated in appropriate
 7 cases to the agencies to expedite processing appoint-
 8 ments and other personnel actions, with the control and
 9 oversight of this delegation being maintained by the
 10 Office of Personnel Management to protect against pro-
 11 hibited personnel practices and the use of unsound man-
 12 agement practices by the agencies;

13 (5) a Senior Executive Service should be estab-
 14 lished to provide the flexibility needed by Executive
 15 agencies to recruit and retain the highly competent and
 16 qualified managers needed to provide more effective
 17 management of Executive agencies and their functions,
 18 and the more expeditious administration of the public
 19 business;

20 (6) in appropriate instances, pay increases should
 21 be based on quality of performance rather than length
 22 of service;

23 (7) a research and demonstration program should
 24 be authorized to permit Federal agencies to experiment
 25 with new and different personnel management concepts

1 in controlled situations to achieve more efficient manage-
 2 ment of the Government's human resources and greater
 3 productivity in the delivery of service to the public;
 4 and

5 (8) the training program of the Government should
 6 include retraining of employees for positions in other
 7 agencies to avoid separations during reductions in force
 8 and the loss to the Government of the knowledge and
 9 experience that these employees possess, and that this
 10 policy will result in maintaining the morale and produc-
 11 tivity of employees.

12 TITLE I—MERIT SYSTEM PRINCIPLES

13 MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL

14 PRACTICES

15 SEC. 101. (a) Title 5, United States Code, is amended
 16 by inserting, after chapter 21, the following new chapter:

17 "Chapter 23.—MERIT SYSTEM PRINCIPLES

"Sec.

"2301. Merit system principles.

"2302. Prohibited personnel practices.

"2303. Responsibility of the General Accounting Office.

18 "§ 2301. Merit system principles

19 "(a) (1) Except as provided in paragraph (2) of this
 20 subsection, this section shall apply to—

21 "(A) an executive agency;

22 "(B) the Administrative Office of the United States
 23 Courts; and

1 "(C) the Government Printing Office.

2 "(2) This section shall not apply to—

3 "(A) a Government corporation;

4 "(B) the Central Intelligence Agency, the Defense
 5 Intelligence Agency, and the National Security Agency,
 6 and, as determined by the President, an executive
 7 agency or unit thereof which conducts foreign intel-
 8 ligence or counterintelligence activities;

9 "(C) the General Accounting Office; and

10 "(D) any agency, or any unit, position or positions
 11 therein, excluded from the application of this section
 12 by the President.

13 "(b) It is the policy of the Congress that in order to
 14 provide the people of the United States with a highly
 15 competent, honest, and productive Federal work force re-
 16 flective of the Nation's diversity, and to improve the quality
 17 of public service, Federal personnel management should
 18 be implemented consistent with merit system principles.

19 "(c) The merit system principles are as follows:

20 "(1) Recruitment should be from qualified candidates
 21 from appropriate sources in an endeavor to achieve a work
 22 force from all segments of society, and selection and ad-
 23 vancement should be determined solely on the basis of rela-
 24 tive ability, knowledge, and skills, after fair and open com-
 25 petition which assures that all receive equal opportunity.

1 “(2) All applicants and employees should receive fair
2 and equitable treatment in all aspects of personnel manage-
3 ment without regard to political affiliation, race, color, reli-
4 gion, national origin, sex, marital status, age, or handicapping
5 condition, and with proper regard for their privacy and
6 constitutional rights.

7 “(3) Equal pay should be provided for work of equal
8 value to attract and retain highly qualified personnel, with
9 appropriate consideration of both national and local rates
10 paid by non-Federal employers, and appropriate incentives
11 and recognition should be provided for excellence in
12 performance.

13 “(4) All employees should maintain high standards of
14 integrity, conduct, and concern for the public interest.

15 “(5) The Federal work force should be used efficiently
16 and effectively.

17 “(6) Employees should be retained on the basis of the
18 adequacy of their performance, inadequate performance
19 should be corrected, and employees should be separated who
20 cannot or will not improve their performance to meet re-
21 quired standards.

22 “(7) Employees should be provided effective education
23 and training in cases in which such education and training
24 would result in better organizational and individual perform-
25 ance.

1 “(8) Employees should be—

2 “(A) protected against arbitrary action, personal
3 favoritism, or coercion for partisan political purposes,
4 and

5 “(B) prohibited from using their official authority
6 for the purpose of interfering with or affecting the result
7 of an election or a nomination for election.

8 “(d) The President may take such actions, including
9 the issuance of rules, regulations, or directives, as the Presi-
10 dent determines are necessary to assure that personnel man-
11 agement in the agencies covered by this section is based on
12 and embodies the merit system principles.

13 “§ 2302. Prohibited personnel practices

14 “(a) For the purpose of this section ‘personnel action’
15 means—

16 “(1) an appointment;

17 “(2) a promotion;

18 “(3) an action under chapter 75 of this title or
19 other disciplinary or corrective action;

20 “(4) a detail, transfer, or reassignment;

21 “(5) a reinstatement;

22 “(6) a restoration;

23 “(7) a reemployment;

24 “(8) a performance evaluation under chapter 43 of
25 this title; or

1 “(9) a decision concerning pay, benefits, awards,
2 or education, or training if it may reasonably be ex-
3 pected to lead to a personnel action within the meaning
4 of this subsection;

5 with respect to an employee in, or applicant for, a position
6 in the competitive service or a position in the excepted serv-
7 ice in an executive agency other than a position which is
8 excepted from the competitive service because of its con-
9 fidential or policymaking character.

10 “(b) Any employee who has authority to take, direct
11 others to take, recommend, or approve any personnel action,
12 shall not, with respect to such authority—

13 “(1) unlawfully discriminate for or against any
14 employee or applicant for employment on the basis of
15 political affiliation, race, color, religion, natural origin,
16 sex, marital status, age, or handicapping condition;

17 “(2) solicit or consider any recommendation or
18 statement, oral or written, with respect to any individual
19 who requests or is under consideration for any person-
20 nel action unless such recommendation or statement is
21 based on the personal knowledge or records of the person
22 furnishing it and consists of—

23 “(A) an evaluation of the work performance,
24 ability, aptitude, or general qualifications of such in-
25 dividual; or

1 “(B) an evaluation of the character, loyalty,
2 or suitability of such individual;

3 “(3) coerce the political activity of any person,
4 obligate any person to make any political contribution
5 (including providing any political service), or take any
6 action against any employee or applicant as a reprisal
7 for the refusal of any person to engage in such political
8 activity, make such contribution, or provide such service;

9 “(4) willfully deceive or obstruct any person with
10 respect to such person's right to compete for Federal
11 employment;

12 “(5) influence any person to withdraw from com-
13 petition for any position for the purpose of improving
14 or injuring the prospects of any applicant for employ-
15 ment;

16 “(6) grant any preference or advantage not author-
17 ized by law, rule, or regulation to any employee or
18 applicant for employment (including defining the scope
19 or manner of competition or the requirements for any
20 position) for the purpose of improving or injuring the
21 prospects of any particular individual;

22 “(7) appoint, employ, promote, advance, or advo-
23 cate for appointment, employment, promotion, or
24 advancement, in or to a civilian position, any individual
25 who is a relative (as defined in section 3110 (a) (3)

1 of this title) of such employee if such position is in
 2 the agency in which such employee is serving as a
 3 public official (as defined in section 3110 (a) (2) of
 4 this title) or over which such employee exercises juris-
 5 diction or control as such an official; or

6 " (8) take action against any employee or appli-
 7 cant for employment as a reprisal for the exercise of
 8 any appeal right granted by law, rule, or regulation
 9 or for the disclosure, not prohibited by law, rule, or
 10 regulation, of information concerning violations of law,
 11 rules, of regulations.

12 The term 'prohibited personnel practice', when used in
 13 this title, means action described in this subsection.

14 " (c) The head of each executive agency shall be re-
 15 sponsible for the prevention of prohibited personnel prac-
 16 tices, for the compliance with and enforcement of applicable
 17 civil service laws, rules, and regulations, as well as other
 18 aspects of personnel management. Any individual to whom
 19 the head of an executive agency delegates authority for
 20 personnel management, or for any aspect thereof, shall be
 21 similarly responsible within the limits of the delegation.

22 " (d) This section shall not be construed to extinguish
 23 or lessen any effort to achieve equal employment opportunity
 24 through affirmative action or any right or remedy available
 25 to any employee or applicant for employment in the civil

1 service under any law, rule, or regulation prohibiting dis-
 2 crimination based on political affiliation, race, color, religion,
 3 national origin, sex, marital status, age, or handicapping
 4 condition.

5 "§ 2303. Responsibility of the General Accounting Office

6 "If requested by either House of the Congress (or any
 7 Member or committee thereof), or if deemed necessary
 8 by the Comptroller General, the General Accounting Office
 9 shall conduct, on a continuing basis, audits and reviews
 10 to assure compliance with the laws, rules, and regulations
 11 governing employment in the executive branch and in the
 12 competitive service and to assess the effectiveness and sound-
 13 ness of Federal personnel management."

14 (b) (1) The table of chapters for part III of title 5,
 15 United States Code, is amended by adding after the item
 16 relating to chapter 21 the following new item:

"23. Merit system principles..... 2301."

17 (2) Section 7153 of title 5, United States Code, is
 18 amended—

19 (A) by striking out "Physical handicap" in the
 20 catch-line and inserting in lieu thereof "Handicapping
 21 condition"; and

22 (B) by striking out "physical handicap" each place
 23 it appears in the text and inserting in lieu thereof "handi-
 24 capping condition".

1 (8) The table of sections for chapter 71 of title 5,
 2 United States Code, is amended by striking out "physical
 3 handicap" in the item relating to section 7153 and inserting
 4 in lieu thereof "handicapping condition".

5 **TITLE II—CIVIL SERVICE FUNCTIONS; PER-**
 6 **FORMANCE APPRAISAL; ADVERSE ACTIONS**

7 **OFFICE OF PERSONNEL MANAGEMENT**

8 **SEC. 201. (a)** Chapter 11 of title 5, United States
 9 Code, is amended to read as follows:

10 **"Chapter 11.—OFFICE OF PERSONNEL MANAGEMENT**

"Sec.

"1101. Office of Personnel Management.

"1102. Director; Deputy Director; Associate Directors.

"1103. Functions of the Director.

"1104. Delegation of authority for personnel management.

11 **"§1101. Office of Personnel Management**

12 "The Office of Personnel Management is an independent
 13 establishment in the Executive branch. The Office shall have
 14 an official seal which shall be judicially noticed and shall
 15 have its principal office in the District of Columbia, but it
 16 may have field offices in other appropriate locations.

17 **"§1102. Director; Deputy Director; Associate Directors**

18 "(a) There is at the head of the Office of Personnel Man-
 19 agement a Director of the Office of Personnel Management
 20 appointed by the President, by and with the advice and
 21 consent of the Senate.

22 "(b) There is in the Office a Deputy Director of the

1 Office of Personnel Management appointed by the President,
 2 by and with the advice and consent of the Senate. The
 3 Deputy Director shall perform such functions as the Director
 4 may from time to time prescribe and shall act as Director
 5 during the absence or disability of the Director or in the event
 6 of a vacancy in the Office of the Director.

7 (c) No person shall, while serving as Director or
 8 Deputy Director, serve in any other office or position in the
 9 Government of the United States except as otherwise pro-
 10 vided by law or by the President.

11 (d) There may be within the Office of Personnel Man-
 12 agement not more than five Associate Directors, as deter-
 13 mined from time to time by the Director. Each Associate
 14 Director shall be appointed by the Director. Such appoint-
 15 ments may be made without regard to the provisions of this
 16 title governing appointments in the competitive service.

17 **"§1103. Functions of the Director**

18 "The following functions are vested in the Director of
 19 the Office of Personnel Management, and shall be performed
 20 by the Director, or by such employees of the Office as the
 21 Director designates—

22 "(1) securing accuracy, uniformity, and justice in
 23 the functions of the Office;

24 "(2) appointing individuals to be employed by the
 25 Office;

1 " (3) directing and supervising employees of the
2 Office, distributing business among employees and organi-
3 zational units of the Office, and directing the internal
4 management of the Office;

5 " (4) directing the preparation of requests for ap-
6 propriations and the use and expenditure of funds;

7 " (5) executing, administering, and enforcing—

8 " (A) the civil service rules and regulations of
9 the President and the Office and the statutes gov-
10 erning the civil service; and

11 " (B) the other activities of the Office including
12 retirement and classification activities;

13 " (6) reviewing the operations under chapter 87 of
14 this title; and

15 " (7) such other functions as are prescribed in
16 part I of Reorganization Plan Numbered 2 of 1978.

17 "§ 1104. Delegation of authority for personnel management

18 "Notwithstanding any other provision of this title—

19 " (1) the President may delegate, in whole or in
20 part, authority for personnel management functions,
21 including authority for competitive examinations, to the
22 Director of the Office of Personnel Management; and

23 " (2) the Director may delegate, in whole or in
24 part, any function vested in the Director, including au-
25 thority for competitive examinations, to the heads of

1 agencies in the executive branch and other agencies
2 employing persons in the competitive service."

3 (b) (1) Section 5313 of title 5, United States Code, is
4 amended by inserting at the end thereof the following new
5 paragraph:

6 " (24) Director of the Office of Personnel Man-
7 agement."

8 (2) Section 5314 of such title is amended by inserting
9 at the end thereof the following new paragraph:

10 " (67) Deputy Director of the Office of Personnel
11 Management."

12 (3) Section 5315 of such title is amended by inserting
13 at the end thereof the following new paragraph:

14 " (122) Associate Directors of the Office of Per-
15 sonnel Management (5)."

16 (c) (1) The heading of part I of title 5, United States
17 Code, is amended by striking out "The United States Civil
18 Service Commission" and inserting in lieu thereof "Civil
19 Service Functions and Responsibilities".

20 (2) The item relating to chapter 11 in the table of
21 chapters for part II of such title is amended by striking out
22 "Organization" and inserting in lieu thereof "Office of Person-
23 nel Management".

1 MERIT SYSTEMS PROTECTION BOARD AND SPECIAL
 2 COUNSEL
 3 SEC. 202. (a) Title 5, United States Code, is amended
 4 by inserting after chapter 11 the following new chapter:
 5 "Chapter 12—MERIT SYSTEMS PROTECTION BOARD AND
 6 SPECIAL COUNSEL

"Sec.
 "1901. Appointment of members of the Merit Systems Protection Board.
 "1902. Term of office; filling vacancies; removal.
 "1903. Chairman; Vice Chairman.
 "1904. Special Counsel; appointment and removal.
 "1906. Powers of the Merit Systems Protection Board and Special
 Counsel.
 "1906. Authority and responsibilities of the Special Counsel.
 "1907. Hearings and decisions on complaints filed by the Special Counsel.

7 "§ 1201. Appointment of members of the Merit Systems
 8 Protection Board
 9 "The Merit Systems Protection Board is composed of
 10 3 members appointed by the President, by and with the
 11 advice and consent of the Senate, not more than 2 of whom
 12 may be adherents of the same political party and none of
 13 whom may hold another office or position in the Government
 14 of the United States. The Board shall have an official seal
 15 which shall be judicially noticed. The Board shall have its
 16 principal office in the District of Columbia and may have
 17 field offices in other appropriate locations.

1 "§ 1202. Term of office; filling vacancies; removal

2 " (a) The term of office of each member of the Merit
 3 Systems Protection Board is 7 years.

4 " (b) A Board member appointed to fill a vacancy oc-
 5 ccurring before the end of a term of office of his predecessor
 6 serves for the remainder of that term. The appointment is
 7 subject to the requirements of section 1201 of this title.

8 " (c) Any Board member appointed for a 7-year term
 9 may not be reappointed to any following term but may con-
 10 tinue to serve until a successor is appointed and has qualified.

11 " (d) A Board member may be removed by the Pres-
 12 ident only upon notice and hearing and only for misconduct,
 13 inefficiency, neglect of duty, or malfeasance in office.

14 "§ 1203. Chairman; Vice Chairman

15 " (a) The President shall from time to time designate
 16 one of the Board members as the Chairman of the Merit
 17 Systems Protection Board. The Chairman is the chief execu-
 18 tive and administrative officer of the Board.

19 " (b) The President shall from time to time designate
 20 one of the Board members as Vice Chairman of the Board.
 21 During the absence or disability of the Chairman, or when
 22 the office is vacant, the Vice Chairman shall perform the
 23 functions vested in the Chairman.

24 " (c) During the absence or disability of both the
 25 Chairman and Vice Chairman, or when both offices are

1 vacant, the remaining Board member shall perform the
2 functions vested in the Chairman.

3 **“§ 1204. Special Counsel; appointment and removal**

4 “The Special Counsel of the Merit Systems Protection
5 Board shall be appointed by the President from attorneys,
6 by and with the advice and consent of the Senate, for a
7 term of 7 years.

8 **“§ 1205. Powers of the Merit Systems Protection Board
9 and Special Counsel**

10 “(a) Any member of the Merit Systems Protection
11 Board, the Special Counsel, any hearing examiner appointed
12 under section 3105 of this title, and any employee of the
13 Board designated by the Board may—

14 “(1) issue subpoenas requiring the attendance and
15 testimony of witnesses and the production of documen-
16 tary or other evidence from any place in the United
17 States or any territory or possession thereof, the Com-
18 monwealth of Puerto Rico, or the District of Columbia,
19 and

20 “(2) administer oaths, take or order the taking
21 of depositions, order responses to written interrogatories,
22 examine witnesses, and receive evidence.

23 “(b) In the case of contumacy or failure to obey a
24 subpoena issued under subsection (a) (1), the United States
25 district court for the judicial district in which the person to

1 whom the subpoena is addressed resides or is served may
2 issue an order requiring such person to appear at any desig-
3 nated place to testify or to produce documentary or other
4 evidence. Any failure to obey the order of the court may
5 be punished by the court as a contempt thereof.

6 “(c) Witnesses (whether appearing voluntarily or
7 under subpoena) shall be paid the same fee and mileage
8 allowances which are paid subpoenaed witnesses in the courts
9 of the United States.

10 **“§ 1206. Authority and responsibilities of the Special Coun-
11 sel**

12 “(a) The Special Counsel may receive and investigate
13 allegations of prohibited personnel practices described in
14 section 2302 (b) of this title and may take such action as
15 provided in this section.

16 “(b) Upon the request of any person, the Special
17 Counsel shall conduct an investigation if the Special Counsel
18 has reason to believe that a personnel action was taken, or
19 is to be taken, as a result of a prohibited personnel practice.

20 “(c) (1) In cases involving alleged reprisal for the
21 disclosure, not prohibited by law, rule, or regulation, of in-
22 formation concerning a violation of any law, rule, or regula-
23 tion, the Special Counsel, except as provided in paragraph
24 (2) of this subsection—

25 “(A) shall not, during the investigation, disclose

1 the agency involved and to the Office of Personnel Management. The Special Counsel may include in such report suggestions as to what corrective action should be taken, but the final decision on what corrective action should be taken shall be made by the agency involved, subject to guidance and instruction from the Office of Personnel Management. The Special Counsel may furnish a copy of such report to the President and to the Congress.

9 "(e) If, in the course of the investigation, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report such determination to the Attorney General, and to the head of the agency involved, and shall submit a copy of such report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget. Any other violation of any law, rule, or regulation shall be reported to the head of the agency involved. The Special Counsel may require, within 30 days of receipt of the such report, a certification by the head of the agency which states—

21 "(1) that such head has personally reviewed the report; and

23 "(2) what action has been, or is to be taken, and when such action will be completed.

25 The Special Counsel shall maintain and make available to

1 the identity of the complainant without the consent of
2 the complainant unless the Special Counsel determines
3 such disclosure is unavoidable during the course of the
4 investigation;

5 "(B) may order a stay of any personnel action
6 which would have a substantial and adverse economic
7 impact on the employee; and

8 "(C) if the Special Counsel determines that reprisal
9 has been taken against an employee, may report the
10 matter to the head of the agency involved, and require
11 the head of such agency to take any action ordered by
12 the Special Counsel, including canceling personnel actions
13 having a substantial and adverse economic impact
14 on the employee and stopping personnel practices which
15 result in the harassment of the employee.

16 Refusal to carry out actions ordered by the Special Counsel
17 may be cause for disciplinary action by the Special Counsel
18 under subsection (i) of this section.

19 "(2) Paragraph (1) (B) and (C) of this subsection
20 shall not apply in the case of a personnel action which is of
21 a type that is appealable to the Merit Systems Protection
22 Board under section 7701 of this title.

23 "(d) If the Special Counsel determines that there are
24 prohibited personnel practices which require corrective action,
25 the Special Counsel may report such determination to

1 the public a list of noncriminal matters referred to agency
2 heads and their certifications of actions taken;

3 “(f) (1) In addition to the authority otherwise pro-
4 vided in this section, the Special Counsel may, except as
5 provided in paragraph (2) of this subsection, conduct an
6 investigation of any other alleged prohibited practice which
7 consists of—

8 “(A) political activity by any employee which is
9 prohibited under subchapter III of chapter 73 of this
10 title;

11 “(B) political activity by any State or local officer
12 or employee which is prohibited under chapter 15 of
13 this title;

14 “(C) arbitrary or capricious withholding of infor-
15 mation prohibited under section 552 of this title;

16 “(D) such personnel practices as are prohibited
17 by the civil service rules and regulations, including
18 such practices relating to political intrusion in personnel
19 decisionmaking; and

20 “(E) involvement by any employee in any pro-
21 hibited discrimination found by any court or appropriate
22 administrative authority to have occurred in the course
23 of any personnel action.

24 “(2) The Special Counsel shall make no investigation
25 of any allegation of any prohibited practice referred to in sub-

1 paragraph (A), (D), or (E) of paragraph (1) of this
2 subsection if the Special Counsel determines that such allega-
3 tion may be more appropriately resolved under an admin-
4 istrative appeals procedure.

5 “(g) During any investigation initiated under subsection
6 (a) or (e) of this section, no disciplinary action shall be
7 taken against any employee for any alleged prohibited ac-
8 tivity under such investigation or any related activity, with-
9 out the approval of the Special Counsel.

10 “(h) (1) Except as provided in paragraph (2) of this
11 subsection, if the Special Counsel determines, after any
12 investigation under this section of any prohibited personnel
13 practice by any employee, that disciplinary action should be
14 taken against such employee because of such prohibited per-
15 sonnel practice, the Special Counsel shall prepare a written
16 complaint against such employee containing such determina-
17 tion and present such complaint together with a statement
18 of supporting facts to the Merit Systems Protection Board
19 or to a hearing examiner appointed under section 3105 of
20 this title and designated by the Board.

21 “(2) In the case of a Presidential appointee, such com-
22 plaint and statement shall be presented to the President in
23 lieu of the Board or a hearing examiner referred to in para-
24 graph (1) of this subsection.

25 “(i) The Special Counsel may bring disciplinary action,

1 in accordance with the procedures set forth in section 1207
 2 of this title against any employee who knowingly and will-
 3 fully refuses or fails to comply with an order of the Special
 4 Counsel under subsection (c) (1) of this section or an order
 5 of the Merit Systems Protection Board. Noncompliance by
 6 any employee who is a Presidential appointee shall be re-
 7 ported to the President by the Special Counsel.

8 " (j) The Special Counsel may appoint such legal, ad-
 9 ministrative, and support personnel as may be necessary
 10 to perform the functions of the Special Counsel.

11 " (k) The Special Counsel may prescribe such regula-
 12 tions as may be necessary for investigations under this
 13 section. Such regulations shall be published in the Federal
 14 Register.

15 " (l) The Special Counsel shall not issue any advisory
 16 opinion concerning any law, rule, or regulation (other than
 17 chapter 15 and subchapter III of chapter 73 of this title,
 18 or any rule or regulation thereunder).

19 "§1207. Hearings and decisions on complaints filed by the
 20 Special Counsel

21 "Any employee against whom a complaint has been
 22 presented to the Merit Systems Protection Board or a hear-
 23 ing examiner under section 1206 of this title shall be entitled
 24 to an agency hearing on the record before the Board or a
 25 hearing examiner appointed under section 3105 of this title

1 and designated by the Board. In the case of a State or local
 2 officer or employee under chapter 15 of this title, such hear-
 3 ing shall be conducted in accordance with section 1505 of
 4 this title. There may be no administrative appeal from a final
 5 order of the Board. A final order of the Board may impose
 6 disciplinary action including removal, demotion, debarment
 7 from Federal employment for a period not to exceed 5 years,
 8 suspension, reprimand, or a civil penalty not to exceed
 9 \$1,000. In the case of any State or local officer or employee
 10 under chapter 15 of this title, the Board shall act in accord-
 11 ance with section 1506 of this title. An employee subject to
 12 a final order imposing disciplinary action may obtain judicial
 13 review of the final order of the Board in the United States
 14 Court of Appeals for the circuit in which such employee was
 15 employed at the time of the action."

16 (b) Any term of office of any member of the Merit
 17 Systems Protection Board serving on July 1, 1978, shall
 18 continue in effect until such time as such term would expire
 19 under section 1202 of title 5, United States Code, as in effect
 20 immediately before the effective date of this Act, and upon
 21 expiration of such term, appointments to such office shall be
 22 made under such section 1202 as amended by this Act.

23 (c) (1) Section 5314 (17) of title 5, United States
 24 Code, is amended by striking out "Chairman of the United

1 States Civil Service Commission" and inserting in lieu
2 thereof "Chairman of the Merit Systems Protection Board".

3 (2) Section 5315 (66) of such title is amended by
4 striking out "Members, United States Civil Service Com-
5 mission" and inserting in lieu thereof "Members, Merit
6 Systems Protection Board"

7 (3) Section 5315 of such title is further amended by
8 adding at the end thereof the following new paragraph:

9 "(123) Special Counsel of the Merit Systems
10 Protection Board."

11 (4) Paragraph (99) of section 5316 of such title is
12 hereby repealed.

13 (d) The table of chapters for part II of title 5, United
14 States Code, is amended by inserting after the item relating
15 to chapter 11 the following new item:

"12. Merit Systems Protection Board and Special Counsel.... 1201".

16 PERFORMANCE APPRAISALS

17 SEC. 203. (a) Chapter 43 of title 5, United States
18 Code, is amended to read as follows:

19 "Chapter 43.—PERFORMANCE APPRAISAL

*Sec.

"4301. Definitions.

"4302. Establishment of performance appraisal systems.

"4303. Actions based on unacceptable performance.

"4304. Responsibilities of Office of Personnel Management.

"4305. Regulations.

1 "§ 4301. Definitions

2 "For the purpose of this subchapter—

3 "(1) 'agency' means—

4 "(A) an Executive agency;

5 "(B) the Administrative Office of the United
6 States Courts; and

7 "(C) the Government Printing Office;

8 but does not include—

9 "(i) the General Accounting Office;

10 "(ii) the Central Intelligence Agency, the De-
11 fense Intelligence Agency, and the National Secu-
12 rity Agency, and, as determined by the President,
13 an Executive agency, or unit thereof, which con-
14 ducts foreign intelligence or counterintelligence ac-
15 tivities;

16 "(iii) a government corporation; and

17 "(iv) an agency or unit of an agency excluded
18 from coverage of this subchapter by regulation of
19 the Office of Personnel Management; and

20 "(2) 'employee' means an individual employed in
21 or under an agency, but does not include—

22 "(A) an employee outside the United States
23 who is paid in accordance with local native pre-
24 vailing wage rates for the area in which employed;

1 “(B) an individual in the Foreign Service of
2 the United States;

3 “(C) a physician, dentist, nurse, or other em-
4 ployee in the Department of Medicine and Surgery,
5 Veterans' Administration, whose pay is fixed under
6 chapter 73 of title 38;

7 “(D) a hearing examiner appointed under
8 section 3105 of this title;

9 “(E) an individual in the Senior Executive
10 Service;

11 “(F) an individual appointed by the President;

12 or

13 “(G) an individual occupying a position ex-
14 cluded from coverage of this chapter by regulations
15 of the Office of Personnel Management.

16 “(3) ‘unacceptable performance’ means perform-
17 ance which fails to meet established requirements in
18 one or more critical elements of the job.

19 **“§ 4302. Establishment of performance appraisal systems**

20 “(a) Each agency shall develop one or more perform-
21 ance appraisal systems which—

22 “(1) provide for periodic appraisals of job perform-
23 ance of employees;

1 “(2) encourage employee participation in estab-
2 lishing performance objectives; and

3 “(3) use the results of performance appraisals as
4 a basis for training, rewarding, reassigning, promoting,
5 demoting, retaining, and separating employees.

6 “(b) Under such regulations as the Office of Personnel
7 Management shall prescribe, each performance appraisal
8 system shall provide for—

9 “(1) establishing performance standards for each
10 employee under such system, communicating such stand-
11 ards to such employee at the beginning of an appraisal
12 period, and evaluating such employee during such period
13 on such standards;

14 “(2) recognizing and rewarding employees whose
15 performance so warrants;

16 “(3) assisting employees whose performance is un-
17 acceptable to improve; and

18 “(4) reassigning, demoting, or separating em-
19 ployees whose performance continues to be unacceptable.

20 **“§ 4303. Actions based on unacceptable performance**

21 “(a) Subject to the provisions of this section, the head
22 of an agency may at any time demote or remove an employee
23 whose performance is unacceptable.

24 “(b) An employee subject to demotion or removal from
25 the service under this section is entitled to—

1 " (1) at least 30 days' advance written notice of
 2 the proposed action which identifies the expected stand-
 3 ard of performance and the areas in which the employee's
 4 performance is unacceptable;

5 " (2) an attorney or other representative;

6 " (3) reply to the notice orally and in writing;

7 " (4) an opportunity during the notice period to
 8 demonstrate acceptable performance; and

9 " (5) a written decision which states the reasons for
 10 the decision and which, unless proposed by the agency
 11 head, has been concurred in by an employee who is in a
 12 higher position than the employee who proposed the
 13 action.

14 " (c) The head of an agency may, under regulations
 15 prescribed by such agency head, extend the notice period
 16 under subsection (b) of this section for not more than 30
 17 days. An agency head may extend such a notice period for
 18 more than 30 days only in accordance with regulations issued
 19 by the Office of Personnel Management. The decision to
 20 retain, remove, or demote an employee shall be made within
 21 30 days after the date of the expiration of the notice period
 22 and may take into account other failures to perform accepta-
 23 bly during the 1-year period ending on the date on which
 24 the action is commenced.

25 " (d) If no action is taken because of performance

1 improvement during the notice period and the employee's
 2 performance continues to be acceptable for one year from
 3 the date of the written advance notice provided under sub-
 4 section (b) of this section, any entry or other notation of
 5 the unacceptable performance shall be removed from official
 6 records relating to such employee.

7 " (e) An employee who is a preference eligible or is
 8 in the competitive service and who has been demoted or
 9 removed under the provisions of subsection (b) of this sec-
 10 tion may appeal the action to the Merit Systems Protection
 11 Board. The appeal shall be conducted in accordance with
 12 the procedures established in section 7701 of this title. The
 13 appeals officer shall conduct an evidentiary hearing only if
 14 there are disputes concerning material issues of fact requiring
 15 presentation of evidence. When there is no genuine issue
 16 as to any material fact, the appeals officer shall grant a
 17 summary decision for the party entitled to such decision as
 18 a matter of law. The decision of the agency shall be sus-
 19 tained by the appeals officer unless the employee shows
 20 that—

21 " (1) the agency's procedures contained error that
 22 substantially impaired the rights of the employee;

23 " (2) the demotion or removal was based on dis-
 24 crimination prohibited by section 2302 (b) (1) of this
 25 title; or

1 “(3) the decision to demote or remove was arbitrary or capricious.

2 “(f) This section does not apply to—

3 “(1) the demotion to the grade previously held of
4 a supervisor who has not completed the probationary
5 period under section 3321 (a) (2) of this title in an
6 initial supervisory position,

7 “(2) the separation or demotion of an individual
8 in the competitive service who has not completed a
9 probationary or trial period or who has not completed
10 one year of current continuous employment under other
11 than a temporary appointment limited to one year or
12 less, or

13 “(3) the separation or demotion of an individual
14 in the excepted service who has not completed one year
15 of current continuous employment in the same or similar
16 positions.

17 **“§ 4304. Responsibilities of the Office of Personnel Management**

18 **ment**
19 “(a) The Office of Personnel Management shall make
20 technical assistance available to agencies in the develop-
21 ment of performance appraisal systems.

22 “(b) If the Office of Personnel Management determines
23 that a system does not meet the requirements of this sub-
24 chapter (including regulations prescribed under section
25

1 4305), the Office of Personnel Management shall direct the
2 agency to implement an appropriate system or to correct
3 operations under the system, and any such agency shall
4 take any action so required.

5 **“§ 4305. Regulations**

6 “The Office of Personnel Management may prescribe
7 regulations to carry out the purposes of this subchapter.”.

8 (b) The item relating to chapter 43 in the table of
9 chapters for part III of title 5, United States Code, is
10 amended by striking out “Performance Rating” and inserting
11 in lieu thereof “Performance Appraisal”.

12 **ADVERSE ACTIONS**

13 **SEC. 204.** (a) Chapter 75 of title 5, United States
14 Code, is amended by striking out subchapters I and II and
15 inserting in lieu thereof the following:

16 **“SUBCHAPTER I—SUSPENSION FOR 30 DAYS OR
17 LESS**

18 **“§ 7501. Definitions**

19 “For the purpose of this subchapter—

20 “(1) ‘employee’ means an individual in the com-
21 petitive service who has completed a probationary or
22 trial period under an initial appointment or as a super-
23 visor or manager or who has completed 1 year of cur-
24 rent continuous employment in the same or similar

1 positions under other than a temporary appointment
2 limited to 1 year or less, but does not include—

3 “(A) an individual in the Senior Executive
4 Service; or

5 “(B) an individual occupying a position ex-
6 cluded from coverage of this subchapter by regula-
7 tion of the Office of Personnel Management; and

8 “(2) ‘suspension’ means the placing of an em-
9 ployee, for disciplinary reasons, in a temporary status
10 without duties and pay.

11 **“§ 7502. Actions covered**

12 “This subchapter applies to a suspension for 30 days
13 or less, but does not apply to a suspension under section 7532
14 of this title or an action initiated under section 204 of Re-
15 organization Plan Numbered 2 of 1978.

16 **“§ 7503. Cause and procedure**

17 “(a) Under regulations prescribed by the Office of
18 Personnel Management, an employee may be suspended for
19 30 days or less only for such cause as will promote the
20 efficiency of the service.

21 “(b) An employee against whom a suspension for 30
22 days or less is proposed is entitled to—

23 “(1) a written notice stating reasons for the
24 proposed action;

1 “(2) a reasonable time to answer orally and in
2 writing and to furnish affidavits and other documentary
3 evidence in support of the answer;

4 “(3) be accompanied by an attorney or other
5 representative; and

6 “(4) a written decision at the earliest practicable
7 date.

8 **“§ 7504. Regulations**

9 “The Office of Personnel Management may prescribe
10 regulations to carry out the purposes of this subchapter.

11 **“SUBCHAPTER II—REMOVAL, SUSPENSION FOR
12 MORE THAN 30 DAYS, REDUCTION IN GRADE
13 OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS**

14 **“§ 7511. Definitions; application**

15 “(a) For the purpose of this subchapter—

16 “(1) ‘employee’ means—

17 “(A) an individual in the competitive service
18 who has completed a probationary or trial period
19 under an initial appointment or as a supervisor or
20 manager or who has completed 1 year of current
21 continuous employment under other than a tempo-
22 rary appointment limited to 1 year or less; and

23 “(B) a preference eligible in an Executive
24 agency in the excepted service, and a preference

1 eligible in the United States Postal Service and
 2 the Postal Rate Commission, who has completed one
 3 year of current continuous service in the same or
 4 similar positions;

5 “(2) ‘suspension’ has the meaning as set forth in
 6 section 7501 of this title;

7 “(3) ‘grade’ means a level of classification under
 8 a position classification system;

9 “(4) ‘pay’ means the rate of basic pay fixed by
 10 law or administrative action for the position held by
 11 an employee; and

12 “(5) ‘furlough’ means the placing of an employee
 13 in a temporary status without duties and pay because
 14 of lack of work or funds or other nondisciplinary reasons.

15 “(b) This subchapter does not apply to an employee—

16 “(1) whose appointment is required to be con-
 17 firmed by, or made by and with the advice and con-
 18 sent of, the Senate;

19 “(2) whose position has been determined to be of
 20 a confidential, policy-determining, or policy-advocating
 21 character by—

22 “(A) the Office of Personnel Management for
 23 a position that it has excepted from the competitive
 24 service; or

1 “(B) the head of an agency for a position
 2 which is excepted from the competitive service by
 3 statute; or

4 “(3) whose position is in the Senior Executive
 5 Service.

6 “(c) The Office of Personnel Management may provide
 7 for the application of this subchapter to any position or
 8 group of positions excepted from the competitive service by
 9 regulation of the Office of Personnel Management.

10 “§ 7512. Actions covered

11 “This subchapter applies to—

12 “(1) a removal;

13 “(2) a suspension for more than 30 days;

14 “(3) a reduction in grade;

15 “(4) a reduction in pay of an amount exceeding
 16 one step of the employee’s grade or 3 percent of the
 17 employee’s basic pay; and

18 “(5) a furlough for 30 days or less;

19 but does not apply to—

20 “(A) a suspension or removal under section 7532
 21 of this title,

22 “(B) a reduction in force action under section
 23 3502 of this title,

24 “(C) the demotion of a supervisor who has not

1 completed the probationary period under section 3321
 2 (a) (2) of this title in an initial supervisory position
 3 if such demotion is to the grade held immediately be-
 4 fore becoming such a supervisor,

5 " (D) a demotion or removal under section 4303
 6 of this title, or

7 " (E) an action initiated under section 204 of Re-
 8 organization Plan Numbered 2 of 1978.

9 "§ 7513. Cause and procedure

10 " (a) Under regulations prescribed by the Office of Per-
 11 sonnel Management, an agency may take an action covered
 12 by this subchapter against an employee only for such cause
 13 as will promote the efficiency of the service.

14 " (b) An employee against whom an action is pro-
 15 posed is entitled to—

16 " (1) at least 30 days' advance written notice, ex-
 17 cept when there is reasonable cause to believe the em-
 18 ployee has committed a crime for which a sentence of
 19 imprisonment can be imposed, stating specific reasons
 20 for the proposed action;

21 " (2) a reasonable time to answer orally and in
 22 writing and to furnish affidavits and other documentary
 23 evidence in support of the answer;

1 " (3) be accompanied by an attorney or other repre-
 2 sentative; and

3 " (4) a written decision and reasons therefor at the
 4 earliest practicable date.

5 " (c) An agency may in its discretion provide by regu-
 6 lation for a hearing which may be in lieu of or in addition to
 7 the opportunity to answer provided under subsection (b) (2)
 8 of this section.

9 " (d) An employee against whom an action is taken
 10 under this section is entitled to appeal to the Merit Systems
 11 Protection Board under section 7701 of this title.

12 " (e) Copies of the notice of proposed action, the answer
 13 of the employee when written, a summary thereof when
 14 made orally, the notice of decision and reasons therefor, and
 15 any order effecting an adverse action shall be maintained by
 16 the agency and shall be furnished to the Merit Systems Pro-
 17 tection Board upon its request and to the individual affected
 18 upon such individual's request.

19 "§ 7514. Regulations

20 "The Office of Personnel Management may prescribe
 21 regulations to carry out the purposes of this subchapter."

22 (b) The table of sections for chapter 75 of title 5,
 23 United States Code, is amended by striking out all the items

1 preceding the item relating to subchapter III and inserting
2 in lieu thereof the following:

3 "Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 30 DAYS OR LESS

"Sec.

"7501. Definitions; application.

"7502. Actions covered.

"7503. Cause and procedure.

"7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE
THAN 30 DAYS, REDUCTION IN GRADE OR PAY, OR
FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application.

"7512. Actions covered.

"7513. Cause and procedure.

"7514. Regulations."

4 APPEALS

5 SEC. 205. Chapter 77 of title 5, United States Code, is
6 amended to read as follows:

7 "Chapter 77.—APPEALS

"Sec.

"7701. Appellate procedures.

"7702. Judicial review of decisions of the Merit Systems Protection
Board.

8 "§ 7701. Appellate procedures

9 " (a) An employee, or applicant for employment, may
10 submit an appeal to the Merit Systems Protection Board
11 from any action which is appealable to the Board under
12 any law, rule, or regulation. An appellant shall have the
13 right to be accompanied by an attorney or other representa-

1 tive. The appeal shall be processed in accordance with regu-
2 lations prescribed by the Board.

3 " (b) The Board may refer any case appealable to it to
4 an appeals officer, or a hearing examiner appointed under
5 section 3105 of this title, who shall make a decision—

6 " (1) on the record after receipt of the written
7 representations of the parties; or

8 " (2) where there are material issues of fact re-
9 quiring presentation of evidence, after conducting an
10 evidentiary hearing.

11 " (c) The decision of the agency shall be sustained by
12 the appeals officer or hearing examiner unless the employee
13 shows that—

14 " (1) the agency's procedures contained error that
15 substantially impaired the rights of the employee;

16 " (2) such decision was based on discrimination pro-
17 hibited by section 2302 (b) (1) of this title; or

18 " (3) such decision was arbitrary or capricious.

19 " (d) Any decision under subsection (b) of this section
20 shall be final unless a party to the appeal or the Office of
21 Personnel Management petitions the Board for a review
22 within 30 days after receipt of the decision, unless the Board,
23 for good cause shown, extends the 30-day period or reopens
24 and reconsiders a case on its own motion. One member of the
25 Board may grant a petition or otherwise direct that a deci-

1 sion be reviewed by the full Board. This procedure shall not
 2 apply if, by law, a decision of a hearing examiner is required
 3 to be acted upon by the Board.

4 “(e) (1) Subject to paragraph (2) of this subsection,
 5 in the case of any complaint of discrimination which under
 6 title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e
 7 et seq.) is required to be heard by the Board, an appeals
 8 officer assigned to hear discrimination complaints filed under
 9 section 717 (b) of the Civil Rights Act of 1964 (42 U.S.C.
 10 2000e-16 (b)) may make a decision on the record or con-
 11 duct an evidentiary hearing, as the circumstances may war-
 12 rant, pursuant to regulations prescribed by the Board.

13 “(2) An appeal may be heard under paragraph (1) of
 14 this subsection if the employee, or applicant for Federal
 15 employment, submits the discrimination complaint to the
 16 agency, which shall have 60 days to resolve the complaint.
 17 If the complaint is not resolved to the satisfaction of the
 18 complainant or if the agency fails to issue a final decision
 19 thereon within 60 days, the complainant may appeal to the
 20 Board. Such an appeal must be submitted within 30 days of
 21 notice to the complainant of the agency’s decision or follow-
 22 ing expiration of the 60-day period if the agency has failed
 23 to issue a decision on the complaint. Class complaints of
 24 discrimination may be processed by an appeals officer pur-
 25 suant to regulations prescribed by the Board.

1 “(f) Members of the Board and hearing examiners or
 2 appeals officers assigned by the Board may—

3 “(1) consolidate appeals filed by two or more
 4 appellants, or

5 “(2) join two or more appeals filed by the same
 6 appellant and hear and decide them concurrently,
 7 if the Board or the appeals officer, as the case may be,
 8 determines in its discretion that such action could result in
 9 the appeals’ being processed more expeditiously and such
 10 action would not prejudice the parties.

11 “(g) Notwithstanding any other provision of law, an
 12 employee who has been affected by an action appealable
 13 to the Board and who alleges that discrimination prohibited
 14 by section 2302 (b) (1) of this title was a basis for the
 15 action shall have both the issue of discrimination and the
 16 appealable action decided by the Board in the appeal deci-
 17 sion under the Board’s appellate procedures.

18 “(h) Members of the Board, hearing examiners, and
 19 appeals officers assigned by the Board may require payment
 20 by the agency which is the losing party to a proceeding
 21 before the Board, of reasonable attorney fees incurred by
 22 an employee, if the employee is the prevailing party and
 23 the deciding official or officials determine that payment by
 24 the agency is warranted on the grounds that the agency’s
 25 action was wholly without basis in fact or law.

1 “(i) The Board may, by regulation, provide for alterna-
 2 tive methods for settling matters subject to the appellate
 3 jurisdiction of the Board. A decision under such a method
 4 shall be final, unless the Board reopens and reconsiders a
 5 case at the request of the Office of Personnel Management
 6 under subsection (c) of this section.

7 “(j) The Merit Systems Protection Board may pre-
 8 scribe regulations to carry out the purposes of this section.

9 **“§ 7702. Judicial review of decisions of the Merit Systems
 10 Protection Board**

11 “(a) Any employee, or applicant for employment,
 12 adversely affected or aggrieved by a final order or decision
 13 of the Merit Systems Protection Board may obtain judicial
 14 review of such an order or decision.

15 “(b) A petition to review a final order or decision
 16 of the Board shall be filed in the Court of Claims or a
 17 United States Court of Appeals as provided in chapters 91
 18 and 158, respectively, of title 28, except for actions filed
 19 in the United States district courts under section 717 (c)
 20 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16 (c)),
 21 under section 15 of the Age Discrimination in Employment
 22 Act of 1967 (29 U.S.C. 633a (c)), or under section 8715
 23 or 8912 of this title. Notwithstanding any other provision
 24 of law, any petition for review must be filed within 30 days

1 after the date the petitioner received notice of the final
 2 order or decision of the Board.

3 “(c) In cases filed in the United States Court of Claims
 4 or a United States Court of Appeals, the court shall re-
 5 view the administrative record for the purpose of determin-
 6 ing whether the findings were arbitrary or capricious, and
 7 not in accordance with law, and whether the procedres re-
 8 quired by statute and regulations were followed. The admin-
 9 istrative findings of the Board are conclusive if supported by
 10 substantial evidence in the administrative record. If the
 11 court determines that further evidence is necessary, it shall
 12 remand the case to the Board. The Board, after such fur-
 13 ther proceedings as may be required, may modify its findings,
 14 and shall file with the court the record of such proceedings.
 15 The findings of the Board are conclusive if supported by
 16 substantial evidence in the administrative record as sup-
 17 plemented.

18 “(d) The Director of the Office of Personnel Manage-
 19 ment may obtain review of any final order or decision of
 20 the Board by filing a petition for judicial review in the
 21 United States Court of Appeals for the District of Columbia
 22 if the Director disagrees with a legal interpretation by the
 23 Board of a law, rule, or regulation involving personnel
 24 management and for which such Office has official respon-
 25 sibility. In addition to the named respondent, the Board

1 and all other parties to the proceedings before the Board
 2 shall have the right to appear in the proceeding before the
 3 Court of Appeals. The granting of the petition for judicial
 4 review shall be at the discretion of the Court of Appeals.”.

5 TECHNICAL AND CONFORMING AMENDMENTS

6 SEC. 206. Section 2342 of title 28, United States Code,
 7 is amended—

8 (1) by striking out “and” at the end of paragraph

9 (3),

10 (2) by striking out the period at the end of para-
 11 graph (4) and inserting in lieu thereof “; and”, and

12 (3) by adding at the end thereof the following new
 13 paragraph:

14 “(5) all final orders of the Merit Systems Protec-
 15 tion Board except as provided for in section 7702 (b)
 16 of title 5.”.

17 TITLE III—STAFFING

18 VOLUNTEER SERVICES

19 SEC. 301. (a) Chapter 31 of title 5, United States
 20 Code, is amended by adding at the end thereof the following
 21 new section:

22 “§3111. Acceptance of volunteer service

23 “(a) For the purpose of this section, ‘student’ means
 24 an individual who is enrolled, not less than half-time, in
 25 a high school, trade school, technical or vocational institute,

1 junior college, college, university, or comparable recognized
 2 educational institution. An individual who is a student is
 3 deemed not to have ceased to be a student during an
 4 interim between school years if the interim is not more
 5 than 5 months and if such individual shows to the satisfaction
 6 of the Office of Personnel Management that such individual
 7 has a bona fide intention of continuing to pursue a course
 8 of study or training in the same or different educational
 9 institution during the school semester (or other period into
 10 which the school year is divided) immediately after the
 11 interim.

12 “(b) Notwithstanding section 665 (b) of title 31, the
 13 head of an agency may accept, subject to regulations issued
 14 by the Office of Personnel Management, voluntary service
 15 for the United States if the service—

16 “(1) is performed by a student, with the permission
 17 of the institution at which the student is enrolled, as
 18 part of an agency program established for the purpose
 19 of providing educational experiences for such students;

20 “(2) is to be uncompensated; and

21 “(3) will not be used to displace any employee.

22 “(c) An individual who provides voluntary service
 23 under subsection (b) of this section shall not be considered
 24 a Federal employee for any purpose other than for pur-
 25 poses of chapter 81 of this title (relating to compensation

1 for injury) and sections 2671 through 2680 of title 28
2 (relating to tort claims)."

3 (b) The analysis of chapter 31 of title 5, United States
4 Code, is amended by adding at the end thereof the following
5 new item:

"§111. Acceptance of volunteer service."

6 DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

7 SEC. 302. Section 2108 of title 5, United States Code,
8 is amended—

9 (1) by striking out "and" at the end of para-
10 graph (2),

11 (2) by inserting in paragraph (3) after "means"
12 the following: ", except as provided in paragraph (4)
13 of this subsection",

14 (3) by striking out the period at the end of para-
15 graph (3) and inserting in lieu thereof a semicolon;
16 and

17 (4) by adding at the end thereof the following
18 new paragraphs:

19 "(4) except for purposes of chapter 75 of this
20 title, 'preference eligible' does not include a retired
21 member of the armed forces unless—

22 "(A) the individual is a disabled veteran; or

23 "(B) the individual retired below the rank of
24 major or its equivalent; and

1 "(5) 'retired member of the armed forces' means
2 a member or former member of the armed forces who
3 is entitled, under statute, to retired, retirement, or re-
4 tainer pay on account of service as such a member."

5 NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED
6 VETERANS

7 SEC. 303. Chapter 31 of title 5, United States Code, is
8 amended by adding at the end thereof the following new
9 section:

10 "§ 3112. Preference eligibles; disabled; noncompetitive ap-
11 pointment

12 "Under such regulations as the Office of Personnel Man-
13 agement may prescribe, an agency may make a noncom-
14 petitive appointment leading to conversion to career or
15 career-conditional employment of a disabled veteran who
16 has a compensable service-connected disability of 50 per-
17 cent or more, or is enrolled in or has successfully completed
18 a course of job related training prescribed by the Adminis-
19 trator of Veterans' Affairs under chapter 31 of title 38."

20 (b) The analysis of chapter 31 of title 5, United States
21 Code, is amended by adding at the end thereof the following
22 new item:

"§112. Preference eligible; disabled; noncompetitive appointment."

1 EXAMINATION, CERTIFICATION, AND APPOINTMENT OF
2 PREFERENCE ELIGIBLES

3 SEC. 304. (a) Chapter 93 of title 5, United States Code,
4 is amended by adding after section 3303 the following new
5 section:

6 "§ 3303a. Preference eligibles; appointment; time limit

7 " (a) For the purpose of this subchapter—

8 " (1) the status of an individual, who is not a re-
9 tired member of the armed forces, as a preference eligi-
10 ble under section 2108 (3) (A) or (B) of this title for
11 purposes of preference in consideration for appointment
12 shall terminate at the end of the 10-year period begin-
13 ning on the date of such individual's separation from
14 active duty in the armed forces; and

15 " (2) the status of an individual as a preference
16 eligible under section 2108 (3) (A) or (B) of this
17 title, who is a retired member of the armed forces and
18 who retired below the rank of major or its equivalent,
19 shall terminate at the end of the 3-year period begin-
20 ning on the date of such individual's separation from
21 active duty in the armed forces."

22 (b) Section 3305 of title 5, United States Code, is
23 amended to read as follows:

1 "§ 3305. Competitive service; preference eligibles; appli-
2 cations

3 "On the applications of a preference eligible a competi-
4 tive examination shall be held for any position for which
5 there is an appropriate list of eligibles."

6 (o) Section 3309 of title 5, United States Code, is
7 amended to read as follows:

8 "§ 3309. Preference eligibles; examinations; additional
9 credit for

10 " (a) Preference eligibles shall be referred for appoint-
11 ment according to the regulations issued under section 3318
12 (d) of this title. A preference eligible who qualifies in an
13 examination for entrance into the competitive service is
14 entitled to additional points above the individual's earned
15 rating, as follows:

16 " (1) a preference eligible under section 2108 (3)
17 (A) or (B) of this title—5 points; and

18 " (2) a preference eligible under section 2108 (3)
19 (C)–(G) of this title—10 points.

20 " (b) A preference eligible under section 2108 (3) (C)
21 of this title who has a compensable service-connected dis-
22 ability of 10 percent or more, shall be placed at the head of
23 the list of eligibles, except that in the case of scientific and
24 professional positions in GS-9 or higher, the eligible shall be

1 placed on the list of eligibles in the order of the eligible's
2 rating, including points added under paragraph (2) of sub-
3 section (b).

4 " (c) If other rating systems are used, preference eligi-
5 bles are entitled to comparable preference."

6 (d) Section 3314 of title 5, United States Code, is
7 amended by striking out "Civil Service Commission" and
8 inserting in lieu thereof "Office of Personnel Management"
9 and by striking out ", in the order named by section 3313
10 of this title".

11 (e) Section 3315 of title 5, United States Code, is
12 amended—

13 (1) in the first sentence of subsection (a), by strik-
14 ing out ", in the order named by section 3313 of this
15 title";

16 (2) in the second sentence of subsection (a), by
17 striking out "Civil Service Commission" and inserting
18 in lieu thereof "Office of Personnel Management"; and

19 (3) in the first sentence of subsection (b), by strik-
20 ing out "Commission" and inserting in lieu thereof
21 "Office of Personnel Management".

22 (f) Section 3317 (a) of title 5, United States Code, is
23 amended to read as follows:

24 " (a) The Office of Personnel Management shall pre-

1 scribe regulations for the referral of eligibles to a nominat-
2 ing or appointing authority for consideration for appoint-
3 ment to each vacancy in the competitive service."

4 (g) Section 3318 (a) of title 5, United States Code, is
5 amended to read as follows:

6 " (a) The nominating or appointing authority shall
7 select for appointment to each vacancy from the highest 7
8 eligibles available for appointment, unless the Office of Per-
9 sonnel Management determines that another referral and
10 selection procedure is appropriate."

11 (h) Section 3318 of title 5, United States Code, is
12 amended by adding at the end thereof the following new
13 subsection:

14 " (d) The Office of Personnel Management may pro-
15 scribe regulations for the referral and selection of qualified
16 eligibles."

17 (i) Section 3321 of title 5, United States Code, is
18 amended to read as follows:

19 "§ 3321. Competitive service; probation; period of

20 " (a) The President may take such action, including
21 the issuance of rules, regulations, and directives, as shall
22 provide as nearly as conditions of good administration war-
23 rant, for a period of probation—

24 " (1) before an appointment in the competitive
25 service becomes final; and

1 “(2) before initial appointment to a supervisory
2 or managerial position becomes final.

3 “(b) An individual—

4 “(1) who has been transferred, assigned, or pro-
5 moted from a position to a supervisory or managerial
6 position, and

7 “(2) who does not satisfactorily complete the pro-
8 bationary period under subsection (a) (2) of this
9 section,

10 shall be returned to a position of no lower grade and pay
11 than the position formerly occupied by the individual.
12 Nothing in this section prohibits an agency from instituting
13 an adverse action against an individual serving a probat-
14 ary period under subsection (a) (2) for cause unrelated to
15 supervisory or managerial performance.”.

16 (j) Section 3326 of title 5, United States Code, is
17 amended—

18 (1) in subsection (b) (1), by striking out “, and, if
19 the position is in the competitive service, after approval
20 by the Civil Service Commission”; and

21 (2) in subsection (c), by striking out “, or the
22 authorization and approval, as the case may be.”

23 (k) The following sections of chapter 33 of title 5,
24 United States Code are repealed:

1 (1) section 3318 (related to registers of eligibles);
2 and

3 (2) section 3319 (related to members of family re-
4 striction).

5 (1) The analysis for chapter 33 of title 5, United States
6 Code, is amended—

7 (1) by inserting after the item relating to section
8 3303 the following new item:

“3306a. Preference eligibles, appointment; time limit.”;

9 (2) by amending the item relating to section 3305
10 to read as follows:

“3305. Competitive service; preference eligibles; applications.”;

11 (3) by amending the item relating to section 3309
12 to read as follows:

“3309. Preference eligibles; examinations; additional credit for.”; and

13 (4) by striking out the items relating to sections
14 3313 and 3319.

15 **RETENTION PREFERENCE**

16 SEC. 305. (a) Section 3501 (a) of title 5, United States
17 Code, is amended—

18 (1) by striking out “and” at the end of paragraph
19 (2).

20 (2) by striking out the period at the end of para-
21 graph (3) and inserting in lieu thereof “; and”, and

22 (3) by adding at the end thereof the following new
23 paragraph:

1 " (4) 'employee with limited preference' means any
 2 preference eligible who is a veteran (other than a vet-
 3 eran under section 2108 (3) (C)-(G) of this title or
 4 subsection (a) (3) (A) of this section).".

5 (b) Section 3502 (b) of title 5, United States Code, is
 6 amended to read as follows:

7 " (b) (1) An employee with limited preference is en-
 8 titled to military preference in retention under this section
 9 only during the 3-year period following the date of such
 10 employee's initial appointment in or under an Executive
 11 agency, or if later, during the 3-year period following the
 12 date of such employee's initial return following a leave of
 13 absence during which such employee was performing active
 14 service in the armed forces.

15 " (2) Any employee with limited preference who is no
 16 longer entitled by reason of paragraph (1) of this subsec-
 17 tion to military preference is entitled to credit for 5 addi-
 18 tional years in computing such employee's length of service
 19 for purposes of subsection (a) of this section."

20 (c) Section 3502 (a) (2) of title 5, United States Code,
 21 is amended by striking out "3501 (a) (3)" and inserting
 22 in lieu thereof "3501 (a) (4)"

23 (d) Section 3502 of title 5, United States Code, is
 24 further amended by adding at the end thereof the following
 25 new subsection:

1 " (c) An employee who is entitled to retention pref-
 2 erence and whose performance meets a standard of adequacy
 3 under a performance appraisal system implemented under
 4 chapter 43 of this title is entitled to be retained in preference
 5 to other competing employees."

6 (e) Section 3503 of title 5, United States Code, is
 7 amended—

8 (1) in subsection (a), by striking out "each pref-
 9 erence eligible employed" and inserting in lieu thereof
 10 "each competing employee"; and

11 (2) in subsection (b) by striking out "each pref-
 12 erence eligible employed" and inserting in lieu thereof
 13 "each competing employee."

14 TRAINING

15 SEC. 306. Section 4103 of title 5, United States Code,
 16 is amended by inserting " (a) " before "In order to increase"
 17 and by adding at the end thereof the following new
 18 subsection:

19 " (b) (1) Notwithstanding any other provision of this
 20 chapter, an agency may train any of its employees to pre-
 21 pare such employee for placement in another agency if the
 22 head of the agency determines that such employee will
 23 otherwise be separated under conditions which would en-
 24 title such employee to severance pay under section 5595
 25 of this title.

1 “(2) Before undertaking any training under this sub-
2 section, the head of the agency shall obtain verification from
3 the Office of Personnel Management that there exists a rea-
4 sonable expectation of placement in another agency.

5 “(3) In selecting an employee for training under this
6 subsection, the head of the agency shall consider—

7 “(A) the extent to which the current skills, knowl-
8 edge, and abilities of the employee may be utilized in
9 the new position;

10 “(B) the employee’s capability to learn new skills
11 and acquire new knowledge and abilities needed in the
12 new position; and

13 “(C) the benefits to the Government which would
14 result from retaining competent employees in the Fed-
15 eral service.”

16 TRAVEL, TRANSPORTATION, AND SUBSISTENCE

17 SEC. 307. Section 5723 (d) of title 5, United States
18 Code, is amended by striking out “not”.

19 RETIREMENT

20 SEC. 308. Section 8336 (d) (2) of title 5, United States
21 Code, is amended to read as follows:

22 “(2) voluntarily, during a period when the agency
23 in which the employee is serving is undergoing a major
24 reorganization, a major reduction-in-force, or a major
25 transfer of function, as determined by the Office of Per-

1 sonnel Management, and such employee is serving in a
2 geographic area designated by the Office;”.

3 EXTENSION OF VETERANS READJUSTMENT APPOINTMENT
4 AUTHORITY

5 SEC. 309. Section 2014 (b) of title 38, United States
6 Code, is amended to read as follows:

7 “(b) To further this policy, veterans of the Vietnam
8 era shall be eligible, in accordance with regulations which
9 the Office of Personnel Management shall prescribe for vet-
10 erans readjustment appointments and subsequent career-
11 conditional appointments, under the terms and conditions of
12 Executive Order Numbered 11521 (March 26, 1970), ex-
13 cept that these appointments may be made up to and includ-
14 ing GS-7 level or the equivalent and, for disabled veterans,
15 the fourteen years of education limit shall not apply. Not-
16 withstanding any limitations with respect to the period of
17 eligibility as prescribed in Executive Order Numbered 11521,
18 a veteran of the Vietnam era who was eligible for appoint-
19 ment under that Executive order on April 9, 1970, or a vet-
20 eran of the Vietnam era who was separated on or after that
21 date, may be appointed at any time. No veterans readjust-
22 ment appointment may be made under authority of this
23 subsection after September 30, 1980.”

EFFECTIVE DATE

1
2 SEC. 310. The amendments relating to the following
3 sections of title 5, United States Code shall take effect on
4 October 1, 1980:

- 5 (1) section 2108 (4) and (5),
6 (2) section 3303a,
7 (3) section 3305, and
8 (4) section 3309.

TITLE IV—SENIOR EXECUTIVE SERVICE

COVERAGE

10
11 SEC. 401. (a) Chapter 21 of title 5, United States Code,
12 is amended by inserting after section 2101 the following
13 new section:

14 "§ 2101a. The Senior Executive Service

15 "The 'Senior Executive Service' consists of positions
16 properly classified above General Schedule 15 and below
17 Executive Level III, or their equivalents, which meet the
18 definition in section 3132 (a) (2) of this title, which, except
19 for those in the Foreign Service, are not filled by Presidential
20 appointment requiring Senate confirmation, and which are
21 not excluded as provided for in section 3132 (a) (1) and
22 (c) of this title."

23 (b) Section 2103 (a) of title 5, United States Code, is
24 amended by striking out the period at the end thereof and

1 inserting in lieu thereof the following: "or the Senior
2 Executive Service."

3 (c) Section 2108 (3) of title 5, United States Code, is
4 amended—

5 (1) in subparagraph (G) (iii), by striking out
6 the period and inserting in lieu thereof a semicolon; and

7 (2) by inserting at the end thereof the following:
8 "but does not include applicants for, or members of, the
9 Senior Executive Service."

10 (d) The analysis for such chapter 21 is amended by
11 inserting after the item relating to section 2101 the follow-
12 ing new item:

"2101a. The Senior Executive Service."

13 AUTHORITY FOR EMPLOYMENT

14 SEC. 402. (a) The chapter analysis of chapter 31 of
15 title 5, United States Code, is amended—

16 (1) by striking out the heading for chapter 31 and
17 inserting in lieu thereof the following:

18 "Chapter 31—AUTHORITY FOR EMPLOYMENT
"SUBCHAPTER I—EMPLOYMENT AUTHORITIES";

19 (2) by inserting at the end thereof the following:
"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"Sec.

"3131. The Senior Executive Service.

"3132. Definitions and exclusions.

"3133. Authorization for number of Senior Executive Service positions.

"3134. Limitations on noncareer Senior Executive Service appointments.

"3135. Biennial report.

"3136. Regulations.";

20 and

1 (3) by inserting after section 3112, as added by
2 this Act, the following new subchapter:

3 "SUBCHAPTER II—THE SENIOR EXECUTIVE
4 SERVICE

5 "§3131. The Senior Executive Service

6 "(a) It is the purpose of this subchapter to establish
7 and provide for a Senior Executive Service in order to
8 insure that the executive management of the Government
9 of the United States is of the highest quality and is respon-
10 sive to the needs, policies, and goals of the Nation. The Sen-
11 ior Executive Service shall be administered in such manner
12 as to accomplish the following objectives:

13 "(1) provide for a compensation system, including
14 salary, benefits, incentives, and other conditions of em-
15 ployment, designed to attract, reinforce, and retain ex-
16 cellent Government managers;

17 "(2) establish a positive correlation between man-
18 agerial success and compensation and retention, with
19 managerial success to be measured on the basis of in-
20 dividual performance and organizational accomplishment
21 (including such factors as improvements in efficiency,
22 productivity, and quality of work or service, cost sav-
23 ings, and timeliness of performance);

24 "(3) make tenure as an executive contingent on
25 successful performance;

1 "(4) recognize exceptional accomplishment;

2 "(5) enable the head of an agency to reassign
3 and transfer Senior Executive Service employees to
4 best accomplish its mission;

5 "(6) provide for severance pay, retirement bene-
6 fits, and placement assistance for those who are removed
7 from the Senior Executive Service for nondisciplinary
8 reasons;

9 "(7) protect Senior Executive Service employees
10 from arbitrary or capricious actions;

11 "(8) provide for both program continuity and
12 policy advocacy in the management of public programs;

13 "(9) maintain a merit personnel system free of
14 improper political interference;

15 "(10) insure accountability for honest, economical,
16 and efficient Government;

17 "(11) see that there is faithful adherence to the
18 law, rules, and regulations relating to equal employment
19 opportunity, political activity, and conflicts of interests;
20 and

21 "(12) provide for the systematic development of
22 talented and effective executives and for the continuing
23 development of incumbents.

24 "§ 3132. Definitions and exclusions

25 "(a) for the purpose of this subchapter—

1 “(1) ‘agency’ means an agency referred to in
2 section 2301 (a) (without regard to paragraphs (1)
3 (B), (1) (C), and (2) (D)) of this title and does not
4 include any agency or unit thereof excluded from cov-
5 erage by the President under subsection (c) of this
6 section;

7 “(2) ‘Senior Executive Service position’ means a
8 position above the GS-15 ‘or equivalent level in which
9 the incumbent—

10 “(A) directs the work of an organizational
11 unit;

12 “(B) is held accountable for the success of
13 specific line or staff programs or projects;

14 “(C) monitors the progress of the organization
15 toward goals and periodically evaluates and makes
16 appropriate adjustments to such goals; or

17 “(D) supervises the work of employees other
18 than personal assistants;

19 “(3) ‘executive’ means a member of the Senior
20 Executive Service;

21 “(4) ‘career reserved position’ means a position
22 which can only be filled by a career appointee, or under
23 a limited emergency or term appointment, and to which
24 it is justifiable to restrict appointment to career employ-

1 ees in order to insure impartiality, or the public’s confi-
2 dence in the impartiality, of the Government;

3 “(5) ‘general position’ means any position, other
4 than those identified as career reserved positions, which
5 may be filled by either a career or noncareer appointee
6 or under a limited emergency or term appointment;

7 “(6) ‘career appointee’ means an individual ap-
8 pointed to a Senior Executive Service position based on
9 selection through a merit staffing process consistent with
10 Office of Personnel Management regulations and, in the
11 case of initial appointment, approval of managerial quali-
12 fications by the Office of Personnel Management;

13 “(7) ‘noncareer appointee’ means an individual ap-
14 pointed to a Senior Executive Service position without
15 approval of managerial qualifications by the Office of
16 Personnel Management;

17 “(8) ‘limited emergency appointment’ means a
18 nonrenewable appointment not to exceed 18 months to
19 a position established to meet a bona fide, unanticipated,
20 urgent need; and

21 “(9) ‘limited term appointment’ means a non-
22 renewable appointment for a term of three years or
23 less to a position the duties of which will expire during
24 that time period.

25 “(b) For purposes of paragraph (4) of subsection

1 (a) of this section, the Office of Personnel Management
 2 shall prescribe the position criteria and regulations governing
 3 the designation of career reserved positions. The designation
 4 of a career reserved position shall be made by the agency;
 5 nondesignation is subject to post audit by the Office of Per-
 6 sonnel Management.

7 “(c) An agency may file with the Office of Personnel
 8 Management an application, setting forth reasons why it,
 9 or a unit thereof, should be excluded from placing positions
 10 in the Senior Executive Service. The Office of Personnel
 11 Management shall review the application and reasons and
 12 undertake such other investigation as it considers appropriate
 13 to determine whether the agency or unit should be excluded
 14 from coverage of this subchapter. Upon completion of its
 15 review, the Office of Personnel Management shall recom-
 16 mend to the President whether the agency or unit should
 17 be so excluded, upon written determination by the President.

18 “(d) Any agency or unit which is excluded from
 19 coverage under subsection (c) of this section shall make a
 20 sustained effort to bring its personnel system into conformity
 21 with the Senior Executive Service insofar as is practicable.

22 “(e) The Office of Personnel Management may at any
 23 time recommend to the President that the exclusion from
 24 coverage previously granted to an agency or unit under
 25 subsection (c) of this section be revoked. The revocation of

1 the exclusion shall be effected upon written determination of
 2 the President.

3 “(f) If any exclusion from this subchapter of any agency
 4 or agency unit is made under subsection (c) of this section,
 5 the Office of Personnel Management forthwith shall transmit
 6 to Congress, for reference to the appropriate committee of
 7 the Senate and the appropriate committee of the House of
 8 Representatives, information concerning the exclusion.

9 “(g) The Office of Personnel Management shall also
 10 forthwith transmit to Congress, for reference to the ap-
 11 propriate committee of the Senate and the appropriate com-
 12 mittee of the House of Representatives, information as to any
 13 revocation of exclusion made under subsection (d) of this
 14 section.

15 **“§ 3133. Authorization for number of Senior Executive**
 16 **Service positions**

17 “(a) Each agency shall in each odd-numbered calendar
 18 year—

19 “(1) examine its total needs for Senior Executive
 20 Service positions for the two fiscal years beginning after
 21 such calendar year; and

22 “(2) submit to the Office of Personnel Manage-
 23 ment, in accordance with regulations prescribed by the
 24 Office, a written request for authority to establish the

1 specific number of positions as Senior Executive Service
 2 positions for such fiscal years.

3 “(b) Each agency request submitted under subsection
 4 (a) of this section shall be based on the following factors:

5 “(1) the anticipated program activity and budget
 6 requests of the agency for the two fiscal years involved;

7 “(2) the anticipated level of work to be performed
 8 by the agency in such fiscal years; and

9 “(3) such other factors as may be prescribed from
 10 time to time by the Office of Personnel Management.

11 “(c) The Office of Personnel Management, upon con-
 12 sultation with the Office of Management and Budget, shall
 13 review the request of each agency and, subject to section
 14 3135 of this title, shall authorize for each fiscal year—

15 “(1) the establishment of a specific number of
 16 Senior Executive Service positions in each agency; and

17 “(2) the number of positions in the entire Senior
 18 Executive Service together with an unallocated pool of
 19 not more than 5 percent of the number of allocated
 20 positions.

21 “(d) Authorizations made under subsection (c) of this
 22 section shall remain in effect until changed in accordance
 23 with subsection (e), (g), or (h) of this section.

24 “(e) Each agency may submit to the Office of Per-

1 sonnel Management, in accordance with regulations pre-
 2 scribed by the Office, a written request for adjustments to its
 3 authorized number of Senior Executive Service positions.

4 The Office may, on its own initiative, make reductions in the
 5 number of positions assigned to particular agencies.

6 “(f) Each agency adjustment request submitted under
 7 subsection (e) of this section shall be submitted in such
 8 form as the Office of Personnel Management shall prescribe
 9 and be based on the then current budget and program ac-
 10 tivity in the agency.

11 “(g) Subject to subsections (e) and (f) of this sec-
 12 tion, the Office of Personnel Management may adjust the
 13 allocations made under subsection (c) of this section. The
 14 total of all adjustments made during a fiscal year under this
 15 subsection may not enlarge the Senior Executive Service
 16 beyond the number identified in subsection (c) of this
 17 section.

18 “(h) The numbers of positions recommended in the
 19 report from the Office of Personnel Management to the Con-
 20 gress, provided for in section 3135 of this title, relating to
 21 the projected number of positions in the total Senior Execu-
 22 tive Service and in each agency, shall be the authorized
 23 number effective beginning on October 1 following submis-
 24 sion of the report.

1 "§ 3134. Limitations on noncareer Senior Executive Service
2 appointments

3 " (a) On or before December 31 of each year, each
4 agency shall—

5 " (1) examine its needs for employment of non-
6 career Senior Executive Service appointees for the fiscal
7 year beginning in the following year; and

8 " (2) submit to the Office of Personnel Manage-
9 ment, in accordance with regulations prescribed by the
10 Office, a written request for authority to make a specific
11 number of noncareer Senior Executive Service appoint-
12 ments for each fiscal year.

13 " (b) The number of noncareer appointments for each
14 agency will be determined annually by the Office of Personnel
15 Management according to demonstrated need of the agency
16 for such positions, provided that the number of noncareer
17 appointees to the Senior Executive Service, governmentwide,
18 does not exceed 10 percent of the total number of Senior
19 Executive Service positions, governmentwide, based on the
20 authorizations made according to section 3133 of this title.

21 " (c) The number of noncareer positions authorized for
22 any agency under subsections (a) and (b) of this section
23 may be adjusted by the Office of Personnel Management for
24 emergency needs that were not anticipated when the original

1 authorizations were made, except that the number of non-
2 career executives, governmentwide, shall not exceed 10 per-
3 cent of the total number of Senior Executive Service positions.

4 "§ 3135. Biennial report

5 " (a) The Office of Personnel Management shall submit
6 to each House of the Congress, at the time the budget is
7 submitted by the President to the first session of each Con-
8 gress, a report on the Senior Executive Service. The report
9 shall include—

10 " (1) the current authorized number of positions
11 then prescribed in the Senior Executive Service, the
12 number of such positions allocated to each agency, and
13 the projected number of positions to be authorized for
14 the next two fiscal years;

15 " (2) each exclusion in the then current fiscal year
16 from this subchapter of any employee or group of em-
17 ployees under authority of section 3132 (c) of this title;
18 and

19 " (3) such other information on the overall program
20 for the management of the Senior Executive Service as
21 the Office of Personnel Management considers appro-
22 priate, including the percentage of agency executives at

1 each pay rate and statistical data on the distribution and
2 amount of performance awards in the agency.

3 “(b) The Office of Personnel Management shall submit
4 to each House of the Congress, at the time the budget is sub-
5 mitted to the second session of each Congress, an interim
6 report showing adjustments to the biennial report as au-
7 thorized in section 3133 (e), (f), and (g) of this title.

8 “§3136. Regulations

9 “The Office of Personnel Management shall prescribe
10 regulations necessary to carry out the purpose of this sub-
11 chapter.”

12 (b) Section 3104 (a) of title 5, United States Code, is
13 amended by inserting “nonmanagerial” after “establish”.

14 (c) Section 3109 of title 5, United States Code, is
15 amended by inserting at the end thereof the following new
16 subsection:

17 “(c) Positions in the Senior Executive Service may
18 not be filled under the authority of subsection (b) of this
19 section.”

20 EXAMINATION, CERTIFICATION, AND APPOINTMENT

21 SEC. 403. Chapter 33 of title 5, United States Code, is
22 amended—

1 (1) by inserting the following in the chapter
2 analysis after the item relating to section 3385:

“SUBCHAPTER VIII—APPOINTMENT, PLACEMENT, TRANS-
FER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE
SERVICE

“Sec.

“3391. General appointment provisions.

“3392. Career appointments to the Senior Executive Service.

“3393. Noncareer appointments to the Senior Executive Service.

“3394. Limited appointments to the Senior Executive Service.

“3395. Placement and transfer within the Senior Executive Service.

“3396. Development for and within the Senior Executive Service.

“3397. Regulations.”;

3 and

4 (2) by adding at the end thereof the following new
5 subchapter:

6 “SUBCHAPTER VIII—APPOINTMENT, PLACE-
7 MENT, TRANSFER, AND DEVELOPMENT IN
8 THE SENIOR EXECUTIVE SERVICE

9 “§3391. General appointment provisions

10 “(a) Qualification standards for all Senior Executive
11 Service positions shall meet the requirements established
12 by the Office of Personnel Management.

13 “(b) Appointees shall meet the qualifications of the
14 positions to which they are appointed.

15 “(c) The appointing authority is responsible for de-
16 termining that a selectee meets the qualification require-
17 ments for a particular position.

18 “(d) Discrimination on account of race, color, religion,
19 national origin, sex, marital status, age, and handicapping
20 condition is prohibited.

1 “(e) Career appointees in the Senior Executive Serv-
 2 ice who accept Presidential appointments requiring Senate
 3 confirmation shall continue to be covered by the basic pay,
 4 performance awards, incentive awards, severance pay, re-
 5 tirement, and leave provisions of this title.

6 **§ 3392. Career appointments to the Senior Executive Serv-**
 7 **ice**

8 “(a) Career recruitment may—

9 “(1) include all current Federal employees; or

10 “(2) be open to Federal employees and persons
 11 outside of Government.

12 “(b) The recruitment process shall attempt to reach all
 13 groups of qualified applicants, including women and minor-
 14 ities as designated by the Office of Personnel Management,
 15 and applicants with handicapping conditions.

16 “(c) Competitive staffing shall be conducted by an
 17 agency executive resources board and the staffing process
 18 shall meet requirements established by the Office of Per-
 19 sonnel Management.

20 “(d) The Office of Personnel Management may ap-
 21 point members of Qualifications Review Boards from within
 22 and outside the Federal service to certify the managerial
 23 qualifications of candidates for entry into the Senior Execu-
 24 tive Service, according to regulations promulgated by the
 25 Office of Personnel Management. The Office of Personnel

1 Management, working with the various Review Boards,
 2 shall set the criteria for establishing managerial qualifica-
 3 tions for appointment to the Senior Executive Service. Such
 4 criteria shall include—

5 “(1) demonstrated performance in managerial
 6 work;

7 “(2) successful participation in a centrally spon-
 8 sored or agency career executive development program
 9 approved by the Office of Personnel Management; and

10 “(3) unique or special individual qualities predic-
 11 tive of success in managerial work to apply in those
 12 cases in which an outstanding candidate would other-
 13 wise be excluded from appointment.

14 “(e) Employees with career status from other Gov-
 15 ernment personnel systems shall have their managerial
 16 qualifications approved by the Office of Personnel Manage-
 17 ment for career appointment.

18 “(f) Discrimination on account of political affiliation is
 19 prohibited.

20 “(g) Employees entering the Senior Executive Service
 21 under career appointments shall serve a 1-year probationary
 22 period.

23 **§ 3393. Noncareer appointments to the Senior Executive**
 24 **Service**

25 “(a) Noncareer recruitment and appointment may be

1 made by the appointing authority without managerial
2 qualifications approval by the Office of Personnel Manage-
3 ment.

4 " (b) The employee given a noncareer appointment
5 may be removed by the appointing authority.

6 " (c) Employees given noncareer appointments do not
7 acquire credit toward career status.

8 " (d) Noncareer appointments cannot be made to career
9 reserved positions as defined in section 3132 (b) (4) of
10 this title.

11 "§ 3394. Limited appointments to the Senior Executive
12 Service

13 " (a) Limited emergency appointments to the Senior
14 Executive Service—

15 " (1) may only be made when filling new positions
16 established under a bona fide emergency as defined in
17 the regulations of the Office of Personnel Management;

18 " (2) may not exceed 18 months and are not re-
19 newable; and

20 " (3) may be filled by the agency without regard
21 to the competitive merit staffing process.

22 " (b) Limited term appointments—

23 " (1) may only be made for positions the duties
24 of which will expire in three years or less;

25 " (2) are not renewable; and

1 " (3) may be filled by the agency without regard
2 to the competitive merit staffing process.

3 " (c) A Senior Executive Service employee does not
4 acquire credit toward career status under limited appointment.

5 " (d) The Office of Personnel Management shall approve
6 use of limited appointment authority before an appointment
7 under this authority may be made.

8 "§ 3395. Placement and transfer within the Senior Execu-
9 tive Service

10 " (a) An executive with a career appointment—

11 " (1) may be reassigned to a Senior Executive
12 Service position in the same agency;

13 " (2) may transfer to a Senior Executive Service
14 position in another agency; and

15 " (3) may request assignment outside the Senior
16 Executive Service.

17 " (b) An executive with a limited appointment—

18 " (1) may be reassigned to another Senior Execu-
19 tive Service position which meets the criteria under
20 which the executive was appointed, except that con-
21 tinuous service in any one agency under a limited emer-
22 gency appointment may not exceed 18 months and
23 under a limited term appointment may not exceed three
24 years;

1 “(2) may not be given a career appointment in the
2 Senior Executive Service except under the competitive
3 merit staffing process; and

4 “(3) may not be given another limited appointment
5 in the same agency after completing the maximum
6 period of service authorized for the employee’s original
7 appointment, within one calendar year of the expiration
8 of the limited appointment.

9 “(c) An executive with a noncareer appointment—

10 “(1) may be reassigned to any general Senior
11 Executive Service position in the same agency;

12 “(2) may transfer to a general Senior Executive
13 Service position in another agency;

14 “(3) may be appointed to a noncareer position out-
15 side the Senior Executive Service; and

16 “(4) may not be given a career appointment ex-
17 cept under the merit staffing process.

18 “(d) A career executive may not be involuntarily re-
19 assigned or transferred within 120 days after the appoint-
20 ment of an agency head.

21 “§ 3396. Development for and within the Senior Executive
22 Service

23 “(a) The Office of Personnel Management shall estab-
24 lish programs for the systematic development of candidates

1 for the Senior Executive Service or require the establish-
2 ment of such programs by agencies which meet criteria pre-
3 scribed by the Office of Personnel Management.

4 “(b) The Office of Personnel Management shall estab-
5 lish programs for the continuing development of executives
6 or require the establishment of such programs by agencies
7 which meet criteria prescribed by the Office of Personnel
8 Management.

9 “(c) The Office of Personnel Management shall assist
10 agencies in the establishment of programs required under
11 subsections (a) and (b) of this section and shall monitor
12 the implementation of such programs. The Office of Person-
13 nel Management shall direct agencies to take corrective action
14 where required.

15 “(d) It shall be the duty of the Office of Personnel Man-
16 agement to encourage and assist individuals to improve
17 their skills and increase their contribution by service in a
18 variety of agencies as well as by accepting placements in
19 State or local governments or in the private sector.

20 “(e) An agency head may grant administrative leave to
21 a career executive for a sabbatical period not exceeding
22 eleven months to permit such person to engage in study or
23 uncompensated work experience which will contribute to the
24 individual’s development and effectiveness. The agency head
25 may authorize travel and per diem costs where essential to

1 the developmental period. A sabbatical leave may not be
 2 granted more than once in a ten-year period. To be eligible
 3 for a sabbatical leave the individual must have completed at
 4 least seven years of Federal service in a position with a level
 5 of duties and responsibilities equivalent to the Senior Execu-
 6 tive Service and including at least two years as a member
 7 of the Senior Executive Service.

8 "§ 3397. Regulations

9 "The Office of Personnel Management shall prescribe
 10 regulations necessary to carry out the purpose of this sub-
 11 chapter."

12 RETENTION PREFERENCE

13 SEC. 404. Chapter 35 of title 5, United States Code, is
 14 amended—

15 (1) by adding at the end of the chapter analysis
 16 the following new items:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND
 GUARANTEED PLACEMENT PROVISIONS IN THE SEN-
 IOR EXECUTIVE SERVICE

"Sec.
 "3591. Removal from the Senior Executive Service.
 "3592. Reinstatement in the Senior Executive Service.
 "3593. Guaranteed placement in other personnel systems.
 "3594. Regulations."

17 (2) by adding at the end of subsection (b) of sec-
 18 tion 3501 the following new sentence: "This subchapter
 19 does not apply to employees in the Senior Executive
 20 Service."; and

1 (3) by adding at the end thereof the following new
 2 subchapter:

3 "SUBCHAPTER V—REMOVAL, REINSTATEMENT,
 4 AND GUARANTEED PLACEMENT PROVISIONS
 5 IN THE SENIOR EXECUTIVE SERVICE

6 "§ 3591. Removal from the Senior Executive Service

7 "(a) Career appointees may be removed from the
 8 Senior Executive Service—

9 "(1) during the one-year period of probation in the
 10 Senior Executive Service;

11 "(2) for less than fully successful managerial per-
 12 formance appraisals determined under the provisions of
 13 subchapter II of chapter 43 of this title; or

14 "(3) for misconduct, neglect of duty, or mal-
 15 feasance.

16 "(b) Limited emergency appointees may be removed at
 17 any time from the Federal service by the appointing author-
 18 ity and shall be separated after 18 months.

19 "(c) Limited term appointees may be removed at any
 20 time from the Federal service by the appointing authority
 21 before the expiration of that period and shall be separated
 22 after 3 years.

23 "(d) Noncareer employees can be removed at any
 24 time from the Federal service by the appointing authority.

1 **“§ 3592. Reinstatement in the Senior Executive Service**

2 “A former Senior Executive Service employee with ca-
3 reer status may be reinstated to any Senior Executive Serv-
4 ice position if—

5 “(1) the individual has successfully completed the
6 probationary period in the Senior Executive Service;

7 and

8 “(2) the removal from the Senior Executive Serv-
9 ice was not for misconduct, neglect of duty, malfeasance,
10 or less than fully successful performance.

11 **“§ 3593. Guaranteed placement in other personnel systems**

12 “(a) Career appointees who are appointed from a
13 career or career-type position within the civil service as
14 determined by the Office of Personnel Management and who
15 are removed for reasons other than misconduct, neglect of
16 duty, or malfeasance from the Senior Executive Service
17 during Senior Executive Service probation shall have the
18 right to placement in a Federal position outside the Senior
19 Executive Service.

20 “(b) Career appointees who are removed from the
21 Senior Executive Service for less than fully successful per-
22 formance shall have the right to placement in a Federal
23 position outside the Senior Executive Service.

24 “(c) Career appointees in the Senior Executive Service

1 who accept Presidential appointments outside the Senior
2 Executive Service and who are removed from these appoint-
3 ments for reasons other than misconduct, neglect of duty, or
4 malfeasance shall have the right to placement in the Senior
5 Executive Service if the appointee applies within 90 days
6 after the separation from the Presidential appointment.

7 “(d) For purposes of subsections (a) and (b) of this
8 section, placement shall be in a continuing career position
9 equivalent to at least a GS-15 and at either the salary held
10 prior to Senior Executive Service appointment or a salary
11 which is equal to the last Senior Executive Service base pay,
12 whichever is higher. Placement shall not cause the separation
13 or reduction in grade of any other employee in the agency.

14 “(e) Career appointees removed from the Senior Execu-
15 tive Service whose base pay exceeds the top pay rate for
16 the position into which they are placed shall retain their
17 pay. If there are comparability increases under section 5305
18 of this title, these employees will receive half of each com-
19 parability increase until their pay equals the top rate payable
20 for their position.

21 **“§ 3594. Regulations**

22 “The Office of Personnel Management shall prescribe
23 regulations necessary to the administration of this
24 subchapter.”.

PERFORMANCE RATING

1
2 SEC. 405. Chapter 43 of title 5, United States Code,
3 is amended—

4 (1) by inserting at the end of the chapter analysis:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE
SENIOR EXECUTIVE SERVICE

"Sec.
"4311. Senior Executive Service performance appraisal systems.
"4312. Criteria for performance appraisals.
"4313. Ratings for managerial performance appraisal.
"4314. Regulations."; and

5 (2) by adding at the end thereof the following:

6 "SUBCHAPTER II—PERFORMANCE APPRAISAL
7 IN THE SENIOR EXECUTIVE SERVICE

8 "§4311. Senior Executive Service performance appraisal
9 systems

10 "(a) Each agency, as defined by section 3132 (a) of
11 this title shall, in accordance with standards established by
12 the Office of Personnel Management, develop one or more
13 performance appraisal systems designed to—

14 "(1) provide for systematic appraisals of job per-
15 formance of individuals in the Senior Executive Service;

16 "(2) encourage excellence in performance for in-
17 dividuals in the Senior Executive Service; and

18 "(3) link the performance of each individual in
19 the Senior Executive Service with eligibility for re-
20 tention and performance awards.

1 "(b) Each performance appraisal system for individuals
2 in the Senior Executive Service shall provide—

3 "(1) that performance requirements for each in-
4 dividual be established at the beginning of the rating
5 period and communicated to the individual;

6 "(2) for written appraisals of performance based
7 on the accomplishment of the previously established
8 personal and organizational requirements; and

9 "(3) that each individual be shown the appraisal
10 and rating and given an opportunity to respond in writ-
11 ing and have the rating reviewed by an employee in a
12 higher managerial level in the agency.

13 "(c) Upon determination by the Office of Personnel
14 Management that an agency performance appraisal system
15 does not meet the requirements of this subchapter and the
16 regulations prescribed thereunder, the Office of Personnel
17 Management shall order corrective action.

18 "§ 4312. Criteria for performance appraisals

19 "Appraisals of managerial success in the Senior Execu-
20 tive Service shall—

21 "(1) take into account both individual performance
22 and organizational accomplishment, and

23 "(2) be based on factors such as—

24 "(A) improvements in efficiency, productivity,
25 and quality of work or service;

1 " (B) cost savings; and

2 " (C) timeliness of performance.

3 "§ 4313. Ratings for managerial performance appraisal

4 " (a) Each performance appraisal system shall provide
5 for annual summary ratings representing a number of levels
6 of performance including one or more fully successful levels,
7 a level of performance which is minimally satisfactory, and
8 an unsatisfactory level.

9 " (b) The head of each agency shall establish a system
10 to appraise the performance of members of the Senior Execu-
11 tive Service. The system shall provide that the appraisal
12 will—

13 " (1) be preceded by a review and appraisal of
14 requirements and accomplishments by a Performance
15 Review Board established under regulations of the Office
16 of Personnel Management. When the performance of a
17 career executive is being appraised the Performance
18 Review Board must include at least one career member.
19 The Performance Review Board shall advise the appoint-
20 ing authority who rates the executive;

21 " (2) take place at least annually, except that no
22 evaluation shall be made of a career employee within
23 120 days after the beginning of a new administration,
24 and permit the assignment of an unsatisfactory rating
25 at any time during the performance appraisal period;

1 " (3) not be appealable to the Merit Systems Pro-
2 tection Board and

3 " (4) have the following results:

4 " (A) career employees receiving ratings at
5 any of the fully successful levels may be given per-
6 formance awards as prescribed in section 5384 of
7 this title;

8 " (B) an unsatisfactory rating requires correc-
9 tive action by removal of the employee from the
10 current position through reassignment, transfer, or
11 separation from the Senior Executive Service except
12 that employees who receive 2 unsatisfactory annual
13 ratings in 5 consecutive years shall be separated
14 from the Senior Executive Service, and

15 " (C) employees who twice in any 3-year period
16 receive a less than fully successful annual rating shall
17 be separated from the Senior Executive Service.

18 "§ 4314. Regulations

19 "The Office of Personnel Management may prescribe
20 regulations necessary for the administration of this sub-
21 chapter."

22 INCENTIVE AWARDS AND RANKS

23 SEC. 406. (a) Chapter 45 of title 5, United States Code,
24 is amended by adding at the end thereof the following new
25 section:

1 "§ 4507. Incentive awards and ranks in the Senior Execu-
2 tive Service

3 "(a) Each agency shall forward annually its recom-
4 mendation to the Office of Personnel Management of career
5 executives in the Senior Executive Service for ranks to be
6 conferred on active duty senior executives. The Office of
7 Personnel Management shall review the recommendations
8 and recommend to the President appointments to ranks as
9 set forth in subsections (b) and (c) of this section. The
10 President shall commission persons conferring a rank of (1)
11 Meritorious Executive for sustained excellence or (2) Dis-
12 tinguished Executive for sustained extraordinary accomplish-
13 ment.

14 "(b) No more than 5 percent of the members of the
15 Senior Executive Service may be appointed to the rank of
16 Meritorious Executive in a calendar year. No more than 15
17 percent of the active duty members of the Senior Executive
18 Service may hold the rank of Meritorious Executive.

19 "(c) No more than 1 percent of the active duty mem-
20 bers of the Senior Executive Service may hold the rank of
21 Distinguished Executive.

22 "(d) Receipt of a meritorious rank shall entitle the
23 individual to an annual award of \$2,500 for a period of five
24 years of active service in the Senior Executive Service.

1 "(e) Distinguished Executives shall receive an annual
2 award of \$5,000 for a period of five years of active service in
3 the Senior Executive Service.

4 "(f) An employee in the Senior Executive Service ap-
5 pointed by the President to another position outside the
6 Senior Executive Service shall be entitled to continue to
7 receive any incentive award granted for service before such
8 appointment."

9 (b) The analysis for such chapter 45 is amended by
10 adding at the end thereof the following new item:

"4507. Incentive awards and ranks in the Senior Executive Service."

11 PAY RATES AND SYSTEMS

12 SEC. 407. (a) Section 5308 of title 5, United States
13 Code, is amended to read as follows:

14 "§ 5308. Pay limitation

15 "An employee may not be paid, by reasons of any pro-
16 vision of this subchapter, at a rate in excess of the rate of
17 basic pay for Level V of the Executive Schedule, except
18 that executives in the Senior Executive Service may be paid
19 up to a rate of basic pay equal to the rate provided for
20 Executive Level IV."

21 (b) Chapter 53 of title 5, United States Code, is
22 amended by adding at the end thereof the following new
23 subchapter:

1 "SUBCHAPTER VIII—PAY FOR THE SENIOR

2 EXECUTIVE SERVICE

3 "§ 5381. Purpose; definitions

4 " (a) It is the purpose of this subchapter to provide a
5 pay system for the Senior Executive Service, established
6 under subchapter II of chapter 31 of this title, that shall
7 facilitate the accomplishment of the goals of that service,
8 as set forth in section 3131 of this title.

9 " (b) For the purpose of this subchapter, 'agency',
10 'Senior Executive Service position' and 'executive' have the
11 meanings given such terms by section 3132 of this title.

12 "§ 5382. Establishment and adjustment of rates of pay for
13 the Senior Executive Service

14 " (a) There shall be 5 or more rates of basic pay for
15 the Senior Executive Service, and the incumbent of each
16 position shall be paid at one of these rates. These rates of
17 basic pay shall be initially established and thereafter adjusted
18 by the President in accordance with the provisions of this
19 section.

20 " (b) In setting rates of basic pay, the lowest rate for
21 the Senior Executive Service shall not be less than the rate
22 for the sixth step of GS-15 and the highest rate shall not
23 exceed the rate for level IV of the Executive Schedule.

24 " (c) The rates of basic pay for the Senior Executive

1 Service shall be adjusted by the President at the same time
2 he adjusts the rates of pay under section 5305 of this title,
3 and the adjusted rates of basic pay for the Senior Executive
4 Service shall be included in the report transmitted to the
5 Congress by the President under section 5305 (a) (3) or
6 (c) (1) of this title.

7 " (d) The rates of basic pay that are established and
8 adjusted under this section shall be printed in the Federal
9 Register and shall supersede any prior rates of basic pay
10 for the Senior Executive Service.

11 "§ 5383. Setting individual executive pay

12 " (a) The pay rate for each executive will be set by the
13 appointing authority according to criteria established by the
14 Office of Personnel Management.

15 " (b) The sum total of all monies paid to an executive
16 for any calendar year under sections 4507, 5382, and 5384
17 of this title shall not exceed 95 percent of the rate provided
18 for Executive Level II.

19 " (c) Except for pay adjustments provided for in sec-
20 tion 5382 of this title, the base pay of a member of the Sen-
21 ior Executive Service can only be adjusted once during any
22 12-month period.

23 "§ 5384. Performance awards for the Senior Executive
24 Service

25 " (a) To encourage excellence in performance by exec-

1 utives under the Senior Executive Service, performance
 2 awards shall be paid to executives in accordance with the
 3 provisions of this section, and shall be in addition to the rate
 4 of basic pay paid under section 5382 of this title and shall
 5 not be subject to the limit placed on salaries under section
 6 5308. It shall be the responsibility of each agency head
 7 to see that the provisions of this section are administered in
 8 the agency in such a way that excellence is encouraged in
 9 the performance of the agency's executives. The Perform-
 10 ance Review Board provided for in section 4313 of this title
 11 will recommend to the appointing authority whether or not
 12 such authority should make a performance award to an ex-
 13 ecutive and the amount of the award.

14 " (b) Each career executive shall annually be eligible
 15 to receive a performance award subject to the following
 16 criteria:

17 " (1) No performance award is to be paid to an
 18 executive whose performance was determined to be less
 19 than fully successful at the time of the executive's most
 20 recent performance evaluation under subchapter II of
 21 chapter 43 of this title.

22 " (2) The amount of a performance award is to be
 23 determined by the agency head but shall not exceed 20
 24 percent of the executive's rate of basic pay.

1 " (3) Performance awards may not be paid in any
 2 fiscal year to more than 50 percent of the executives in
 3 an agency which employs 4 or more members of the
 4 Senior Executive Service.

5 " (c) A performance award under this section shall be
 6 paid in a lump sum not subject to retirement or life insur-
 7 ance deductions. As provided in section 8339 of this title,
 8 for each year for which a performance award is received a
 9 24-percent-annuity calculation will be used in lieu of any
 10 lower percentage.

11 " (d) After annual review as provided for in section
 12 3135 (a) and (b) of this title, the Office of Personnel Man-
 13 agement is authorized to issue guidance to agencies concern-
 14 ing the proportion of Senior Executive Service salary ex-
 15 penses that may be appropriately applied to payment of
 16 performance awards and the distribution of awards of each
 17 amount.

18 "§ 5385. Regulations

19 "Subject to such policies and procedures as the Presi-
 20 dent may prescribe, the Office of Personnel Management
 21 shall issue regulations necessary for the administration of
 22 this subchapter."

23 (c) The analysis of chapter 53 of title 5, United States

1 Code, is amended by adding at the end thereof the following
2 new items:

"SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE
SERVICE

"Sec.
"5381. Purpose; definitions.
"5382. Establishment and adjustment of rates of pay for the Senior
Executive Service.
"5383. Setting individual executive pay.
"5384. Performance awards for the Senior Executive Service.
"5385. Regulations."

3 PAY ADMINISTRATION

4 SEC. 408. Chapter 55 of title 5, United States Code,
5 is amended—

6 (1) by inserting "other than an employee or in-
7 dividual excluded by section 5541 (2) (xvi) of this
8 section" immediately before the period at the end of
9 section 5504 (a) (B) ;

10 (2) by amending section 5541 (2) by striking out
11 "or" after paragraph (xiv), by striking out the period
12 after paragraph (xv) and inserting " ; or" in lieu thereof,
13 and by adding the following paragraph at the end
14 thereof:

15 "(xvi) executive managers occupying Senior Exec-
16 utive Service positions under the Senior Executive Serv-
17 ice established under subchapter II of chapter 31 of
18 this title." ; and
19

--

1 (3) by inserting "other than a member of the
2 Senior Executive Service" after "employee" in section
3 5595 (a) (2) (i) .

4 TRAVEL, TRANSPORTATION, AND SUBSISTENCE
5 SEC. 409. Chapter 57 of title 5, United States Code,
6 is amended—

7 (1) in section 5723 (a) (1) by striking out " ; and"
8 and adding in lieu thereof "or of a new member of the
9 Senior Executive Service ; and " ;

10 (2) by adding at the end of subchapter IV the
11 following section:

12 "§ 5752. Travel expenses of Senior Executive Service can-
13 didates

14 "Employing agencies may pay candidates for Senior
15 Executive Service positions travel expenses incurred incident
16 to preemployment interviews requested by the employing
17 agency." ; and

18 (3) by adding at the end of the analysis of sub-
19 chapter IV the following new item:

"5752. Travel expenses of Senior Executive Service candidates."

20 LEAVE .

21 SEC. 410. Chapter 63 of title 5, United States Code,
22 is amended by inserting in subsection (a) of section 6304
23 "(e) , and (f) " in lieu of "and (e) ," and by adding at the
24 end of such section the following new subsection:

1 “(f) Annual leave accrued by an individual serving in
2 a position under the Senior Executive Service shall not be
3 subject to the limitation on accumulation otherwise imposed
4 by this section.”

5 DISCIPLINARY ACTIONS

6 SEC. 411. Chapter 75 of title 5, United States Code,
7 is amended—

8 (1) by inserting the following in the chapter anal-
9 ysis after subchapter IV:

 “SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

^{“Sec.}
 ^{“7541. Definitions.}
 ^{“7542. Actions covered.}
 ^{“7543. Cause and procedure.”;}

10 and

11 (2) by adding the following after subchapter IV:

12 “SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

13 “§ 7541. Definitions

14 “For the purpose of this subchapter—

15 “(1) ‘employee’ means an individual in the Senior
16 Executive Service who—

17 “(A) has completed a year of current continu-
18 ous service in the Senior Executive Service; or

19 “(B) when appointed to a position in the
20 Senior Executive Service was covered by the pro-
21 visions of subchapter II of this chapter:

22 “(2) ‘disciplinary action’ means an action based

1 on the conduct of the employee which results in in-
2 voluntary removal or suspension for more than 30 days
3 of the employee, including misconduct, neglect of duty,
4 or malfeasance, and not including less than fully success-
5 ful performance:

6 “(3) ‘removal’ means separation from the Federal
7 service;

8 “(4) ‘suspension’ means the placing of an em-
9 ployee in a temporary nonduty nonpay status for
10 disciplinary reasons.

11 “§ 7542. Actions covered

12 “‘This subchapter applies to a disciplinary removal or
13 suspension for more than 30 days, but does not apply to a
14 suspension or removal under section 7532 of this title.

15 “7543. Cause and procedure

16 “(a) Under regulations prescribed by the Office of
17 Personnel Management, an agency may take disciplinary
18 action against an employee only for such cause as shall
19 promote the efficiency of the service. Removal from the
20 Senior Executive Service for less than fully successful per-
21 formance is not a disciplinary action within the meaning
22 of this provision.

23 “(b) An employee against whom a disciplinary action
24 is proposed is entitled to—

25 “(1) at least 30 days’ advance written notice, un-

1 less there is reasonable cause to believe that the em-
 2 ployee is guilty of a crime for which a sentence of
 3 imprisonment can be imposed, stating specific reasons
 4 for the proposed action;

5 " (2) a reasonable time to answer orally and in
 6 writing and to furnish affidavits and other documentary
 7 evidence in support of the answer;

8 " (3) be accompanied by an attorney or other
 9 representative; and

10 " (4) a written decision and reasons therefor at
 11 the earliest practicable date.

12 " (c) An agency may in its discretion provide, by
 13 regulation, for a hearing which may be in lieu of or in
 14 addition to the opportunity to answer provided under sub-
 15 section (b) (2) of this section.

16 " (d) Copies of the notice of proposed action, the an-
 17 swer of the employee if written and a summary thereof if
 18 made orally, the notice of decision and reasons therefor, and
 19 any order effecting a disciplinary action shall be made a part
 20 of the records of the agency and, on request, shall be fur-
 21 nished to the Merit Systems Protection Board or the Office
 22 of Personnel Management.

23 " (e) An employee in the Senior Executive Service,
 24 against whom a disciplinary action as defined in section
 25 7541 (2) of this title is taken, is entitled to appeal to the

1 Merit Systems Protection Board under section 7701 of this
 2 title. The decision of the agency shall be sustained by the
 3 appeals officer or hearing examiner unless the employee
 4 shows that—

5 " (1) the agency's procedures contained error that
 6 substantially impaired the rights of the employee;

7 " (2) such decision was based on discrimination
 8 prohibited by section 2302 (b) (1) of this title; or

9 " (3) such decision was arbitrary or capricious.

10 RETIREMENT

11 SEC. 412. (a) Section 8336 of title 5, United States
 12 Code, is amended by redesignating subsection (h) as sub-
 13 section (i) and inserting immediately after subsection (g)
 14 the following new subsection:

15 " (h) An executive in the Senior Executive Service is
 16 entitled to an immediate annuity if separated from the Senior
 17 Executive Service for less than fully successful performance
 18 after completion of 25 years of Federal service or after be-
 19 coming 50 years of age and completing 20 years of Federal
 20 service."

21 (b) Section 8339 of title 5, United States Code, is
 22 amended by adding at the end thereof the following new
 23 subsection:

24 " (n) The annuity of a member or former member of
 25 the Senior Executive Service, retiring under this subchapter,

1 is computed under subsection (a) of this section, except that,
 2 if the employee has received one or more annual performance
 3 awards as a member of the Senior Executive Service, such
 4 annuity is computed by multiplying 2½ percent of average
 5 pay, in lieu of any lesser percent, by the number of full years
 6 of service for which an award is in effect.”.

7 CONVERSION TO THE SENIOR EXECUTIVE SERVICE

8 SEC. 413. (a) During the period beginning on the date
 9 of the enactment of this title and ending on the effective date
 10 of this title, each agency under the guidance and review of
 11 the Office of Personnel Management and the definitions in
 12 chapter 31 of title 5, United States Code, as amended by this
 13 title, shall designate those positions which are to be incor-
 14 porated into the Senior Executive Service and shall designate
 15 those positions which are career reserved.

16 (b) Each agency shall also submit a request for total
 17 Senior Executive Service space allocations and for the
 18 number of noncareer appointments needed. The Office of
 19 Personnel Management shall establish interim authoriza-
 20 tions within the limits defined in sections 3133 and 3134
 21 of title 5, United States Code, as amended by this Act.

22 (c) Each employee serving in a position at the time
 23 it is officially designated as a position in the Senior Execu-
 24 tive Service shall have the option to—

25 (1) decline conversion and remain in the current

1 appointment and pay system, retaining the grade,
 2 seniority, and other rights and benefits associated with
 3 career and career-conditional appointment and election
 4 of such option shall not cause the separation, displace-
 5 ment, or reduction in grade of any other employee in the
 6 agency; or

7 (2) convert to a Senior Executive Service appoint-
 8 ment according to the automatic appointment conversion
 9 provisions of subsections (d), (e), (f), (g), and (h)
 10 of this section.

11 The employee shall be notified in writing that his position
 12 has been brought into the Senior Executive Service and
 13 what the employee's options are under subsections (d),
 14 (e), (f), (g), and (h) of this section. The employee shall
 15 be given 90 days from the date of such notification to elect
 16 one of the options.

17 (d) Each employee who has elected an automatic
 18 appointment conversion, is serving immediately before the
 19 effective date in a position designated as a Senior Executive
 20 Service position, and is currently under—

21 (1) a career or career-conditional appointment; or

22 (2) a similar type of appointment in an excepted
 23 service as determined by the Office of Personnel Man-
 24 agement;

25 shall receive a career appointment to that position in the

1 Senior Executive Service not subject to section 3392 (f) of
2 title 5, United States Code.

3 (e) Each employee who has elected an automatic
4 appointment conversion and is currently under an excepted
5 appointment in a position which is not designated a career
6 reserved position in the Senior Executive Service, but is—

7 (1) a position in schedule C of subpart C of part
8 213 of title 5, Code of Federal Regulations;

9 (2) a position filled by noncareer executive assign-
10 ment under subpart F of part 305 of title 5, Code of
11 Federal Regulations; or

12 (3) a position in the Executive Schedule under
13 subchapter II of chapter 53 of title 5, United States
14 Code, except career Executive Schedule positions;

15 shall receive a noncareer appointment in the Senior Execu-
16 tive Service.

17 (f) Each employee described in subsection (e) of this
18 section who is serving immediately before the effective date
19 in a position designated as a Senior Executive Service career
20 reserved position shall be reassigned to an appropriate Senior
21 Executive Service general position or terminated.

22 (g) Each employee described in subsection (e) of this
23 section who is serving immediately before the effective date,
24 in a position designated as a Senior Executive Service posi-
25 tion and who has reinstatement eligibility to a position in the

1 competitive service, may request the reinstatement of the
2 employee's career status from the Office of Personnel Man-
3 agement and be converted to a career appointment in the
4 Senior Executive Service. The names and grounds for status
5 of all such employees who are so reinstated and converted
6 shall be published in the Federal Register.

7 (h) Each employee who has elected an automatic ap-
8 pointment conversion and is under a limited executive assign-
9 ment under subpart F of part 305 of title 5, Code of Federal
10 Regulations, shall—

11 (1) be converted to a Senior Executive Service
12 limited term appointment if the position encumbered
13 immediately before the effective date will terminate
14 within 3 years of the effective date;

15 (2) be converted to a Senior Executive Service
16 noncareer appointment if the position encumbered im-
17 mediately before the effective date is designated as a
18 Senior Executive Service general position; or

19 (3) be converted to a Senior Executive Service
20 noncareer appointment and reassigned to a Senior Execu-
21 tive Service general position if the encumbered position
22 immediately before the effective date is designated as
23 a Senior Executive Service career reserved position.

24 (i) Employees whose actual base pay at the time of
25 conversion exceeds the pay of the rate to which they are

1 converted shall retain their pay. If there are comparability
 2 increases under section 5305 of title 5, United States Code,
 3 these employees will receive half of each comparability in-
 4 crease until the base pay equals the established Senior Execu-
 5 tive Service rate.

6 (j) The Office of Personnel Management shall prescribe
 7 regulations to carry out the purpose of this section. The
 8 regulations shall provide a right of appeal to the Merit
 9 Systems Protection Board for an employee who believes
 10 such employee's agency has violated the employee's rights
 11 under this section. An agency shall take the corrective action
 12 that the Merit Systems Protection Board orders in its de-
 13 cision on an appeal under this subsection.

14 **REPEALER**

15 **SEC. 414.** Except for the Presidential authority pro-
 16 vided in section 5317 of title 5, United States Code, all au-
 17 thority in effect immediately before the effective date of this
 18 section for the establishment or the pay, or both, as the case
 19 may be, of each position subject to section 401 of this Act
 20 is repealed.

21 **SAVINGS PROVISION**

22 **SEC. 415.** The enactment of this title shall not decrease
 23 the present pay, allowances, or compensation, or future an-
 24 nuity of any person.

EFFECTIVE DATE

2 **SEC. 416.** The provisions of this title shall take effect 9
 3 months after the enactment of the title with the exception
 4 of section 413, regarding conversion procedures, which shall
 5 take effect immediately upon enactment.

6 **TITLE V—MERIT PAY**

7 **PAY FOR PERFORMANCE AMENDMENTS**

8 **SEC. 501. (a)** Part III of title 5, United States Code,
 9 is amended by inserting after chapter 53 the following new
 10 chapter:

11 **“Chapter 54—MERIT PAY**

“Sec.
 “5401. Purpose.
 “5402. Merit pay system.
 “5403. Reports.
 “5404. Regulations.

12 **“§ 5401. Purpose**

13 “It is the purpose of this chapter to provide for a merit
 14 pay system which shall—

15 “(1) within available funds, recognize and reward
 16 quality performance by varying merit pay adjustments;

17 “(2) use performance appraisals as the basis for
 18 determining merit pay adjustments;

19 “(3) within available funds, provide for training to
 20 improve objectivity and fairness in the evaluation of
 21 performance; and

22 “(4) regulate the costs of merit pay by establishing
 23 a merit pay budget and other control techniques.

1 "§ 5402. Merit pay system

2 " (a) In accordance with the purposes set forth in sec-
 3 tion 5401 of this title, the Office of Personnel Management
 4 shall establish a merit pay system which shall cover any
 5 employee in a position which regularly requires the exercise
 6 of managerial or supervisory responsibilities and which is
 7 in GS-13 through GS-15.

8 " (b) The merit pay system established under subsection
 9 (a) of this section shall provide for a range of basic pay for
 10 each grade to which it applies, which range shall be limited
 11 by the minimum and maximum rate of basic pay of each
 12 such grade.

13 " (c) (1) Concurrent with each adjustment under sec-
 14 tion 5305 of this title, the Office of Personnel Management in
 15 consultation with the Office of Management and Budget shall
 16 determine the extent to which such adjustment shall be
 17 made in rates of basic pay for all employees covered by the
 18 merit pay system.

19 " (2) An increase in pay under this subsection is not
 20 an equivalent increase in pay within the meaning of section
 21 5335 of this title. Any such increase shall not result in such
 22 pay being considered as fixed by administrative action.

23 " (3) No employee may be paid less than the minimum
 24 rate of basic pay of the grade of such employee's position.

25 " (d) (1) Under regulations prescribed by the Office of

1 Personnel Management, the head of each agency may pro-
 2 vide for within-grade pay rate increases for any employee
 3 covered by a merit pay system.

4 " (2) Determinations to provide pay increases under this
 5 subsection to an employee—

6 " (A) may take into account both individual per-
 7 formance and organizational accomplishment, and

8 " (B) shall be based on factors such as—

9 " (i) improvements in efficiency, productivity,
 10 and quality of work or service;

11 " (ii) cost savings; and

12 " (iii) timeliness of performance;

13 " (C) shall be subject to review only in accordance
 14 with and to the extent provided by procedures estab-
 15 lished by the agency head; and

16 " (D) shall be made in accordance with guidelines
 17 issued by the Office of Personnel Management which
 18 relate to the distribution of increases available under
 19 this subsection.

20 " (3) For any fiscal year, the head of any agency may
 21 exercise authority under paragraph (1) of this subsection
 22 only to the extent of the funds available for purposes of
 23 this subsection.

24 " (4) The funds available for purposes of this subsection
 25 to the head of an agency for any fiscal year shall be deter-

1 mined by the Office of Personnel Management on an annual
 2 basis, after consultation with the Office of Management and
 3 Budget, before the beginning of such fiscal year. The amount
 4 so available for any such agency shall be determined by
 5 the Office on the basis of—

6 “(A) the additional amount of the adjustments
 7 under section 5305 of this title, and

8 “(B) the amount estimated by the Office to reflect
 9 within-grade step increases and quality step increases,
 10 which would have occurred if the employees covered by the
 11 merit pay system in such agency were not so covered.

12 “(e) (1) The head of an agency may pay a cash award
 13 to, and incur necessary expenses for the honorary recogni-
 14 tion of, any employee covered by a merit pay system who—

15 “(A) by such employee's suggestion, invention,
 16 superior accomplishment, or other personal effort con-
 17 tributes to the efficiency, economy, or other improve-
 18 ment of Government operations; or

19 “(B) performs a special act or service in the pub-
 20 lic interest in connection with or related to such em-
 21 ployee's official employment.

22 “(2) The President may pay a cash award to, and
 23 incur necessary expenses for the honorary recognition of,
 24 any employee covered by a merit pay system who—

25 “(A) by such employee's suggestion, invention,

1 superior accomplishment, or other personal effort con-
 2 tributes to the efficiency, economy, or other improvement
 3 of Government operations; or

4 “(B) performs an exceptionally meritorious special
 5 act or service in the public interest in connection with or
 6 related to such employee's official employment.

7 A Presidential award may be in addition to an agency award
 8 under paragraph (1) of this subsection.

9 “(3) A cash award under this subsection is in addition
 10 to the basic pay and any merit increase to basic pay of the
 11 employee receiving the award. Acceptance of a cash award
 12 under this subsection constitutes an agreement that the use by
 13 the Government of an idea, method, or device for which the
 14 award is made does not form the basis of a further claim of
 15 any nature against the Government by the employee, his
 16 heirs, or assigns.

17 “(4) A cash award to, and expenses for the honorary
 18 recognition of, any employee covered by a merit pay system
 19 may be paid from the fund or appropriation available to the
 20 activity primarily benefiting or the various activities bene-
 21 fitting. The head of the agency concerned shall determine the
 22 amount to be paid by each activity for an agency award
 23 under paragraph (1) of this subsection. The President shall
 24 determine the amount to be paid by each activity for a Presi-
 25 dential award under paragraph (2) of this subsection.

1 “(5) Except as provided by paragraph (6) of this
2 subsection, a cash award under this subsection may not ex-
3 ceed \$10,000.

4 “(6) If the head of an agency certifies to the Office
5 of Personnel Management that the suggestion, invention,
6 superior accomplishment, or other meritorious effort for
7 which the award is proposed is highly exceptional and un-
8 usually outstanding, a cash award in excess of \$10,000 but
9 not in excess of \$25,000 may be granted with the approval
10 of such office.

11 “(7) An agency may pay or grant an award under
12 this subsection notwithstanding the death or separation from
13 the service of the employee concerned, if the suggestion,
14 invention, superior accomplishment, other meritorious effort
15 for which the award is proposed was made or performed
16 while the employee was in the employ of the Government.

17 “(f) Under regulations prescribed by the Office of Per-
18 sonnel Management, the benefit of advancement through the
19 range of basic pay shall be preserved for an employee cov-
20 ered by the merit pay system, whose continuous service is
21 interrupted in the public interest by service with the armed
22 forces, or by service in essential non-Government civilian
23 employment during a period of war or national emergency.

24 “(g) For purposes of section 5941 of this title, rates

1 of basic pay subject to increases under the merit pay system
2 are considered pay fixed by statute.

3 “§ 5403. Reports

4 ““The Office of Personnel Management shall periodically
5 submit to the Congress reports on the operation of the merit
6 pay system.

7 “§ 5404. Regulations

8 ““The Office of Personnel Management shall prescribe
9 regulations necessary for the administration of this chapter.”.

10 CONFORMING AND TECHNICAL AMENDMENTS

11 SEC. 502. (a) Section 4501 (2) (A) of title 5, United
12 States Code, is amended by striking out “; and” and inserting
13 in lieu thereof “but does not include an individual paid under
14 the merit pay system established under section 5402 of this
15 title; and”.

16 (b) Section 4502 (a) of title 5, United States Code,
17 is amended by striking out “\$5,000” and inserting in lieu
18 thereof “\$10,000”.

19 (c) Section 4502 (b) of title 5, United States Code, is
20 amended—

21 (1) by striking out “Civil Service Commission”
22 an inserting in lieu thereof “Office of Personnel
23 Management”;

24 (2) by striking out “\$5,000” and inserting in lieu
25 thereof “\$10,000”; and

1 (3) by striking out "the Commission" and insert-
2 ing in lieu thereof "the Office"

3 (d) Section 4506 of title 5, United States Code, is
4 amended by striking out "Civil Service Commission may"
5 and inserting in lieu thereof "Office of Personnel Manage-
6 ment shall"

7 (e) Section 5332 (a) of title 5, United States Code, is
8 amended by inserting after "applies" the following: "except
9 an employee covered by chapter 54 of this title."

10 (f) Section 5334 of title 5, United States Code, is
11 amended—

12 (1) in paragraph (2) of subsection (c) by insert-
13 ing " or for an employee appointed to a position covered
14 by the merit pay system, any dollar amount," after
15 "step"; and

16 (2) by adding at the end thereof the following new
17 subsection:

18 "(g) In the case of an employee covered by the merit
19 pay system, all references in this section to 'two steps' or
20 'two step-increases' shall be deemed to mean 6 percent."

21 (g) Section 5335 (e) of title 5, United States Code, is
22 amended by inserting after "individual" the following: "cov-
23 ered by chapter 54 of this title, or,"

24 (h) Section 5336 (c) of title 5, United States Code, is

1 amended by inserting after "individual" the following: "cov-
2 ered by chapter 54 of this title, or,"

3 (i) The table of chapters for part III of title 5, United
4 States Code, is amended by inserting after the item relating
5 to chapter 53 the following new item:

"64. Merit Pay----- 5401".

6 **EFFECTIVE DATE**

7 **SEC. 503.** The provisions of this title shall take effect on
8 the first day of the first applicable pay period which begins
9 on or after the 90th day after the date of the enactment of
10 this Act.

11 **TITLE VI—RESEARCH, DEMONSTRATION, AND**
12 **OTHER PROGRAMS**

13 **RESEARCH AND DEMONSTRATION PROJECTS**

14 **SEC. 601.** Part III of title 5, United States Code, is
15 amended by adding at the end thereof the following new
16 chapter:

17 **"Chapter 47.—PERSONAL RESEARCH AND**
18 **DEMONSTRATION PROJECTS**

"Sec.

"4701. Definitions.

"4702. Research and development functions.

"4703. Demonstration projects.

"4704. Allocation of funds.

"4705. Reports.

"4706. Regulations.

19 **"§ 4701. Definitions**

20 **"For the purpose of this chapter—**

21 **" (1) 'agency' means an agency as defined in sec-**

1 tion 2301 (a) (without regard to paragraph (2) (D)
2 thereof);

3 “(2) ‘employee’ means an individual employed in
4 or under an agency;

5 “(3) ‘eligible’ means an individual who has quali-
6 fied for appointment in an agency and whose name has
7 been entered on the appropriate register or list of eli-
8 gibles;

9 “(4) ‘demonstration project’ means a project con-
10 ducted by the Office of Personnel Management, or un-
11 der its supervision, to determine whether a specified
12 change in personnel management policies or procedures
13 would result in improved Federal personnel manage-
14 ment; and

15 “(5) ‘research program’ means a planned study of
16 the manner in which public management policies and
17 systems are operating, the effects of those policies and
18 systems, the possibilities for change, and comparisons
19 among policies and systems.

20 “§ 4702. Research and development functions

21 “The Office of Personnel Management shall—

22 “(1) establish and maintain (and assist in the es-
23 tablishment and maintenance of) research and develop-
24 ment projects of improved methods and technologies in
25 Federal personnel management;

1 “(2) evaluate projects, and proposed projects,
2 described in paragraph (1);

3 “(3) establish and maintain a program for the
4 collection and public dissemination of information relat-
5 ing to personnel management research and for encour-
6 aging and facilitating the exchange of information among
7 interested persons and entities; and

8 “(4) carry out the preceding functions directly or
9 through agreement or contract.

10 “§ 4703. Demonstration projects

11 “(a) Except as provided in this section, the Office of
12 Personnel Management may directly or through agreement
13 or contract with one or more Federal agencies and other
14 public and private organizations conduct and evaluate dem-
15 onstration projects. The conduct of demonstration projects
16 shall not be limited by any lack of specific authority to take
17 the action contemplated, or by any provision or provisions of
18 law existing at the time inconsistent with such action, in-
19 cluding laws or regulations relating to—

20 “(1) the methods of establishing qualification re-
21 quirements for, recruitment for, and appointment to
22 positions;

23 “(2) the methods of classifying positions and com-
24 pensating employees, except that no variation is hereby

1 authorized in employee benefits provided by chapter 63
2 or subpart G of part III of this title;

3 " (3) the methods of assigning, reassigning, or
4 promoting employees;

5 " (4) the methods of disciplining employees;

6 " (5) the methods of providing incentives to em-
7 ployees, including the provision of group or individual
8 incentive bonuses or pay;

9 " (6) hours of work per day or per week;

10 " (7) the methods of involving employees, unions,
11 and employee organizations in personnel decisions; and

12 " (8) the methods of reducing overall agency staff
13 and grade levels.

14 Notwithstanding the provisions of this subsection, no dem-
15 onstration project shall affect leave under chapter 63 of
16 this title or insurance or annuities under subpart G of part III
17 of this title.

18 " (b) Before conducting or entering into any agreement
19 to conduct a demonstration project, the Office of Personnel
20 Management shall—

21 " (1) develop a plan for such project which iden-
22 tifies—

23 " (A) purposes;

24 " (B) the types of employees or eligibles,

1 categorized by organizational series, grade, or
2 organizational unit;

3 " (C) the number of employees or eligibles to
4 be included, in total amount or by category;

5 " (D) the methodology;

6 " (E) the duration;

7 " (F) the training to be provided;

8 " (G) the anticipated costs; and

9 " (H) the methodology and criteria for
10 evaluation;

11 " (2) publish such plan in the Federal Register;
12 and

13 " (3) submit such plan so published to public
14 hearing.

15 Any such plan shall not be implemented until it is approved
16 by each agency involved.

17 " (c) Each demonstration project shall—

18 " (1) involve no more than 5,000 individuals other
19 than individuals in any control groups necessary to
20 validate the results of the project; and

21 " (2) terminate before the end of the 5-year period
22 beginning on the date of approval by the Office of Per-
23 sonnel Management except that research may continue
24 beyond such date to the extent necessary to validate the
25 results of the project.

1 “(d) Subject to the terms of any written agreement
2 between the Office of Personnel Management and an agency,
3 a demonstration project involving an agency may be termi-
4 nated by the Office of Personnel Management, or such
5 agency, if either determines that the project creates a sub-
6 stantial hardship on, or is not in the best interests of, the
7 public, the Federal Government, employees, or eligibles.

8 “(e) Employees within a unit with respect to which
9 an organization of Government employees has been ac-
10 corded exclusive recognition shall not be included within
11 any project under subsection (b) of this section—

12 “(1) if such project would violate a negotiated
13 agreement between such agency and such organization,
14 unless there is a written agreement with respect to such
15 project between such agency and such organization; or

16 “(2) if such project is not covered by a negotiated
17 agreement, until there has been consultation or negotia-
18 tion, as appropriate, with such organization.

19 “(f) Employees within any unit with respect to which
20 an organization of Government employees has not been
21 accorded exclusive recognition shall not be included within
22 any project under subsection (b) of this section unless there
23 has been agency consultation regarding the project with the
24 employees in such unit.

25 “(g) Evaluation of the results of the project and its im-

1 pact on improving public management shall be undertaken
2 for each project.

3 “(h) Upon the request of the Director of the Office of
4 Personnel Management, agencies shall cooperate with and
5 assist the Office as far as practical in the performance of this
6 function and provide the Office with requested information
7 and reports relating to the conduct of demonstration projects
8 in their respective agencies.

9 “§ 4704. Allocation of funds

10 “Funds appropriated to the Office of Personnel Manage-
11 ment for the purposes of this subchapter may be allocated by
12 the Office of Personnel Management to any agency conduct-
13 ing demonstration projects or assisting the Office of Personnel
14 Management in conducting such projects. Funds so allocated
15 shall remain available for such period as may be specified in
16 appropriation Acts. No contract shall be entered into under
17 this section unless such contract has been provided for in ad-
18 vance in appropriation Acts.

19 “§ 4705. Reports

20 “‘The Office of Personnel Management shall include in
21 the annual report required by section 1308 of this title a
22 summary of research and demonstration projects conducted
23 during the year, the effect of that research on improving
24 public management and increasing efficiency, and recom-

1 mendations of policies and procedures which will improve
2 the attainment of general research objectives.

3 "§ 4706. Regulations

4 "The Office of Personnel Management shall prescribe
5 regulations for the administration of this chapter."

6 INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

7 SEC. 602. (a) Section 208 of the Intergovernmental
8 Personnel Act of 1970 is amended—

9 (1) by striking out the section heading and insert-
10 ing in lieu thereof the following:

11 "TRANSFER OF FUNCTIONS AND ADMINISTRATION OF
12 MERIT POLICIES";

13 (2) by redesignating subsections (b), (c), (d),
14 (e), (f), and (g) as subsections (c), (d), (e), (f),
15 (g), and (i), respectively, and by inserting after sub-
16 section (a) the following new subsection:

17 "(h) In accordance with regulations of the Office of
18 Personnel Management, Federal agencies may require as a
19 condition of participation in assistance programs, systems of
20 personnel administration consistent with personnel standards
21 prescribed by the Office of Personnel Management for posi-
22 tions engaged in carrying out such programs. Such standards
23 shall include the merit principles in section 2 of this Act."
24 and

1 (3) by inserting after subsection (g) as re-
2 designated by this section, the following new subsection:

3 "(h) Effective one year after the date of the enactment
4 of this subsection, all statutory personnel requirements estab-
5 lished as a condition of the receipt of Federal grants-in-aid
6 by State and local governments, are hereby abolished,
7 except—

8 "(1) those requirements listed in subsection (a)
9 of this section,

10 "(2) those that generally prohibit discrimination
11 in employment or require equal employment opportunity,

12 "(3) the Davis-Bacon Act (40 U.S.C. 276 et
13 seq.), and

14 "(4) chapter 15, Political Activities of Certain
15 State and Local Employees, of title 5, United States
16 Code."

17 (b) Section 401 of such Act is amended by striking the
18 period after "institutions of higher education" and inserting
19 in lieu thereof "and other organizations."

20 (c) Section 403 of such Act is amended by striking
21 out "(less applicability to commissioned officers of the Pub-
22 lic Health Service)".

23 (d) Section 502 of such Act is amended in paragraph
24 (3) by inserting "the Trust Territory of the Pacific Islands,"
25 before "and a territory or possession of the United States,"

(e) Section 506 of such Act is amended—

(1) by inserting in subsection (b) (2) “the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands)” after “(Other than the District of Columbia,”; and

(2) by striking out of subsection (b) (5) “and the District of Columbia,” and by inserting in lieu thereof “the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.”.

AMENDMENTS TO THE MOBILITY PROGRAM

SEC. 603. (a) Section 3371 of title 5, United States Code, is amended—

(1) by inserting “the Trust Territory of the Pacific Islands,” after “Puerto Rico,” in paragraph (1) (A); and

(2) by striking out “and” at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

“(3) ‘Federal agency’ means an executive agency, a military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Com-

mission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other appropriate agencies of the legislative and judicial branches as determined by the Office of Personnel Management; and

“(4) ‘other organizations’ means—

“(A) a national, regional, State-wide, or metropolitan organization representing member State or local governments;

“(B) an association of State or local public officials; or

“(C) a nonprofit organization, one of whose principal functions is to offer professional advisory, research, development, or related services to governments or universities concerned with public management.”.

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out “executive agency” and “an executive agency” each place they appear and by inserting in lieu thereof, respectively, “Federal agency” and “a Federal agency”

(c) Section 3372 (a) (1) of title 5, United States Code, is further amended by inserting immediately before the semicolon the following: “, except that an employee in a Federal agency does not include an employee in the

1 Senior Executive Service serving under a non-career appoint-
 2 ment and an employee in the excepted service who is serving
 3 in a confidential or policy-determining or policy-advocating
 4 position”.

5 (d) Section 3372 of title 5, United States Code, is
 6 amended—

7 (1) in subsection (b) (1), by striking out “and”
 8 after “higher education”;

9 (2) in subsection (b) (2), by striking out the
 10 period after “executive agency” and inserting in lieu
 11 thereof a semicolon; and

12 (3) by adding at the end thereof the following:

13 “(3) an employee of a Federal agency to another
 14 organization; and

15 “(4) an employee of another organization to a
 16 Federal agency.”

17 (e) Section 3374 of title 5, United States Code, is
 18 amended—

19 (1) by adding the following new sentence at the
 20 end of subsection (b) :

21 “The above exceptions shall not apply to non-Federal em-
 22 ployees who are covered by chapters 83, 87, and 89 of this
 23 title by virtue of their non-Federal employment immediately
 24 before assignment and appointment under this section.”;

25 (2) in subsection (c) (1), by striking out the semi-

1 colon at the end thereof and by inserting in lieu thereof
 2 the following: “, except to the extent that the compen-
 3 sation received from the State or local government is
 4 less than the appropriate rate of pay which the duties
 5 would warrant under the applicable pay provisions of
 6 this title or other applicable authority;”; and

7 (3) by striking out the period at the end of sub-
 8 section (c) and adding the following: “, or for the
 9 contribution of the State or local government, or a part
 10 thereof, to employee benefit systems.”

11 (g) Section 3375 (a) of title 5, United States Code, is
 12 amended by striking out “and” at the end of paragraph (4),
 13 by redesignating paragraph (5) as paragraph (6), and by
 14 inserting after paragraph (4) thereof the following:

15 “(5) section 5724a (b) of this title, to be used by
 16 the employee for miscellaneous expenses related to
 17 change of station where movement or storage of house-
 18 hold goods is involved; and”.

19 TITLE VII—MISCELLANEOUS

20 SAVINGS PROVISIONS

21 SEC. 701. (a) Except as provisions of this Act may
 22 govern, all Executive orders, rules, and regulations affecting
 23 the Federal service shall continue in effect, according to their
 24 terms, until modified, terminated, superseded, or repealed by
 25 the President, the Office of Personnel Management, or the

1 Merit Systems Protection Board as to matters within their
2 respective jurisdictions.

3 (b) No provision of this Act shall affect any ad-
4 ministrative proceedings pending at the time such provision
5 takes effect. Orders shall be issued in such proceedings and
6 appeals shall be taken therefrom as if this Act had not been
7 enacted.

8 (c) No suit, action, or other proceeding lawfully com-
9 menced by or against the Director of the Office of Personnel
10 Management or the board members of the Merit Systems
11 Protection Board, or officers or employees thereof in their
12 official capacity or in relation to the discharge of their offi-
13 cial duties, as in effect immediately before the effective date
14 of this Act, shall abate by reason of enactment of this Act.
15 Such suits, actions, or other proceedings shall be determined
16 as if this Act had not been enacted.

17 AUTHORIZATION OF APPROPRIATIONS

18 SEC. 702. There are authorized to be appropriated, out
19 of any moneys in the Treasury not otherwise appropriated,
20 such sums as may be necessary to carry out the provisions of
21 this Act.

22 POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS

23 PROVISIONS

24 SEC. 703. Except as expressly provided in this Act,
25 nothing contained herein shall be construed to limit, curtail,

1 abolish, or terminate any function of, or authority available
2 to, the President which the President had immediately before
3 the effective date of this Act; or to limit, curtail, or terminate
4 the President's authority to delegate, redelegate, or termi-
5 nate any delegation of functions.

6 TECHNICAL AND CONFORMING AMENDMENTS

7 SEC. 704. The President or his designee shall, as soon
8 as practicable but in any event not later than 30 days after
9 the date of the enactment of this Act, submit to the Com-
10 mittee on Post Office and Civil Service of the House of Repre-
11 sentatives and the Committee on Governmental Affairs of
12 the Senate a draft of any technical and conforming amend-
13 ments to title 5, United States Code, which have not been
14 made by the provisions of this Act and which are necessary
15 to reflect throughout such title the amendments to the sub-
16 stantive provisions of law made by this Act and by Reorgani-
17 zation Plan Numbered 2 of 1978.

18 EFFECTIVE DATES

19 SEC. 705. Except as otherwise expressly provided in
20 this Act, the provisions of this Act shall take effect 90 days
21 after the date of the enactment of this Act.

[COMMITTEE PRINT]

May 12

**The Administration's Proposed
New Title VII
TO
H.R. 11280**

(Printed for the Use of the
House Post Office and Civil Service Committee)

27-522

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19 *TITLE VII—LABOR-MANAGEMENT*
20 *RELATIONS*
21 *Labor-Management Relations*
22 *SEC. 701. (a) Chapter 71 of subpart F of part III of*
23 *title 5, United States Code, is amended to add the following*
24 *subchapter III:*

1 "SUBCHAPTER III—FEDERAL SERVICE

2 LABOR-MANAGEMENT RELATIONS

3 "§ 7161. Findings and purpose

4 "(a) The Congress finds that the public interest demands
5 the highest standards of employee performance and the con-
6 tinued development and implementation of modern and pro-
7 gressive work practices to facilitate and improve employee
8 performance and the efficient accomplishment of the oper-
9 ations of the Government.

10 "(b) The Congress further finds that while significant
11 differences exist between Federal and private employment,
12 experience under Executive Order 11491, as amended,
13 indicates that the statutory protection of the right of em-
14 ployees to organize, bargain collectively within limits pre-
15 scribed by this subchapter, and participate through labor
16 organizations of their own choosing in decisions which af-
17 fect them can be accomplished with full regard for the public
18 interest and contributes to the effective conduct of public busi-
19 ness. Such protection facilitates and encourages the amicable
20 settlement of disputes between employees and their employers
21 involving personnel policies, practices and matters affecting
22 working conditions.

23 "(c) It is the purpose of this subchapter to prescribe
24 certain rights and obligations of the employees of the Fed-

1 eral Government, subject to the paramount interest of the
2 public, and to establish procedures which are designed to
3 meet the special requirements and needs of the Federal
4 Government.

5 "§ 7162. Definitions; application

6 "(a) For the purpose of this subchapter—

7 "(1) 'agency' means an Executive agency as defined
8 in section 105 of this title, except the General Accounting
9 Office;

10 "(2) 'employee' means an individual—

11 "(A) employed in an agency;

12 "(B) employed in a nonappropriated fund in-
13 strumentality described in section 2105(c) of this
14 title;

15 "(C) employed in the Veterans' Canteen Serv-
16 ice, Veterans' Administration, described in section
17 5102(c)(14) of this title; or

18 "(D) who was an employee (as defined under
19 subparagraph (A), (B), or (C) of this paragraph)
20 and was separated from service as a consequence of,
21 or in connection with, an unfair labor practice under
22 section 7174 of this subchapter; but does not
23 include—

24 "(i) an alien or noncitizen of the United

1 *States who occupies a position outside the United*
2 *States;*

3 *"(ii) a member of the uniformed services;*

4 *"(iii) for the purpose of exclusive recogni-*
5 *tion or national consultation rights (except as*
6 *authorized under the provisions of this subchap-*
7 *ter), a supervisor, a management official, or a*
8 *confidential employee;*

9 *"(3) 'labor organization' means a lawful orga-*
10 *nization of any kind in which employees participate and*
11 *which exists for the purpose, in whole or in part, of deal-*
12 *ing with agencies concerning grievances, personnel pol-*
13 *icies and practices, or other matters affecting the working*
14 *conditions of their employees; but does not include an*
15 *organization which—*

16 *"(A) consists of management officials, con-*
17 *fidential employees, or supervisors, except as au-*
18 *thorized under this subchapter;*

19 *"(B) assists or participates in a strike against*
20 *the Government of the United States or any agency*
21 *thereof or imposes a duty or obligation to conduct,*
22 *assist, or participate in such a strike;*

23 *"(C) advocates the overthrow of the constitu-*
24 *tional form of government in the United States; or*

1 *"(1) discriminates with regard to the terms or*
2 *conditions of membership because of race, color,*
3 *religion, national origin, sex, age, or handicapping*
4 *condition;*

5 *"(4) 'agency management' means the agency head*
6 *and all management officials, supervisors, and other rep-*
7 *resentatives of management having authority to act for*
8 *the agency on any matters relating to the implementa-*
9 *tion of the agency labor-management relations program*
10 *established under this subchapter;*

11 *"(5) 'Authority' means the Federal Labor Rela-*
12 *tions Authority under section 7163 of this subchapter;*

13 *"(6) 'General Counsel' means the General Coun-*
14 *sel of the Federal Labor Relations Authority;*

15 *"(7) 'Panel' means the Federal Service Impasses*
16 *Panel under section 7173 of this subchapter;*

17 *"(8) 'Assistant Secretary' means the Assistant Sec-*
18 *retary of Labor for Labor-Management Relations;*

19 *"(9) 'confidential employee' means an employee*
20 *who assists and acts in a confidential capacity to persons*
21 *who formulate and effectuate management policies in the*
22 *field of labor relations;*

23 *"(10) 'management official' means an employee*
24 *having authority to make, or to influence effectively the*

1 making of, policy necessary to the agency or activity
2 with respect to personnel, procedures, or programs;

3 "(11) 'supervisor' means an employee having au-
4 thority, in the interest of an agency, to hire, transfer,
5 suspend, lay off, recall, promote, discharge, assign, re-
6 ward, or discipline other employees or responsibly to
7 direct them, or to adjust their grievances, or effectively
8 to recommend such action, if in connection with the
9 foregoing the exercise of authority is not of a merely
10 routine or clerical nature, but requires the use of in-
11 dependent judgment;

12 "(12) 'professional employee' means—

13 "(A) any employee engaged in the perform-
14 ance of work—

15 "(i) requiring knowledge of an advanced
16 type in a field of science or learning custom-
17 arily acquired by a prolonged course of special-
18 ized intellectual instruction and study in an
19 institution of higher learning or a hospital, as
20 distinguished from knowledge acquired by a
21 general academic education, or from an ap-
22 prenticeship, or from training in the perform-
23 ance of routine mental, manual, or physical
24 processes;

1 "(ii) requiring the consistent exercise of
2 discretion and judgment in its performance;

3 "(iii) which is predominantly intellectual
4 and varied in character (as opposed to routine
5 mental, manual, mechanical, or physical work);
6 and

7 "(iv) which is of such a character that the
8 output produced or the result accomplished
9 cannot be standardized in relation to a given
10 period of time; or

11 "(B) any employee who has completed the
12 courses of specialized intellectual instruction and
13 study described in subparagraph (A) of this para-
14 graph and is performing related work under the
15 direction or guidance of a professional person to
16 qualify the employee to become a professional em-
17 ployee as defined in subparagraph (A) of this
18 paragraph;

19 "(13) 'agreement' means an agreement entered into
20 as a result of collective bargaining pursuant to the pro-
21 visions of this subchapter;

22 "(14) 'collective bargaining', 'bargaining', or
23 'negotiating' means the performance of the mutual obli-
24 gation of the representatives of the agency and the ex-

1 exclusive representative as provided in section 7169 of this
2 subchapter;

3 “(15) ‘exclusive representative’ includes any labor
4 organization which has been—

5 “(A) selected pursuant to the provisions of
6 section 7168 of this subchapter as the representa-
7 tive of the employees in an appropriate collective
8 bargaining unit; or

9 “(B) certified or recognized prior to the effec-
10 tive date of this subchapter as the exclusive repre-
11 sentative of the employees in an appropriate col-
12 lective bargaining unit;

13 “(16) ‘person’ means an individual, labor organi-
14 zation, or agency covered by this subchapter; and

15 “(17) ‘grievance’ means any complaint by any
16 person concerning any matter which falls within the
17 coverage of a grievance procedure.

18 “(b) This subchapter applies to all employees and
19 agencies in the executive branch, except as provided in sub-
20 sections (c), (d), and (e) of this section.

21 “(c) This subchapter does not apply to—

22 “(1) the Federal Bureau of Investigation;

23 “(2) the Central Intelligence Agency;

24 “(3) the National Security Agency;

1 “(4) any other agency, or office, bureau, or entity
2 within an agency, which has as a primary function in-
3 telligence, investigative, or security work, when the head
4 of the agency determines, in the agency head’s sole judg-
5 ment, that this subchapter cannot be applied in a manner
6 consistent with national security requirements and con-
7 siderations;

8 “(5) any office, bureau, or entity within an agency
9 which has as a primary function investigations or audit
10 of the conduct or work of officials or employees of the
11 agency for the purpose of ensuring honesty and integrity
12 in the discharge of their official duties, when the head of
13 the agency determines, in the agency head’s sole judg-
14 ment, that this subchapter cannot be applied in a manner
15 consistent with the internal security of the agency;

16 “(6) the United States Postal Service; or

17 “(7) the Foreign Service of the United States:
18 Department of State, International Communication
19 Agency, and Agency for International Development and
20 their successor agency or agencies;

21 “(8) the Tennessee Valley Authority; or

22 “(9) personnel of the Federal Labor Relations Au-
23 thority, including the Office of General Counsel, and the
24 Federal Service Impasses Panel.

1 shall be appointed by the President by and with the advice
 2 and consent of the Senate. The term of office of the General
 3 Counsel is 5 years. The General Counsel shall be eligible for
 4 reappointment. The General Counsel may be removed by
 5 the President. The General Counsel shall hold no other office
 6 or position in the Government of the United States except
 7 where provided by law or by the President.

8 "§ 7164. Powers and duties of the Authority; the General
 9 Counsel

10 "(a) The Authority shall administer and interpret this
 11 subchapter, decide major policy issues, prescribe regulations,
 12 disseminate information appropriate to the needs of agencies,
 13 labor organizations, and the public pursuant to section 7181
 14 of this subchapter.

15 "(b) The Authority shall, subject to its regulations—

16 "(1) decide questions as to the appropriate unit for
 17 the purpose of exclusive recognition and related issues
 18 submitted for its consideration;

19 "(2) supervise elections to determine whether a labor
 20 organization is the choice of a majority of the employees
 21 in an appropriate unit as their exclusive representative,
 22 and certify the results;

23 "(3) decide questions as to the eligibility of labor
 24 organizations for national consultation rights; and

1 "(4) decide unfair labor practice complaints.

2 "(c) The Authority may consider, subject to its
 3 regulations—

4 "(1) appeals on negotiability issues as provided in
 5 subsection (e) of section 7169 of this subchapter;

6 "(2) exceptions to arbitration awards as provided
 7 in section 7171 of this subchapter;

8 "(3) appeals from decisions of the Assistant Secre-
 9 tary issued pursuant to section 7175 of this subchapter;

10 "(4) exceptions to final decisions and orders of the
 11 Federal Service Impasses Panel issued pursuant to
 12 section 7173 of this subchapter; and

13 "(5) other matters it deems appropriate to assure
 14 the effectuation of the purposes of this subchapter.

15 "(d) The Authority shall adopt an official seal which
 16 shall be judicially noticed.

17 "(e) The principal office of the Authority shall be in
 18 or about the District of Columbia but it may meet and
 19 exercise any or all of its powers at any time or place. Sub-
 20 ject to subsection (g) of this section, the Authority may by
 21 one or more of its members or by such agents as it may
 22 designate, make any inquiry necessary to carry out its duties
 23 wherever persons subject to this subchapter are located. A
 24 member who participates in such inquiry shall not be dis-

1 qualified from later participating in a decision of the Au-
2 thority in the same case.

3 “(f) The Authority shall appoint an executive director,
4 such attorneys, regional directors, administrative law judges,
5 and other officers and employees as it may from time to time
6 find necessary for the proper performance of its duties and
7 may delegate to such officers and employees authority to
8 perform such duties and make such expenditures as may be
9 necessary.

10 “(g) All of the expenses of the Authority including all
11 necessary traveling and subsistence expenses outside the Dis-
12 trict of Columbia incurred by members, employees, or agents
13 of the Authority under its orders, shall be allowed and paid
14 on the presentation of itemized vouchers therefor approved
15 by the Authority or by an individual it designates for that
16 purpose and pursuant to applicable law.

17 “(h) The Authority is expressly empowered and di-
18 rected to prevent any person from engaging in conduct found
19 violative of this subchapter. In order to carry out its func-
20 tions under this subchapter, the Authority is authorized to
21 hold hearings, subpoena witnesses, administer oaths, and
22 take the testimony or deposition of any person under oath,
23 and in connection therewith, to issue subpoenas requiring the
24 production and examination of evidence as described in sec-

1 tion 7179(d) of this subchapter relating to any matter pend-
2 ing before it and to take such other action as may be neces-
3 sary. Also in the exercise of the functions of the Authority
4 under this subchapter—

5 “(1) the Authority may request from the Director
6 of the Office of Personnel Management an advisory opin-
7 ion concerning the proper interpretation of regulations
8 or other policy directives promulgated by the Office of
9 Personnel Management in connection with a matter be-
10 fore the Authority for adjudication;

11 “(2) whenever a regulation or other policy directive
12 issued by the Office of Personnel Management is at issue
13 in an appeal before the Authority, the Authority shall
14 timely notify the Director, and the Director shall have
15 standing to intervene in the proceeding and shall have
16 all the rights of a party to the proceeding; and

17 “(3) the Director may request that the Authority
18 reopen an appeal and reconsider its decision on the
19 ground that the decision was based on an erroneous in-
20 terpretation of law or of controlling regulation or other
21 policy directive issued by the Office of Personnel
22 Management.

23 “(i) In any matters arising under subsection (b) of this
24 section, the Authority may require an agency or a labor

1 organization to cease and desist from violations of this sub-
 2 chapter and require it to take such affirmative action as it
 3 considers appropriate to effectuate the policies of this
 4 subchapter.

5 "(j) The General Counsel is authorized to—

6 "(1) investigate complaints of violations of section
 7 7174 of this subchapter;

8 "(2) make final decisions as to whether to issue
 9 notices of hearing on unfair labor practice complaints
 10 and to prosecute such complaints before the Authority;

11 "(3) direct and supervise all field employees of the
 12 General Counsel in the field offices of the Federal Labor
 13 Relations Authority;

14 "(4) perform such other functions as the Authority
 15 prescribes; and

16 "(5) prescribe regulations needed to administer the
 17 General Counsel's functions under this subchapter.

18 "(k) Notwithstanding any other provisions of law, in-
 19 cluding chapter 7 of this title, the decisions of the Authority
 20 on any matter within its jurisdiction shall be final and con-
 21 clusive, and no other official or any court of the United
 22 States shall have power or jurisdiction to review any such
 23 decision by an action in the nature of mandamus on appeal
 24 of that decision or by any other means: Provided, That

1 nothing in this section shall limit the right of persons to
 2 judicial review of questions arising under the Constitution
 3 of the United States.

4 "§ 7165. Employees' rights

5 "(a) Each employee shall have the right to form, join,
 6 or assist any labor organization, or to refrain from such
 7 activity, freely and without fear of penalty or reprisal, and
 8 each such employee shall be protected in exercising such
 9 right. Except as otherwise provided under this subchapter,
 10 such right includes the right to participate in the manage-
 11 ment of a labor organization, the right to act for the orga-
 12 nization in the capacity of a representative, and the right,
 13 in such capacity, to present the views of the organization to
 14 agency heads and other officials of the executive branch of
 15 the Government, the Congress, or other appropriate author-
 16 ities; and the right to bargain collectively subject to the
 17 limits prescribed in section 7169(c) of this subchapter
 18 through representatives of their own choosing.

19 "(b) This subchapter does not authorize participation
 20 in the management of a labor organization or acting as a
 21 representative of such an organization by a management
 22 official, a confidential employee or a supervisor, except as
 23 specifically provided in this subchapter, or by an employee
 24 when the participation or activity would result in a conflict
 25 or apparent conflict of interest or would otherwise be in-

1 compatible with law or with the official duties of the
2 employee.

3 **"§ 7166. Recognition of labor organizations in general**

4 *"(a) An agency shall accord exclusive recognition or*
5 *national consultation rights at the request of a labor orga-*
6 *nization which meets the requirements for the recognition*
7 *or consultation rights under this subchapter.*

8 *"(b) When recognition of a labor organization has*
9 *been accorded, the recognition continues as long as the orga-*
10 *nization continues to meet the requirements of this sub-*
11 *chapter applicable to that recognition, except that this sec-*
12 *tion does not require an election to determine whether an*
13 *organization should become, or continue to be recognized*
14 *as, exclusive representative of the employees in any unit or*
15 *other third-party mediation fail to resolve a negotiation im-*
16 *election with respect to such unit.*

17 *"(c) Recognition of a labor organization does not—*

18 *"(1) preclude an employee, regardless of whether*
19 *fitness to perform the duties and functions of the office from*
20 *exercising grievance or appellate rights established by*
21 *law or regulation, or from choosing the employee's own*
22 *representative in a grievance or appellate action, except*
23 *when the grievance or appeal is covered under a nego-*
24 *tiated procedure as provided in section 7171 of this*
25 *subchapter;*

1 *"(2) preclude or restrict consultations and dealings*
2 *between an agency and a veterans organization with re-*
3 *spect to matters of particular interest to employees with*
4 *veterans preference; or*

5 *"(3) preclude an agency from consulting or dealing*
6 *with a religious, social, fraternal, professional, or other*
7 *lawful association, not qualified as a labor organization,*
8 *with respect to matters or policies which involve indi-*
9 *vidual members of the association or are of particular*
10 *applicability to it or its members.*

11 *"(d) Consultations and dealings under paragraph (3)*
12 *of subsection (c) of this section shall be so limited that they*
13 *do not assume the character of formal consultation on mat-*
14 *ters of general employer-management policy covering em-*
15 *ployees in that unit, or extend to areas where recognition of*
16 *the interests of one employee group may result in discrimina-*
17 *tion against or injury to the interest of other employees.*

18 **"§ 7167. National consultation rights**

19 *"(a) An agency shall accord national consultation rights*
20 *to a labor organization which qualifies under criteria es-*
21 *tablished by the Federal Labor Relations Authority as the*
22 *representative of a substantial number of employees of the*
23 *agency. National consultation rights shall not be accorded*
24 *for any unit where a labor organization already holds ex-*

1 clusive recognition at the national level for that unit. The
 2 granting of national consultation rights does not preclude
 3 an agency from appropriate dealings at the national level
 4 with other organizations on matters affecting their members.
 5 An agency shall terminate national consultation rights when
 6 the labor organization ceases to qualify under the established
 7 criteria.

8 “(b) When a labor organization has been accorded
 9 national consultation rights, the agency, through appropriate
 10 officials, shall notify representatives of the organization of
 11 proposed substantive changes in personnel policies that af-
 12 fect employees it represents and provide an opportunity for
 13 the organization to comment on the proposed changes. The
 14 labor organization may suggest changes in the agency's
 15 personnel policies and have its views carefully considered. It
 16 may consult in person at reasonable times, on request, with
 17 appropriate officials on personnel policy matters, and at all
 18 times present its views thereon in writing. An agency is not
 19 required to consult with a labor organization on any matter
 20 on which it would be required to negotiate if the organiza-
 21 tion were entitled to exclusive recognition.

22 “(c) Questions as to the eligibility of labor organiza-
 23 tions for national consultation rights may be referred to the
 24 Authority for decision.

1 “§ 7168. *Exclusive recognition*

2 “(a) An agency shall accord exclusive recognition to
 3 a labor organization when the organization has been selected,
 4 in a secret ballot election, by a majority of the employees in
 5 an appropriate unit as their representative: Provided, That
 6 this section shall not preclude an agency from according ex-
 7 clusive recognition to a labor organization, without an elec-
 8 tion, where the appropriate unit is established through the
 9 consolidation of existing exclusively recognized units repre-
 10 sented by that organization.

11 “(b) A unit may be established on a plant or installation,
 12 craft, functional, or other basis which will ensure a clear
 13 and identifiable community of interest among the employees
 14 concerned and will promote effective dealings and efficiency
 15 of agency operations. A unit shall not be established solely
 16 on the basis of the extent to which employees in the proposed
 17 unit have organized, nor shall a unit be established if it
 18 includes—

19 “(1) any management official, confidential employee,
 20 or supervisor, except as provided in section 7182 of this
 21 subchapter;

22 “(2) an employee engaged in Federal personnel
 23 work in other than a purely clerical capacity; or

24 “(3) both professional and nonprofessional em-

1 *ployees, unless a majority of the professional employees*
 2 *vote for inclusion in the unit.*

3 *Questions as to the appropriate unit and related issues may*
 4 *be referred to the Authority for decision.*

5 “(a) *All elections shall be conducted under the super-*
 6 *vision of the Authority or persons designated by the Au-*
 7 *thority and shall be by secret ballot. Employees eligible to*
 8 *vote shall be provided the opportunity to choose the labor*
 9 *organization they wish to represent them, from among those*
 10 *on the ballot or ‘no union’, except as provided in paragraph*
 11 *(4) of this subsection. Elections may be held to determine*
 12 *whether—*

13 “(1) *a labor organization should be recognized as*
 14 *the exclusive representative of employees in a unit;*

15 “(2) *a labor organization should replace another*
 16 *labor organization as the exclusive representative;*

17 “(3) *a labor organization should cease to be the*
 18 *exclusive representative;*

19 “(4) *a labor organization should be recognized as*
 20 *the exclusive representative of employees in a unit com-*
 21 *posed of employees in units currently represented by that*
 22 *labor organization or continue to be recognized in the*
 23 *existing separate units.*

1 “§ 7169. *Representation rights and duties; good faith bar-*
 2 *gaining; scope of negotiations; resolution of*
 3 *negotiability disputes*

4 “(a) *When a labor organization has been accorded*
 5 *exclusive recognition, it is the exclusive representative of*
 6 *employees in the unit and is entitled to act for and negotiate*
 7 *agreements covering all employees in the unit. It is respon-*
 8 *sible for representing the interests of all employees in the*
 9 *unit without discrimination and without regard to labor*
 10 *organization membership. The labor organization shall be*
 11 *given the opportunity to be represented at formal discussions*
 12 *between management and employees or employee represent-*
 13 *atives concerning grievances, personnel policies and prac-*
 14 *tices, or other matters affecting general working conditions of*
 15 *employees in the unit. The agency and the labor organiza-*
 16 *tion, through appropriate representatives, shall meet and*
 17 *negotiate in good faith for the purpose of arriving at an*
 18 *agreement.*

19 “(b) *The duty of the agency and the labor organization*
 20 *to negotiate in good faith includes—*

21 “(1) *to approach the negotiations with a sincere*
 22 *resolve to reach an agreement;*

23 “(2) *to be represented at the negotiations by appro-*
 24 *priate representatives prepared to discuss and negotiate*
 25 *on all negotiable matters;*

1 “(3) to meet at reasonable times and places as may
2 be necessary; and

3 “(4) if an agreement is reached, to execute upon
4 request a written document embodying the agreed terms,
5 and to take such steps as are necessary to implement the
6 agreement.

7 “(c) An agency and a labor organization that has been
8 accorded exclusive recognition, through appropriate repre-
9 sentatives, shall meet at reasonable times and negotiate in
10 good faith with respect to personnel policies and practices and
11 matters affecting working conditions, so far as may be ap-
12 propriate under this subchapter and other applicable laws
13 and regulations, including policies set forth in the Federal
14 Personnel Manual; published agency policies and regulations
15 for which a compelling need exists under criteria established
16 by the Federal Labor Relations Authority and which are
17 issued at the agency headquarters level or at the level of a
18 primary national subdivision; and a national or other con-
19 trolling agreement at a higher level in the agency. They
20 may negotiate an agreement; determine appropriate tech-
21 niques, consistent with section 7173 of this subchapter, to
22 assist in such negotiation; and execute a written agreement
23 or memorandum of understanding.

24 “(d) In prescribing regulations relating to personnel
25 policies and practices and working conditions, an agency

1 shall have due regard for the obligation imposed by this
2 section. However, the obligation to negotiate does not include
3 matters with respect to the number of employees in an
4 agency; the numbers, types, and grades of positions or em-
5 ployees assigned to an organizational unit, work project or
6 tour of duty; or the technology of performing its work. This
7 does not preclude the parties from negotiating agreements
8 providing appropriate arrangements for employees adversely
9 affected by the impact of realignment of work forces or tech-
10 nological change.

11 “(e) If, in connection with negotiations, an issue de-
12 velops as to whether a proposal is contrary to this subchapter
13 or other applicable law, regulation, or controlling agreement
14 and therefore not negotiable, it shall be resolved as follows:

15 “(1) an issue which involves interpretation of a con-
16 trolling agreement at a higher agency level is resolved
17 under the procedures of the controlling agreement, or, if
18 none, under agency regulations;

19 “(2) an issue other than as described in paragraph
20 (1) of this subsection which arises at a local level may
21 be referred by either party to the head of the agency for
22 determination;

23 “(3) an agency head's determination as to the inter-
24 pretation of the agency's regulations with respect to a
25 proposal is final;

1 “(4) a labor organization may appeal to the Au-
2 thority for a decision when—

3 “(i) it disagrees with an agency head’s deter-
4 mination that a proposal would violate this subchap-
5 ter or other applicable law or regulation of appro-
6 priate authority outside the agency,

7 “(ii) it believes that an agency’s regulations, as
8 interpreted by the agency head, violate this subchapter
9 or other applicable law or regulation of appropriate
10 authority outside the agency, or are not otherwise
11 applicable to bar negotiations under subsection (c)
12 of this section.

13 “§ 7170. **Basic provisions of agreements**

14 “Each agreement between an agency and a labor orga-
15 nization is subject to the following requirements:

16 “(a) in the administration of all matters covered by
17 the agreement, officials and employees are governed by
18 existing or future laws and the regulations of appropriate
19 authorities, including policies set forth in the Federal
20 Personnel Manual; by published agency policies and
21 regulations in existence at the time the agreement was
22 approved; and by subsequently published agency policies
23 and regulations required by law or by the regulations of
24 appropriate authorities, or authorized by the terms of a
25 controlling agreement at a higher agency level;

1 “(b) management officials of the agency retain the
2 right to determine the mission, budget, organization, and
3 internal security practices of the agency, and the right
4 in accordance with applicable laws and regulations—

5 “(1) to direct employees of the agency;

6 “(2) to hire, promote, transfer, assign, and
7 retain employees in positions within the agency, and
8 to suspend, demote, discharge, or take other dis-
9 ciplinary action against employees;

10 “(3) to relieve employees from duties because
11 of lack of work or for other legitimate reasons;

12 “(4) to maintain the efficiency of the Govern-
13 ment operations entrusted to them;

14 “(5) to determine the methods, means, and per-
15 sonnel by which such operations are to be conducted;
16 and

17 “(6) to take whatever actions may be necessary
18 to carry out the mission of the agency in situations of
19 emergency.

20 However, nothing in this subsection shall preclude
21 the parties from negotiating procedures which manage-
22 ment will observe in exercising its authority to decide or
23 act, reserved under this subsection; or, from negotiating
24 appropriate arrangements for employees adversely af-
25 fected by the impact of management’s exercising its au-

1 *thority to decide or act, reserved under this subsection:*
 2 *Provided, That such negotiations shall not unreasonably*
 3 *delay the exercise by management of its authority to*
 4 *decide or act: And provided further, That such proced-*
 5 *dures and arrangements so negotiated shall be consonant*
 6 *with law and regulation as provided in section 7169(c)*
 7 *and shall not have the effect of negating the authority*
 8 *reserved under this subsection; and*

9 *"(c) nothing in the agreement shall require an*
 10 *employee to become or to remain a member of a labor*
 11 *organization, or to pay money to the organization except*
 12 *pursuant to a voluntary, written authorization by a*
 13 *member for the payment of dues through payroll*
 14 *deductions.*

15 *"The requirements of this section shall be expressly*
 16 *stated in the initial or basic agreement and apply to*
 17 *all supplemental, implementing, subsidiary, or informal*
 18 *agreements between the agency and the organization.*

19 *"§ 7171. Grievance procedures*

20 *"(a) An agreement between an agency and a labor orga-*
 21 *nization shall provide a procedure, applicable only to the unit,*
 22 *for the consideration of grievances. Subject to the provisions of*
 23 *subsection (d) of this section and so long as it does not otherwise*
 24 *conflict with statute, the coverage and scope of the procedure*
 25 *shall be negotiated by the parties to the agreement. It shall be*

1 *the exclusive procedure available to the parties and the em-*
 2 *ployees in the unit for resolving grievances which fall within*
 3 *its coverage except as otherwise provided in this section.*

4 *"(b) Any employee or group of employees in the unit*
 5 *may present grievances falling within the coverage of the*
 6 *negotiated grievance procedure to the agency and have them*
 7 *adjusted, without the intervention of the exclusive representa-*
 8 *tive, as long as the adjustment is not inconsistent with the*
 9 *terms of the agreement and the exclusive representative has*
 10 *been given opportunity to be present at the adjustment.*

11 *"(c) A negotiated grievance procedure shall provide for*
 12 *arbitration as the final step of the procedure. Arbitration may*
 13 *be invoked by the agency or the exclusive representative. Ex-*
 14 *cept as provided in subsection (g) of this section, the pro-*
 15 *cedure must also provide that the arbitrator is empowered to*
 16 *resolve questions as to whether or not a grievance is on a mat-*
 17 *ter subject to arbitration.*

18 *"(d) A negotiated grievance procedure may cover any*
 19 *matter within the authority of an agency so long as it does*
 20 *not otherwise conflict with this subchapter, except that it may*
 21 *not include matters involving examination, certification and*
 22 *appointment, suitability, classification, political activities, re-*
 23 *irement, life and health insurance, national security or the*
 24 *Fair Labor Standards Act (chapter 8, title 29, U.S. Code).*

25 *"(e) Matters covered under sections 4303 and 7512 of*

1 this title which also fall within the coverage of the negoti-
 2 ated grievance procedure may, in the discretion of the ag-
 3 grieved employee, be raised either under the appellate proce-
 4 dures of section 7701 of this title or under the negotiated
 5 grievance procedure, but not under both procedures. Similar
 6 matters which arise under other personnel systems applicable
 7 to employees covered by this subchapter may, in the discre-
 8 tion of the aggrieved employee, be raised either under the
 9 appellate procedures, if any, applicable to those matters, or
 10 under the negotiated grievance procedure, but not under
 11 both procedures.

12 “(f) An aggrieved employee affected by a prohibited
 13 personnel practice under section 2302(b)(1) of this title
 14 which also falls under the coverage of the negotiated griev-
 15 ance procedure may raise the matter under a statutory pro-
 16 cedure or the negotiated procedure, but not both. Selection
 17 of the negotiated procedure in no manner prejudices the right
 18 of an aggrieved employee to request the Equal Employment
 19 Opportunity Commission to review a final decision in the
 20 same manner as provided for in section 3 of Reorganization
 21 Plan numbered 1 of 1978; or, where applicable, to request
 22 review by the Equal Employment Opportunity Commission
 23 pursuant to its regulations.

24 “(g) Questions that cannot be resolved by the parties as
 25 to whether or not a grievance is on a matter excepted by sub-

1 section (d) of this section shall be referred for resolution to
 2 the agency responsible for final decisions relating to those
 3 matters.

4 “(h) In matters covered under sections 4303 and 7512
 5 of this title which have been raised under the negotiated
 6 grievance procedure in accordance with the provisions of sub-
 7 section (e) of this section, an arbitrator shall be governed by
 8 the provisions of section 7701(c) of this title.

9 “(i) Allocation of the costs of the arbitration shall be
 10 governed by the collective bargaining agreement. An arbi-
 11 trator shall have no authority to award attorney or other
 12 representative fees.

13 “(j) Either party may file exceptions to any arbitrator’s
 14 award with the Federal Labor Relations Authority: Pro-
 15 vided, however, That no exceptions may be filed to awards
 16 concerning matters covered under subsection (e) of this sec-
 17 tion. Decisions of the Authority on exceptions to arbitration
 18 awards shall be final, except for the right of an aggrieved
 19 employee under subsection (f) of this section.

20 “(k) In matters covered under sections 4303 and 7512
 21 of this title which have been raised under the provisions of
 22 the negotiated grievance procedure in accordance with the
 23 provisions of subsection (e) of this section, the provisions of
 24 section 7702 of this title pertaining to judicial review shall
 25 apply to the award of an arbitrator in the same manner and

1 under the same conditions as if the matter had been decided
 2 by the Merit Systems Protection Board. In such cases the
 3 word 'arbitrator' shall replace the words 'Merit Systems Pro-
 4 tection Board' and 'Board' where appropriate in section
 5 7702 for purposes of applying its provisions. In matters simi-
 6 lar to those covered under sections 4303 and 7512 which
 7 arise under other personnel systems and which an aggrieved
 8 employee has raised under the negotiated grievance procedure,
 9 judicial review of an arbitrator's award may be obtained in
 10 the same manner and on the same basis as could be obtained
 11 of a final decision in such matters raised under applicable
 12 appellate procedures.

13 "§ 7172. Approval of agreements

14 "An agreement with a labor organization as the exclu-
 15 sive representative of employees in a unit is subject to the
 16 approval of the head of the agency or an official designated
 17 by the head of the agency. An agreement shall be approved
 18 within 45 days from the date of its execution if it conforms
 19 to this subchapter and other applicable laws, existing pub-
 20 lished agency policies and regulations (unless the agency has
 21 granted an exception to a policy or regulation) and regula-
 22 tions of other appropriate authorities. An agreement which
 23 has not been approved or disapproved within 45 days from
 24 the date of its execution shall go into effect without the re-
 25 quired approval of the agency head and shall be binding on

1 the parties subject to the provisions of this subchapter and
 2 other applicable laws, and the regulations of appropriate
 3 authorities outside the agency. A local agreement subject to
 4 a national or other controlling agreement at a higher level
 5 shall be approved under the procedures of the controlling
 6 agreement, or, if none, under agency regulations.

7 "§ 7173. Negotiation impasses; Federal Service Impasses

8 Panel

9 "(a) Upon request, the Federal Mediation and Con-
 10 ciliation Service shall provide services and assistance to
 11 agencies and labor organizations in the resolution of nego-
 12 tiation impasses.

13 "(b) When voluntary arrangements including the serv-
 14 ices of the Federal Mediation and Conciliation Service or
 15 other third-party mediation fail to resolve a negotiation im-
 16 passe, either party may request the Federal Service Im-
 17 passes Panel provided for under subsection (c) of this sec-
 18 tion to consider the matter.

19 "(c) There is a Federal Service Impasses Panel as a
 20 distinct organizational entity within the Authority. The
 21 Panel is composed of a Chairperson and at least two other
 22 members, appointed by the President solely on the basis of
 23 fitness to perform the duties and functions of the office from
 24 among individuals who are familiar with Government op-
 25 erations and knowledgeable in labor-management relations.

1 No employee as defined under section 2105 of this title shall
2 be appointed to serve as a member of the Panel.

3 "(d) The members of the Panel (in equal numbers)
4 shall be appointed for respective terms of 1 year and of 3
5 years, and the Chairperson for a term of 5 years. Their suc-
6 cessors shall be appointed for terms of 5 years, except that
7 an individual chosen to fill a vacancy shall be appointed for
8 the unexpired term of the member whom such individual
9 shall replace. Any member of the Panel may be removed by
10 the President.

11 "(e) The Panel may appoint an Executive Secretary
12 and such other employees as it may from time to time find
13 necessary for the proper performance of its duties. Each
14 member of the Panel is entitled to pay at a rate equal to the
15 daily equivalent of the maximum annual rate of basic pay
16 currently paid, from time to time, under the General Sched-
17 ule for each day the member is engaged in the performance
18 of official business on the work of the Panel, including travel
19 time, and is entitled to travel expenses and a per diem allow-
20 ance under section 5703 of this title.

21 "(f) The Panel or its designee shall promptly investigate
22 any impasse presented to it under subsection (b) of this sec-
23 tion. The Panel shall consider the matter and shall either
24 recommend procedures to the parties for the resolution of the
25 impasse or assist the parties in arriving at a settlement

1 through whatever methods and procedures, including fact
2 finding and recommendations, it may deem appropriate to
3 accomplish the purposes of this section. Arbitration or third-
4 party factfinding with recommendations to assist in the reso-
5 lution of an impasse may be used by the parties only when
6 authorized or directed by the Panel. If the parties do not ar-
7 rive at a settlement, the Panel may hold hearings, compel
8 under section 7179 of this subchapter the attendance of wit-
9 nesses and the production of documents, and take whatever
10 action is necessary and not inconsistent with this subchapter
11 to resolve the impasse. Notice of any final action of the Panel
12 shall be promptly served upon the parties, and such action
13 shall be binding upon them during the term of the agreement
14 unless the parties mutually agree otherwise.

15 "§ 7174. Unfair labor practices

16 "(a) It shall be an unfair labor practice for an
17 agency—

18 "(1) to interfere with, restrain, or coerce an em-
19 ployee in the exercise of rights assured by this sub-
20 chapter;

21 "(2) to encourage or discourage membership in
22 any labor organization by discrimination in regard to
23 hiring, tenure, promotion, or other conditions of em-
24 ployment;

25 "(3) to sponsor, control, or otherwise assist any

1 labor organization, except that the agency may furnish
 2 to a labor organization customary and routine services
 3 and facilitate when consistent with the best interest of
 4 the agency, its employees, and the organization and
 5 when the services and facilities are furnished, if re-
 6 quested, on an impartial basis to organizations having
 7 equivalent status;

8 “(4) to discipline or otherwise discriminate against
 9 an employee because the employee has filed a complaint,
 10 affidavit, petition, or given any information or testi-
 11 mony under this subchapter;

12 “(5) to refuse to accord appropriate recognition to
 13 a labor organization qualified for such recognition; or

14 “(6) to refuse to consult or negotiate in good faith
 15 with a labor organization as required by this subchapter.

16 “(b) It shall be an unfair labor practice for a labor
 17 organization—

18 “(1) to interfere with, restrain, or coerce an em-
 19 ployee in the exercise of the rights assured by this sub-
 20 chapter;

21 “(2) to cause or attempt to cause an agency to co-
 22 erce an employee in the exercise of rights under this
 23 subchapter;

24 “(3) to coerce or attempt to coerce an employee or
 25 to discipline, fine or take other economic sanction against

1 a member of the labor organization as punishment or
 2 reprisal or for the purpose of hindering or impeding
 3 work performance, productivity or the discharge of duties
 4 owed as an employee of the United States;

5 “(4) to call or engage in a strike, work stoppage, or
 6 slowdown; picket an agency in a labor-management dis-
 7 pute when such picketing interferes or reasonably threat-
 8 ens to interfere with an agency's operations; or condone
 9 any such activity by failing to take affirmative action to
 10 prevent or stop it;

11 “(5) to discriminate against an employee with
 12 regard to the terms or conditions of membership because
 13 of race, color, religion, national origin, sex, age, or
 14 handicapping condition; or

15 “(6) to refuse to consult, or negotiate in good faith
 16 with an agency as required by this subchapter.

17 “(c) It shall be an unfair labor practice for a labor
 18 organization which is accorded exclusive recognition to deny
 19 membership to an employee in the appropriate unit except
 20 for failure to meet reasonable occupational standards uni-
 21 formly required for admission, or for failure to tender ini-
 22 tiation fees and dues uniformly required as a condition of
 23 acquiring and retaining membership. This subsection does not
 24 preclude a labor organization from enforcing discipline in

1 accordance with procedures under its constitution or bylaws
2 which conform to the requirements of this subchapter.

3 “(d) Issues which can properly be raised under an
4 appeals procedure may not be raised under this section. Ex-
5 cept for matters wherein, under section 7171(c) of this title,
6 an employee has an option of using either the appellate pro-
7 cedures of section 7701 of this title or the negotiated griev-
8 ance procedure, issues which can be raised under a grievance
9 procedure may, in the discretion of the aggrieved party, be
10 raised under that procedure or the complaint procedure
11 under this section, but not under both procedures. Appeals
12 or grievance decisions shall not be construed as unfair labor
13 practice decisions under this subchapter nor as a precedent
14 for such decisions. All complaints under this section that
15 cannot be resolved by the parties shall be filed with the
16 Authority.

17 “(e) Questions as to whether an issue can properly be
18 raised under an appeals procedure shall be referred for res-
19 olution to the agency responsible for final decisions relating
20 to those issues.

21 **“§ 7175. Standards of conduct for labor organizations**

22 “(a) An agency shall accord recognition only to a labor
23 organization that is free from corrupt influences and in-
24 fluences opposed to basic democratic principles. Except as

1 provided in subsection (b) of this section, an organization
2 is not required to prove that it has the required freedom
3 when it is subject to governing requirements adopted by the
4 organization or by a national or international labor orga-
5 nization or federation of labor organizations with which it is
6 affiliated or in which it participates, containing explicit and
7 detailed provisions to which it subscribes calling for—

8 “(1) the maintenance of democratic procedures and
9 practices, including provisions for periodic elections to
10 be conducted subject to recognized safeguards and pro-
11 visions defining and securing the right of individual
12 members to participation in the affairs of the organiza-
13 tion, to fair and equal treatment under the governing
14 rules of the organization, and to fair process in disci-
15 plinary proceedings;

16 “(2) the exclusion from office in the organization of
17 persons affiliated with communist or other totalitarian
18 movements and persons identified with corrupt influences;

19 “(3) the prohibition of business or financial inter-
20 ests on the part of organization officers and agents which
21 conflict with their duty to the organization and its mem-
22 bers; and

23 “(4) the maintenance of fiscal integrity in the con-
24 duct of the affairs of the organization, including provi-

1 sion for accounting and financial controls and regular
2 financial reports or summaries to be made available to
3 members.

4 "(b) Notwithstanding the fact that a labor organization
5 has adopted or subscribed to standards of conduct as pro-
6 vided in subsection (a) of this section, the organization is
7 required to furnish evidence of its freedom from corrupt in-
8 fluences or influences opposed to basic democratic principles
9 when there is reasonable cause to believe that—

10 "(1) the organization has been suspended or ex-
11 pelled from or is subject to other sanction by a parent
12 labor organization or federation of organizations with
13 which it had been affiliated because it has demonstrated
14 an unwillingness or inability to comply with governing
15 requirements comparable in purpose to those required by
16 subsection (a) of this section; or

17 "(2) the organization is in fact subject to influences
18 that would preclude recognition under this subchapter.

19 "(c) A labor organization which has or seeks recogni-
20 tion as a representative of employees under this subchapter
21 shall file financial and other reports with the Assistant Sec-
22 retary, provide for bonding of officials and employees of the
23 organization, and comply with trusteeship and election
24 standards.

1 "(d) The Assistant Secretary shall prescribe the regu-
2 lations needed to effectuate this section. These regulations
3 shall conform generally to the principles applied to unions
4 in the private sector. Complaints of violations of this section
5 shall be filed with the Assistant Secretary. In any matters
6 arising under this section, the Assistant Secretary may re-
7 quire a labor organization to cease and desist from viola-
8 tions of this section and require it to take such affirmative
9 action as he considers appropriate to effectuate the policies
10 herein.

11 "§ 7176. Allotments to representatives

12 "(a) Where, pursuant to an agreement negotiated in
13 accordance with the provisions of this subchapter, an agency
14 has received from an employee in a unit of exclusive recog-
15 nition a written assignment which authorizes the agency to
16 deduct from the wages of such employee amounts for the
17 payment of regular and periodic dues of the labor orga-
18 nization having exclusive recognition for such unit, such
19 assignment shall be honored. Except as required under sub-
20 section (b) of this section, any such assignment shall be
21 revocable at stated intervals of not more than 6 months.

22 "(b) An allotment for the deduction of labor organiza-
23 tion dues terminates when—

24 "(1) the dues withholding agreement between the

1 agency and the labor organization is terminated or
2 ceases to be applicable to the employee; or

3 "(2) the employee has been suspended or expelled
4 from the labor organization.

5 "§ 7177. Use of official time

6 "Solicitation of membership or dues, and other internal
7 business of a labor organization, shall be conducted during
8 the non-duty hours of the employees concerned. Employees
9 who represent a recognized labor organization shall not be
10 on official time when negotiating an agreement with agency
11 management, except to the extent that the negotiating parties
12 agree to other arrangements which may provide that the
13 agency will either authorize official time for up to 40 hours
14 or authorize up to one-half the time spent in negotiations
15 during regular working hours, for a reasonable number of
16 employees, which number normally shall not exceed the
17 number of management representatives.

18 "§ 7178. Remedial actions

19 "When it is determined by appropriate authority, in-
20 cluding an arbitrator, that certain affirmative action will
21 effectuate and further the policies of this subchapter, such
22 affirmative action may be directed by the appropriate author-
23 ity so long as such action is consistent with statute including
24 section 5596, of this title.

1 "§ 7179. Subpenas

2 "(a) Any member of the Federal Labor Relations Au-
3 thority, including the General Counsel, or the Panel, and
4 any employee of the Authority designated by the Authority
5 may—

6 "(1) issue subpenas requiring the attendance and
7 testimony of witnesses and the production of docu-
8 mentary or other evidence from any place in the United
9 States or any territory or possession thereof, the Com-
10 monwealth of Puerto Rico, or the District of Columbia:
11 Provided, however, That no subpena shall issue under
12 this section requiring the disclosure of intra-manage-
13 ment guidance, advice, counsel or training within an
14 agency or between an agency and the Office of Personnel
15 Management; and

16 "(2) administer oaths, take or order the taking of
17 depositions, order responses to written interrogatories,
18 examine witnesses, and receive evidence.

19 "(b) In the case of contumacy or failure to obey a
20 subpena issued under subsection (a)(1), the United States
21 district court for the judicial district in which the person
22 to whom the subpena is addressed resides or is served may
23 issue an order requiring such person to appear at any
24 designated place to testify or to produce documentary or

1 other evidence. Any failure to obey the order of the court
2 may be punished by the court as a contempt thereof.

3 “(c) Witnesses (whether appearing voluntarily or under
4 subpoena) shall be paid the same fee and mileage allowances
5 which are paid subpoenaed witnesses in the courts of the
6 United States.

7 “§ 7180. Issuance of regulations

8 “The Authority, including the General Counsel, and
9 the Panel and the Federal Mediation and Conciliation Service
10 shall each prescribe rules and regulations to carry out the
11 provisions of this subchapter applicable to each of them,
12 respectively. Unless otherwise specifically provided in this
13 subchapter, the provisions of subchapter II of chapter 5 of
14 this title shall be applicable to the issuance, revision, or repeal
15 of any such rule or regulation.

16 “§ 7181. Compilation and publication of proceedings, deci-
17 sions, actions

18 “(a) The Authority shall maintain a file of its pro-
19 ceedings and shall publish the texts of its decisions and the
20 actions taken by the Panel under section 7173 of this
21 subchapter.

22 “(b) All files maintained under subsection (a) of this
23 section shall be open to inspection and reproduction subject
24 to the provisions of section 552 of this title.

1 “§ 7182. Continuation of existing laws, recognitions, agree-
2 ments, policies, regulations, procedures, and
3 decisions

4 “(a) Nothing contained in this subchapter shall pre-
5 clude—

6 “(1) the renewal or continuation of an exclusive
7 recognition, certification of a representative, or a lawful
8 agreement between an agency and a representative of its
9 employees entered into before the effective date of this
10 subchapter; or

11 “(2) the renewal, continuation, or initial according
12 of recognition for units of management officials or super-
13 visors represented by labor organizations which histori-
14 cally or traditionally represent management officials or
15 supervisors in private industry and which hold exclusive
16 recognition for units of such officials or supervisors in
17 any agency on the effective date of this subchapter.

18 “(b) Policies, regulations, and procedures established,
19 and decisions issued, under Executive Order 11491, as
20 amended, or under the provisions of any related Executive
21 order in effect on the effective date of this statute shall remain
22 in full force and effect until revised or revoked by Executive
23 order or statute, or unless superseded by appropriate decision
24 or regulation of the Authority.”

1 (b) CONTINUANCE OF TERMS OF OFFICE.—Any term
 2 of office of any member of the Federal Labor Relations Au-
 3 thority and the General Counsel of the Federal Labor Relations
 4 Authority serving on the effective date of this act shall con-
 5 tinue in effect until such time as such term would expire under
 6 Reorganization Plan numbered 2 of 1978, and upon ex-
 7 piration of such term, appointments to such office shall be
 8 made under section 7163 of title 5, United States Code. Any
 9 term of office of any member of the Federal Service Impasses
 10 Panel serving on the effective date of this act shall continue
 11 in effect until such time as members of the Panel are ap-
 12 pointed pursuant to section 7173 of title 5, United States
 13 Code.

14 (c) FUNDING.—There are hereby authorized to be ap-
 15 propriated such sums as are necessary to carry out the func-
 16 tions and purposes of this subchapter.

17 (d) SEVERABILITY.—If any provision of this sub-
 18 chapter, or the application of such provision to any person
 19 or circumstance, shall be held invalid, the remainder of this
 20 subchapter or the application of such provision to persons or
 21 circumstances other than those as to which it is held invalid,
 22 shall not be affected thereby.

23 (e) The analysis of chapter 71 of subpart F of part

1 III of title 5, United States Code, is amended to add the
 2 following subchapter III:

3 "SUBCHAPTER III—FEDERAL SERVICE LABOR-
 4 MANAGEMENT RELATIONS

"Sec.

"7161. Findings and purpose.

"7162. Definitions; application.

"7163. Federal Labor Relations Authority; Office of the General Counsel.

"7164. Powers and duties of the Authority; the General Counsel.

"7165. Employees' rights.

"7166. Recognition of labor organizations in general.

"7167. National consultation rights.

"7168. Exclusive recognition.

"7169. Representation rights and duties; good faith bargaining; scope of negotiations; resolution of negotiability disputes.

"7170. Basic provisions of agreements.

"7171. Grievance procedures.

"7172. Approval of agreements.

"7173. Negotiation impasses; Federal Service Impasses Panel.

"7174. Unfair labor practices.

"7175. Standards of conduct for labor organizations.

"7176. Allotments to representatives.

"7177. Use of official time.

"7178. Remedial actions.

"7179. Subpenas.

"7180. Issuance of regulations.

"7181. Compilation and publication of proceedings, decisions, actions.

"7182. Continuation of existing laws, recognitions, agreements, policies, regulations, procedures, and decisions."

3 (f) Section 5314 of title 5, United States Code, is
 4 amended by adding at the end thereof:

5 "(66) Chairperson, Federal Labor Relations Au-
 6 thority."

7 (g) Section 5315 of title 5, United States Code, is
 8 amended by adding at the end thereof:

9 "(114) Members (2), Federal Labor Relations
 10 Authority."

11 (h) Section 5316 of title 5, United States Code, is
 12 amended by adding at the end thereof:

1 “(141) General Counsel, Federal Labor Relations
2 Authority.”

3 REMEDIAL AUTHORITY

4 SEC. 702. Section 5596 of title 5, United States Code,
5 is amended to read after subsection (a) as follows:
6 “(b) An employee of an agency who, on the basis of an
7 administrative determination or a timely appeal, is found
8 by appropriate authority to have suffered a withdrawal, re-
9 duction, or denial of all or part of the employee's pay, al-
10 lowances, differentials, or other monetary or employment
11 benefits, or a denial of an increase in such pay, allowances,
12 differentials, or other monetary or employment benefits,
13 which would not have occurred but for unjustified or un-
14 warranted action taken by the agency—

15 “(1) is entitled, on correction of the action, to be
16 made whole for all losses suffered less, in applicable cir-
17 cumstances, interim earnings. Such correction may in-
18 clude, where appropriate, reinstatement or restoration
19 to the same or substantially similar position or promo-
20 tion to a higher level position; and

21 “(2) for all purposes, is deemed to have performed
22 service for the agency during the period of the unjustified
23 or unwarranted action except that—

24 “(A) annual leave restored under this para-
25 graph which is in excess of the maximum leave

1 accumulation permitted by law shall be credited to
2 a separate leave account for the employee and shall
3 be available for use by the employee within the time
4 limits prescribed by regulations of the Office of Per-
5 sonnel Management, and

6 “(B) annual leave credited under subpara-
7 graph (A) of this paragraph but unused and still
8 available to the employee under regulations prescribed
9 by the Office of Personnel Management shall be in-
10 cluded in the lump-sum payment under section 5551
11 or 5552(1) of this title but may not be retained
12 to the credit of the employee under section 5552(2)
13 of this title.

14 “(c) For the purposes of this section—

15 “(1) An ‘unjustified or unwarranted action’ shall
16 include—

17 “(A) any act of commission, either substantive
18 or procedural, which violates or improperly applies
19 a provision of law, Executive Order, regulation, or
20 collective bargaining agreement; and

21 “(B) any act of omission, or failure to take an
22 action, or confer a benefit, which must be taken or
23 conferred under a nondiscretionary provision of
24 law, Executive order, regulation, or collective bar-
25 gaining agreement;

1 “(2) An ‘administrative determination’ shall in-
2 clude, but is not limited to, a decision, award, or order,
3 issued by—

4 “(A) a court having jurisdiction over the mat-
5 ter involved;

6 “(B) the Office of Personnel Management;

7 “(C) the Merit Systems Protection Board;

8 “(D) the Federal Labor Relations Authority;

9 “(E) the Comptroller General of the United
10 States;

11 “(F) the head of the employing agency or an
12 agency official to whom corrective action authority is
13 delegated;

14 “(G) an arbitrator under a negotiated binding
15 arbitration agreement between a labor organization
16 and agency management.

17 “(3) An ‘appropriate authority’ shall include, but
18 is not limited to—

19 “(A) a court having jurisdiction;

20 “(B) the Office of Personnel Management;

21 “(C) the Merit Systems Protection Board;

22 “(D) the Federal Labor Relations Authority;

23 “(E) the Comptroller General of the United
24 States;

1 “(F) the head of the employing agency or an
2 agency official to whom corrective action authority
3 is delegated;

4 “(G) an arbitrator under a negotiated binding
5 arbitration agreement between a labor organization
6 and agency management.

7 “(d) The provisions of this section shall not apply to
8 reclassification actions nor shall they authorize the setting
9 aside of an otherwise proper promotion action by a select-
10 ing official from a group of properly ranked and certified
11 candidates.

12 “(e) The Office of Personnel Management shall pre-
13 scribe regulations to carry out this section. However, the
14 regulations are not applicable to the Tennessee Valley Au-
15 thority and its employees.”.

[COMMITTEE PRINT]

JUNE 15, 1978

[Note: the following reflects the proposed draft to be used in the consideration of H.R. 11280, but does not include the proposed title VII (labor-management relations) and necessary conforming and technical amendments, Matter to be omitted is struck through and matter to be inserted is shown in *italics*]

96TH CONGRESS
2d Session

H. R. 11280

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1978

Mr. NIX (for himself and Mr. DEMWINSKI) (by request) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To reform the civil service laws.

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

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Civil Service
5 Reform Act of 1978".

6 SEC. 2. The table of contents is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 8. Findings and statement of purpose.

TABLE OF CONTENTS—Continued

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

- Sec. 201. Office of Personnel Management.
- Sec. 202. Merit Systems Protection Board and Special Counsel.
- Sec. 203. Performance appraisals.
- Sec. 204. Adverse actions.
- Sec. 205. Appeals.
- Sec. 206. Technical and conforming amendments.

TITLE III—STAFFING

- Sec. 301. Volunteer services.
- [Sec. 302. Definitions relating to preference eligibles.
- [Sec. 303. Noncompetitive appointment of certain disabled veterans.
- [Sec. 304. Examination, certification, and appointment of preference eligibles.
- [Sec. 305. Retention preference.]
- Sec. 306. Training.
- Sec. 307. Travel, transportation, and subsistence.
- Sec. 308. Retirement.
- [Sec. 309. Extension of veterans readjustment appointment authority.
- [Sec. 310. Effective date.]

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. Coverage.
- Sec. 402. Authority for employment.
- Sec. 403. Examination, certification, and appointment.
- Sec. 404. Retention preference.
- Sec. 405. Performance rating.
- Sec. 406. Incentive awards and ranks.
- Sec. 407. Pay rates and systems.
- Sec. 408. Pay administration.
- Sec. 409. Travel, transportation, and subsistence.
- Sec. 410. Leave.
- Sec. 411. Disciplinary actions.
- Sec. 412. Retirement.

TABLE OF CONTENTS—Continued

TITLE IV—SENIOR EXECUTIVE SERVICE—Continued

- Sec. 413. Conversion to the Senior Executive Service.
 Sec. 414. Limitations on executive positions.
 Sec. 416. Effective date.

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.
 Sec. 502. Conforming and technical amendments.
 Sec. 503. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND
OTHER PROGRAMS

- Sec. 601. Research and demonstration projects.
 Sec. 602. Intergovernmental Personnel Act amendments.
 Sec. 603. Amendments to the mobility program.

Title VII—LABOR-MANAGEMENT RELATIONS

[To be supplied.]

TITLE VIII—MISCELLANEOUS

- Sec. 701. 801 Savings provisions.
 Sec. 702. 802 Authorization of appropriations.
 Sec. 703. 803 Powers of President unaffected except by express provisions.
 Sec. 704. 804 Technical and conforming amendments.
 Sec. 705. 805 Effective dates.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information concerning violation of law or regulations and to bring disciplinary charges against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by Executive agencies to recruit and retain the highly competent and qualified managers needed to provide more effective

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1 management of Executive agencies and their functions,
2 and the more expeditious administration of the public
3 business;

4 (6) in appropriate instances, pay increases should
5 be based on quality of performance rather than length
6 of service;

7 (7) a research and demonstration program should
8 be authorized to permit Federal agencies to experiment,
9 *subject to congressional review*, with new and different
10 personnel management concepts in controlled situations
11 to achieve more efficient management of the Govern-
12 ment's human resources and greater productivity in the
13 delivery of service to the public; and

14 (8) the training program of the Government should
15 include retraining of employees for positions in other
16 agencies to avoid separations during reductions in force
17 and the loss to the Government of the knowledge and
18 experience that these employees possess, and that this
19 policy will result in maintaining the morale and produc-
20 tivity of employees.

21 TITLE I—MERIT SYSTEM PRINCIPLES

22 MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL

23 PRACTICES

24 SEC. 101. (a) Title 5, United States Code, is amended
25 by inserting, after chapter 21, the following new chapter:

"Chapter 23.—MERIT SYSTEM PRINCIPLES

"Sec.
"2301. Merit system principles.
"2302. Prohibited personnel practices.
"2303. Responsibility of the General Accounting Office.

1 "§ 2301. Merit system principles

2 "(a) ~~(1)~~ Except as provided in paragraph ~~(2)~~ of this
3 subsection, ~~this~~ This section shall apply to—

4 "~~(A)~~ (1) an executive agency;

5 "~~(B)~~ (2) the Administrative Office of the United
6 States Courts; and

7 "~~(C)~~ (3) the Government Printing Office.

8 "~~(2)~~ This section shall not apply to—

9 "~~(A)~~ a Government corporation;

10 "~~(B)~~ the Central Intelligence Agency, the Defense
11 Intelligence Agency, and the National Security Agency,
12 and, as determined by the President, an executive
13 agency or unit thereof which conducts foreign intel-
14 ligence or counterintelligence activities;

15 "~~(C)~~ the General Accounting Office; and

16 "~~(D)~~ any agency, or any unit, position or positions
17 therein, excluded from the application of this section
18 by the President.

19 "(b) It is the policy of the Congress that in order to
20 provide the people of the United States with a highly
21 competent, honest, and productive Federal work force re-
22 flective of the Nation's diversity, and to improve the quality

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1 of public service, Federal personnel management should
2 be implemented consistent with merit system principles.

3 “(c) The merit system principles are as follows:

4 “(1) Recruitment should be from qualified candidates
5 from appropriate sources in an endeavor to achieve a work
6 force from all segments of society, and selection and ad-
7 vancement should be determined solely on the basis of rela-
8 tive ability, knowledge, and skills, after fair and open com-
9 petition which assures that all receive equal opportunity.

10 “(2) All applicants and employees should receive fair
11 and equitable treatment in all aspects of personnel manage-
12 ment without regard to political affiliation, race, color, reli-
13 gion, national origin, sex, marital status, age, or handicapping
14 condition, and with proper regard for their privacy and
15 constitutional rights.

16 “(3) Equal pay should be provided for work of equal
17 value to attract and retain highly qualified personnel, with
18 appropriate consideration of both national and local rates
19 paid by ~~non-Federal~~ employers *in the private sector*, and
20 appropriate incentives and recognition should be provided
21 for excellence in performance.

22 “(4) All employees should maintain high standards of
23 integrity, conduct, and concern for the public interest.

24 “(5) The Federal work force should be used efficiently
25 and effectively.

1 “(6) Employees should be retained on the basis of the
2 adequacy of their performance, inadequate performance
3 should be corrected, and employees should be separated who
4 cannot or will not improve their performance to meet re-
5 quired standards.

6 “(7) Employees should be provided effective education
7 and training in cases in which such education and training
8 would result in better organizational and individual
9 performance.

10 “(8) Employees should be—

11 “(A) protected against arbitrary action, personal
12 favoritism, or coercion for partisan political purposes,
13 and

14 “(B) prohibited from using their official authority
15 for the purpose of interfering with or affecting the result
16 of an election or a nomination for election.

17 “(d) The President ~~may~~ *shall* take such actions, in-
18 cluding the issuance of rules, regulations, or directives, as the
19 President determines are necessary to assure that personnel
20 management in the agencies covered by this section is based
21 on and embodies the merit system principles. *carry out the*
22 *policy set forth in subsection (b) of this section.*

23 “§ 2302. Prohibited personnel practices

24 “(a) For the purpose of this section ‘personnel action’
25 means—

- 1 " (1) an appointment;
- 2 " (2) a promotion;
- 3 " (3) an action under chapter 75 of this title or
4 other disciplinary or corrective action;
- 5 " (4) a detail, transfer, or reassignment;
- 6 " (5) a reinstatement;
- 7 " (6) a restoration;
- 8 " (7) a reemployment;
- 9 " (8) a performance evaluation under chapter 43 of
10 this title; or
- 11 " (9) a decision concerning pay, benefits, awards,
12 or education, or training if it may reasonably be ex-
13 pected to lead to a personnel action within the meaning
14 of this subsection;
- 15 with respect to an employee in, or applicant for, a position
16 in the competitive service or in an agency with respect to
17 which this section applies, to a position in the excepted serv-
18 ice in an executive agency with respect to which this section
19 applies (other than a position which is excepted from the
20 competitive service because of its confidential or policymak-
21 ing character), or to a career appointee in the Senior Execu-
22 tive Service in an agency with respect to which this section
23 applies.
- 24 " (b) Any employee who has authority to take, direct

1 others to take, recommend, or approve any personnel action,
2 shall not, with respect to such authority—

3 "~~(1)~~ unlawfully discriminate for or against any
4 employee or applicant for employment on the basis of
5 political affiliation, race, color, religion, natural origin,
6 sex, marital status, age, or handicapping condition;

7 "(1) discriminate for or against any employee or
8 applicant for employment—

9 "(A) on the basis of race, color, religion, sex,
10 or national origin, as prohibited under the Civil
11 Rights Act of 1964 (42 U.S.C. 2000e-16);

12 "(B) on the basis of age, as prohibited under
13 the Age Discrimination in Employment Act of
14 1967 (29 U.S.C. 631, 633a);

15 "(C) on the basis of handicapping condition,
16 as prohibited under section 501 of the Rehabilita-
17 tion Act of 1973 (29 U.S.C. 791);

18 "(D) on the basis of marital status or political
19 affiliation, as prohibited under this title; or

20 "(E) on any such basis, as prohibited under
21 the provisions of any other law, rule, or regulation.

22 [" (2) solicit or consider any recommendation or
23 statement, oral or written, with respect to any individual
24 who requests or is under consideration for any person-
25 nel action unless such recommendation or statement is

1 based on the personal knowledge or records of the person
2 furnishing it and consists of—

3 [" (A) an evaluation of the work performance,
4 ability, aptitude, or general qualifications of such in-
5 dividual; or

6 [" (B) an evaluation of the character, loyalty,
7 or suitability of such individual;"]

8 " (3) coerce the political activity of any person,
9 obligate any person to make any political contribution
10 (including providing any political service), or take any
11 action against any employee or applicant as a reprisal
12 for the refusal of any person to engage in such political
13 activity, make such contribution, or provide such service;

14 " (4) willfully deceive or obstruct any person with
15 respect to such person's right to compete for Federal
16 employment;

17 " (5) influence any person to withdraw from com-
18 petition for any position for the purpose of improving
19 or injuring the prospects of any applicant for employ-
20 ment;

21 " (6) grant any preference or advantage not author-
22 ized by law, rule, or regulation to any employee or
23 applicant for employment (including defining the scope
24 or manner of competition or the requirements for any

1 position) for the purpose of improving or injuring the
2 prospects of any particular individual;

3 " (7) appoint, employ, promote, advance, or ad-
4 vocate for appointment, employment, promotion, or ad-
5 vancement, in or to a civilian position, any individual
6 who is a relative (as defined in section 3110 (a) (3) of
7 this title) of such employee if such position is in the
8 agency in which such employee is serving as a public
9 official (as defined in section 3110 (a) (2) of this title)
10 or over which such employee exercises jurisdiction or
11 control as such an official; or

12 ~~" (8) take action against any employee or applicant~~
13 ~~for employment as a reprisal for the exercise of any ap-~~
14 ~~peal right granted by law, rule, or regulation or for the~~
15 ~~disclosure, not prohibited by law, rule, or regulation, of~~
16 ~~information concerning violations of law, rules, or~~
17 ~~regulations.~~

18 " (8) take action against any employee or applicant
19 for employment as a reprisal for—

20 " (A) a disclosure, not prohibited by law or
21 Executive order, of information which the employee
22 or applicant reasonably believes evidences a viola-
23 tion of any law, rule, or regulation; or

24 " (B) a disclosure to the Special Counsel of the
25 Merit Systems Protection Board, or to the Inspector

1 *General of an agency or such other employee des-*
 2 *ignated by the head of the agency to receive such*
 3 *disclosures, of information which the employee or*
 4 *applicant reasonably believes evidences mismanage-*
 5 *ment, waste of funds, or abuse of authority; or*

6 *“(9) take action against any employee or applicant*
 7 *for employment as a reprisal for the exercise of any*
 8 *right of appeal granted by law, rule, or regulation.*

9 The term ‘prohibited personnel practice’, when used in this
 10 title, means any action described in this subsection.

11 *“(c) The head of each executive agency shall be re-*
 12 *sponsible for the prevention of prohibited personnel prac-*
 13 *tices, for the compliance with and enforcement of applicable*
 14 *civil service laws, rules, and regulations, as well as other*
 15 *aspects of personnel management. Any individual to whom*
 16 *the head of an executive agency delegates authority for*
 17 *personnel management, or for any aspect thereof, shall be*
 18 *similarly responsible within the limits of the delegation.*

19 *“(d) This section shall not be construed to extinguish*
 20 *or lessen any effort to achieve equal employment opportunity*
 21 *through affirmative action or any right or remedy available*
 22 *to any employee or applicant for employment in the civil*
 23 *service under any law, rule, or regulation prohibiting dis-*
 24 *crimination based on political affiliation, race, color, religion,*

1 *national origin, sex, marital status, age, or handicapping*
 2 *condition.*

3 *“(d) This section shall not be construed to extinguish*
 4 *or lessen any effort to achieve equal employment opportunity*
 5 *through affirmative action or any right or remedy available*
 6 *to any employee or applicant for employment in the civil*
 7 *service—*

8 *“(1) under the Civil Rights Act of 1964 (42*
 9 *U.S.C. 2000e-16), prohibiting discrimination on the*
 10 *basis of race, color, religion, sex, or national origin;*

11 *“(2) under the Age Discrimination in Employment*
 12 *Act of 1967 (29 U.S.C. 631, 633a), prohibiting dis-*
 13 *crimination on the basis of age;*

14 *“(3) under section 501 of the Rehabilitation Act of*
 15 *1973 (29 U.S.C. 791), prohibiting discrimination on*
 16 *the basis of handicapping condition;*

17 *“(4) under the provisions of this title, and rules*
 18 *and regulations thereunder, prohibiting discrimination*
 19 *on the basis of marital status or political affiliation; or*

20 *“(5) under the provisions of any other law, rule,*
 21 *or regulation prohibiting discrimination on any such*
 22 *basis.*

23 *“(e) This section shall apply with respect to an Executive*
 24 *agency, the Administrative Office of the United States Courts,*

1 and the Government Printing Office, except that this section
2 shall not apply with respect to—

3 “(A) a Government corporation;

4 “(B) the Central Intelligence Agency, the Defense
5 Intelligence Agency, the National Security Agency, and
6 any Executive agency or unit thereof which is designated
7 by the President and which conducts foreign intelligence
8 or counterintelligence activities; and

9 “(C) the General Accounting Office.

10 “§ 2303. Responsibility of the General Accounting Office

11 “If requested by either House of the Congress (or any
12 Member or committee thereof), or if deemed necessary
13 by the Comptroller General, the General Accounting Office
14 shall conduct, on a continuing basis, audits and reviews
15 to assure compliance with the laws, rules, and regulations
16 governing employment in the executive branch and in the
17 competitive service and to assess the effectiveness and sound-
18 ness of Federal personnel management.”

19 (b) (1) The table of chapters for part III of title 5,
20 United States Code, is amended by adding after the item
21 relating to chapter 21 the following new item:

22 “23. Merit system principles..... 2301.”

23 (2) Section 7153 of title 5, United States Code, is
24 amended—

1 (A) by striking out “Physical handicap” in the
2 catch-line and inserting in lieu thereof “Handicapping
3 condition”; and

4 (B) by striking out “physical handicap” each place
5 it appears in the text and inserting in lieu thereof “handi-
6 capping condition”.

7 (3) The table of sections for chapter 71 of title 5,
8 United States Code, is amended by striking out “physical
9 handicap” in the item relating to section 7153 and inserting
10 in lieu thereof “handicapping condition”.

11 **TITLE II—CIVIL SERVICE FUNCTIONS; PER-**
12 **FORMANCE APPRAISAL; ADVERSE ACTIONS**

13 **OFFICE OF PERSONNEL MANAGEMENT**

14 **SEC. 201.** (a) Chapter 11 of title 5, United States
15 Code, is amended to read as follows:

16 **“Chapter 11.—OFFICE OF PERSONNEL**
17 **MANAGEMENT**

“Sec.

“1101. Office of Personnel Management.

“1102. Director; Deputy Director; Associate Directors.

“1103. Functions of the Director.

“1104. Delegation of authority for personnel management.

18 **“§ 1101. Office of Personnel Management**

19 **“The Office of Personnel Management is an independent**
20 **establishment in the Executive branch. The Office shall have**
21 **an official seal which shall be judicially noticed and shall**

1 have its principal office in the District of Columbia, but
2 may have field offices in other appropriate locations.

3 "§ 1102. Director; Deputy Director; Associate Directors

4 " (a) There is at the head of the Office of Personnel Man-
5 agement a Director of the Office of Personnel Management
6 appointed by the President, by and with the advice and
7 consent of the Senate.

8 " (b) There is in the Office a Deputy Director of the
9 Office of Personnel Management appointed by the President,
10 by and with the advice and consent of the Senate. The
11 Deputy Director shall perform such functions as the Director
12 may from time to time prescribe and shall act as Director
13 during the absence or disability of the Director or in the event
14 of a vacancy in the Office of the Director.

15 " (c) No person shall, while serving as Director or
16 Deputy Director, serve in any other office or position in the
17 Government of the United States except as otherwise pro-
18 vided by law or by the President.

19 " (d) There may be within the Office of Personnel Man-
20 agement not more than five Associate Directors, as deter-
21 mined from time to time by the Director. Each Associate
22 Director shall be appointed by the Director. Such appoint-
23 ments may be made without regard to the provisions of this
24 title governing appointments in the competitive service. Each

1 position of Associate Director shall be in the Senior Executive
2 Service.

3 "§ 1103. Functions of the Director

4 "The following functions are vested in the Director of
5 the Office of Personnel Management, and shall be performed
6 by the Director, or by such employees of the Office as the
7 Director designates—

8 " (1) securing accuracy, uniformity, and justice in
9 the functions of the Office;

10 " (2) appointing individuals to be employed by the
11 Office;

12 " (3) directing and supervising employees of the
13 Office, distributing business among employees and
14 organizational units of the Office, and directing the in-
15 ternal management of the Office;

16 " (4) directing the preparation of requests for ap-
17 propriations for the Office and the use and expenditure
18 of funds by the Office;

19 " (5) executing, administering, and enforcing—

20 " (A) the civil service rules and regulations of
21 the President and the Office and the statutes gov-
22 erning the civil service; and

23 " (B) the other activities of the Office including
24 retirement and classification activities;

1 “(6) reviewing the operations under chapter 87 of
2 this title; and

3 “(7) such other functions as are prescribed in
4 part I of Reorganization Plan Numbered 2 of 1978.

5 “§ 1104. Delegation of authority for personnel management

6 “(a) Notwithstanding any other provision of this
7 title—

8 “(1) the President may delegate, in whole or in
9 part, authority for personnel management functions,
10 including authority for competitive examinations, to the
11 Director of the Office of Personnel Management; and

12 “(2) the Director may delegate, in whole or in
13 part, any function vested in or delegated to the Director,
14 including authority for competitive examinations, to the
15 heads of agencies in the executive branch and other
16 agencies employing persons in the competitive service.”
17 service.

18 “(b)(1) The Office of Personnel Management shall es-
19 tablish standards which shall apply to the conducting of
20 competitive examinations by the Office or any other agency
21 under authority delegated under subsection (a) of this
22 section.

23 “(2) The Office shall establish and maintain an over-
24 sight program to assure that competitive examinations con-

1 ducted under authority delegated under subsection (a) are
2 in accordance with the merit system principles and the stand-
3 ards established under this subsection.

4 “(c) If the Office makes a written finding, on the basis
5 of information obtained under the program established under
6 subsection (b)(2) or otherwise, that any action taken by
7 an agency pursuant to authority delegated under subsection
8 (a) of this section is contrary to any law, rule, or regulation,
9 or is contrary to any standard established under paragraph
10 (1) of this subsection, such action shall be invalid and the
11 agency involved shall take such corrective action as the Office
12 may require.”.

13 (b) (1) Section 5313 of title 5, United States Code, is
14 amended by inserting at the end thereof the following new
15 paragraph:

16 “(24) Director of the Office of Personnel Man-
17 agement.”.

18 (2) Section 5314 of such title is amended by inserting
19 at the end thereof the following new paragraph:

20 “(67) Deputy Director of the Office of Personnel
21 Management.”.

22 (3) Section 5315 of such title is amended by inserting
23 at the end thereof the following new paragraph:

24 “(122) Associate Directors of the Office of Per-
25 sonnel Management (5).”.

1 (c) (1) The heading of part I II of title 5, United States
 2 Code, is amended by striking out "The United States Civil
 3 Service Commission" and inserting in lieu thereof "Civil
 4 Service Functions and Responsibilities".

5 (2) The item relating to chapter 11 in the table of
 6 chapters for part II of such title is amended by striking out
 7 "Organizatton" and inserting in lieu thereof "Office of Person-
 8 nel Management".

9 MERIT SYSTEMS PROTECTION BOARD AND SPECIAL

10 COUNSEL

11 SEC. 202. (a) Title 5, United States Code, is amended
 12 by inserting after chapter 11 the following new chapter:

13 "Chapter 12—MERIT SYSTEMS PROTECTION BOARD
 14 AND SPECIAL COUNSEL

"Sec.

"1201. Appointment of members of the Merit Systems Protection Board.

"1202. Term of office; filling vacancies; removal.

"1203. Chairman; Vice Chairman.

"1204. Special Counsel; appointment and removal.

"1205. Powers of the Merit Systems Protection Board and Special
 Counsel.

"1206. Authority and responsibilities of the Special Counsel.

"1207. Hearings and decisions on complaints filed by the Special Counsel.

15 "§ 1201. Appointment of members of the Merit Systems
 16 Protection Board

17 "The Merit Systems Protection Board is composed of
 18 3 members appointed by the President, by and with the
 19 advice and consent of the Senate, not more than 2 of whom
 20 may be adherents of the same political party and none of

1 whom may hold another office or position in the Govern-
 2 ment of the United States. The Board shall have an official
 3 seal which shall be judicially noticed. The Board shall have
 4 its principal office in the District of Columbia and may have
 5 field offices in other appropriate locations.

6 "§ 1202. Term of office; filling vacancies; removal

7 "(a) The term of office of each member of the Merit
 8 Systems Protection Board is 7 years.

9 "(b) A Board member appointed to fill a vacancy oc-
 10 ccurring before the end of a term of office of his predecessor
 11 serves for the remainder of that term. The appointment is
 12 subject to the requirements of section 1201 of this title.

13 "(c) Any Board member appointed for a 7-year term
 14 may not be reappointed to any following term but may con-
 15 tinue to serve until a successor is appointed and has qualified.

16 "(d) A Board member may be removed by the Pres-
 17 ident only upon notice and hearing and only for misconduct,
 18 inefficiency, neglect of duty, or malfeasance in office.

19 "§ 1203. Chairman; Vice Chairman

20 "(a) The President shall from time to time designate
 21 one of the Board members as the Chairman of the Merit
 22 Systems Protection Board. The Chairman is the chief execu-
 23 tive and administrative officer of the Board.

24 "(b) The President shall from time to time designate
 25 one of the Board members as Vice Chairman of the Board.

1 During the absence or disability of the Chairman, or when
2 the office is vacant, the Vice Chairman shall perform the
3 functions vested in the Chairman.

4 “(c) During the absence or disability of both the
5 Chairman and Vice Chairman, or when both offices are
6 vacant, the remaining Board member shall perform the
7 functions vested in the Chairman.

8 “§ 1204. Special Counsel; appointment and removal

9 “The Special Counsel of the Merit Systems Protection
10 Board shall be appointed by the President ~~from attorneys,~~
11 by and with the advice and consent of the Senate, for a
12 term of 7 years. *The Special Counsel may be removed by*
13 *the President only upon notice and hearing and only for*
14 *misconduct, inefficiency, neglect of duty, or malfeasance in*
15 *office.*

16 “§ 1205. Powers and Functions of the Merit Systems Pro-
17 tection Board and Special Counsel

18 “(a) Any member of the Merit Systems Protection
19 Board, the Special Counsel, any ~~hearing examiner~~ *adminis-*
20 *trative law judge* appointed under section 3105 of this title,
21 and any employee of the Board designated by the Board
22 may—

23 “(1) issue subpoenas requiring the attendance and
24 testimony of witnesses and the production of documen-
25 tary or other evidence from any place in the United

1 States or any territory or possession thereof, the Com-
2 monwealth of Puerto Rico, or the District of Columbia,
3 and

4 “(2) administer oaths, take or order the taking
5 of depositions, order responses to written interrogatories,
6 examine witnesses, and receive evidence.

7 “(b) In the case of contumacy or failure to obey a
8 subpoena issued under subsection (a) (1), the United States
9 district court for the judicial district in which the person to
10 whom the subpoena is addressed resides or is served may
11 issue an order requiring such person to appear at any desig-
12 nated place to testify or to produce documentary or other
13 evidence. Any failure to obey the order of the court may
14 be punished by the court as a contempt thereof.

15 “(c) Witnesses (whether appearing voluntarily or
16 under subpoena) shall be paid the same fee and mileage
17 allowances which are paid subpoenaed witnesses in the courts
18 of the United States.

19 “(d) *In addition to functions otherwise provided in*
20 *this title, the Board shall have such functions as are pre-*
21 *scribed in part II of Reorganization Plan Numbered 2 of*
22 *1978.*

23 “§ 1206. Authority and responsibilities of the Special
24 Counsel

25 “(a) *The Special Counsel may receive and investigate*

1 allegations of prohibited personnel practices described in
2 section 2302(b) of this title and may take such action as
3 provided in this section.

4 "(b) Upon the request of any person, the Special
5 Counsel shall conduct an investigation if the Special Counsel
6 has reason to believe that a personnel action was taken, or
7 is to be taken, as a result of a prohibited personnel practice.

8 "(c)(1) In cases involving alleged reprisal for the
9 disclosure, not prohibited by law, rule, or regulation, of in-
10 formation concerning a violation of any law, rule, or regula-
11 tion, the Special Counsel, except as provided in paragraph
12 (2) of this subsection—

13 "(A) shall not, during the investigation, disclose
14 the identity of the complainant without the consent of
15 the complainant unless the Special Counsel determines
16 such disclosure is unavoidable during the course of the
17 investigation;

18 "(B) may order a stay of any personnel action
19 which would have a substantial and adverse economic
20 impact on the employee; and

21 "(C) if the Special Counsel determines that re-
22 prisal has been taken against an employee, may report
23 the matter to the head of the agency involved; and re-
24 quire the head of such agency to take any action ordered
25 by the Special Counsel, including canceling personnel

1 actions having a substantial and adverse economic im-
2 pact on the employee and stopping personnel practices
3 which result in the harassment of the employee.

4 Refusal to carry out actions ordered by the Special Counsel
5 may be cause for disciplinary action by the Special Counsel
6 under subsection (i) of this section.

7 "(2) Paragraph (1) (B) and (C) of this subsection
8 shall not apply in the case of a personnel action which is of
9 a type that is appealable to the Merit Systems Protection
10 Board under section 7701 of this title.

11 "(a)(1) The Special Counsel shall receive any alle-
12 gation of a prohibited personnel practice and shall investi-
13 gate such allegation to the extent necessary to determine
14 if there are reasonable grounds to believe that a prohibited
15 personnel practice exists or has occurred.

16 "(2) If the Special Counsel terminates any investigation
17 under paragraph (1) of this section, the Special Counsel
18 shall prepare and transmit to any person on whose allega-
19 tion such investigation was initiated a written statement
20 summarizing the results of such investigation and setting
21 forth the reasons for its termination.

22 "(3) In addition to authority granted under paragraph
23 (1) of this subsection, the Special Counsel may, in the ab-
24 sence of an allegation, conduct an investigation for the pur-
25 pose of determining if a prohibited personnel practice exists

1 or has occurred.

2 “(b)(1) If the Special Counsel determines that there
3 are reasonable grounds to believe—

4 “(A) that a personnel action was taken, or is to be
5 taken, as a result of a prohibited personnel practice;
6 and

7 “(B) that such personnel action would have a sub-
8 stantial and adverse impact on the employee involved;
9 the Special Counsel may order a stay of such personnel
10 action for 30 calendar days or such longer period as the
11 Board may prescribe under paragraph (2) of this subsection.

12 “(2) If the Board—

13 “(A) has received a petition of the Special Counsel
14 for an extension of a stay under paragraph (1) of this
15 subsection, and

16 “(B) concurs in the determination of the Special
17 Counsel under paragraph (1), after an opportunity is
18 provided for oral or written comment by the Special
19 Counsel and the agency involved,

20 the Board may extend the period of a stay under this subsec-
21 tion for such period as it considers appropriate. If the aggre-
22 gate period of the stay, as proposed to be extended, will not
23 exceed 60 days, the function of the Board under this para-
24 graph may be performed by any one member of the Board.

25 “(c)(1) In any case involving alleged reprisal for—

1 “(A) any disclosure, not prohibited by law or Ex-
2 ecutive order, of information which an employee reason-
3 ably believes evidences a violation of any law, rule, or
4 regulation, or

5 “(B) any disclosure to the Special Counsel, or to
6 any Inspector General of an agency or such other em-
7 ployee as is designated by the head of an agency to re-
8 ceive such disclosure, of information which an employee
9 reasonably believes evidences mismanagement, waste of
10 funds, or abuse of authority,

11 the Special Counsel, Inspector General, or other employee,
12 as the case may be, shall not disclose the identity of the com-
13 plainant without the consent of the complainant during such
14 officer or employee's investigation under subsection (a) or
15 during an agency's investigation under paragraph (2) of
16 this subsection, unless the Special Counsel determines such
17 disclosure is unavoidable in order to effectively carry out such
18 investigation.

19 “(2) In any case in which the Special Counsel receives
20 information described in paragraph (1) (A) or (B), the
21 Special Counsel shall determine whether the information war-
22 rants an investigation and, if investigation is determined to
23 be warranted, the Special Counsel shall—

24 “(A) transmit the information to the head of the
25 agency involved;

1 “(B) require the agency head to conduct an investi-
2 gation of the information and related matters trans-
3 mitted by the Special Counsel and report, in writing,
4 its findings to the Special Counsel and the General Ac-
5 counting Office.

6 “(3) The General Accounting Office shall examine any
7 agency findings reported to it under paragraph (2) (B) to
8 determine whether the agency investigation involved was
9 adequate and whether the corrective action, if any, taken
10 by the agency is adequate. The General Accounting Office
11 shall report the results of such an examination to the Con-
12 gress if the agency investigation or any corrective action
13 by the agency is inadequate.

14 “(d) If the Special Counsel determines that there are
15 prohibited personnel practices which require corrective ac-
16 tion, the Special Counsel ~~may~~ shall report such determi-
17 nation together with any findings or recommendations to
18 the Merit Systems Protection Board, the agency involved,
19 and to the Office of Personnel Management, and may report
20 such determination, findings, and recommendations to the
21 President. The Special Counsel may include in such report
22 suggestions as to what corrective action should be taken, but
23 the final decision on what corrective action should be taken
24 shall be made by the agency involved, subject to guidance
25 and instruction from the Office of Personnel Management.

1 The Special Counsel may furnish a copy of such report to
2 the President and to the Congress.

3 “(e) If, in the course of the any investigation, the
4 Special Counsel determines that there is reasonable cause to
5 believe that a criminal violation by an employee has oc-
6 curred, the Special Counsel shall report such determination
7 to the Attorney General, and to the head of the agency in-
8 volved, and shall submit a copy of such report to the Director
9 of the Office of Personnel Management and the Director of
10 the Office of Management and Budget. Any other violation
11 of any law, rule, or regulation shall be reported to the head
12 of the agency involved. The Special Counsel ~~may~~ shall
13 require, within 30 days of receipt of the such report, a certi-
14 fication by the head of the agency which states—

15 “(1) that such head has personally reviewed the
16 report; and

17 “(2) what action has been, or is to be, taken, and
18 when such action will be completed.

19 The Special Counsel shall maintain and make available to
20 the public a list of noncriminal matters referred to agency
21 heads and their certifications of actions taken.

22 “(f) (1) In addition to the authority otherwise pro-
23 vided in this section, the Special Counsel ~~may~~ shall, except as
24 provided in paragraph (2) of this subsection, conduct an

1 investigation of any other alleged prohibited practice which
2 consists of allegation concerning—

3 “(A) political activity by any employee which is
4 prohibited under subchapter III of chapter 73 of this
5 title;

6 “(B) political activity by any State or local officer
7 or employee which is prohibited under chapter 15 of
8 this title;

9 “(C) arbitrary or capricious withholding of infor-
10 mation prohibited under section 552 of this title;

11 “(D) such personnel practices as are prohibited
12 by the civil service rules and regulations, including such
13 practices activities prohibited by any civil service law,
14 rule, or regulation, including any such activity relating
15 to political intrusion in personnel decisionmaking; and

16 “(E) involvement by any employee in any pro-
17 hibited discrimination found by any court or appropriate
18 administrative authority to have occurred in the course
19 of any personnel action.

20 “(2) The Special Counsel shall make no investigation
21 of any allegation of any prohibited practice activity referred
22 to in subparagraph (A), (D); or (E) of paragraph (1)
23 of this subsection if the Special Counsel determines that such

1 allegation may be more appropriately resolved under an
2 administrative appeals procedure.

3 “(g) During any investigation initiated under subsec-
4 tion (a) or ~~(e)~~ (f) of this section, no disciplinary action
5 shall be taken against any employee for any alleged pro-
6 hibited activity under such investigation or for any related
7 activity, without the approval of the Special Counsel.

8 “~~(h) (1)~~ Except as provided in paragraph ~~(2)~~ of this
9 subsection, if the Special Counsel determines, after any
10 investigation under this section of any prohibited personnel
11 practice by any employee, that disciplinary action should be
12 taken against such employee because of such prohibited per-
13 sonnel practice, the Special Counsel shall prepare a written
14 complaint against such employee containing such determina-
15 tion and present such complaint together with a statement
16 of supporting facts to the Merit Systems Protection Board
17 or to a hearing examiner appointed under section 3105 of
18 this title and designated by the Board.

19 “~~(2)~~ In the case of a Presidential appointee, such com-
20 plaint and statement shall be presented to the President in
21 lieu of the Board or a hearing examiner referred to in para-
22 graph ~~(1)~~ of this subsection.

23 “(i) The Special Counsel may bring disciplinary action,
24 in accordance with the procedures set forth in section 1207
25 of this title against any employee who knowingly and will-

1 fully refuses or fails to comply with an order of the Special
 2 Counsel under subsection (c) (1) of this section or an order
 3 of the Merit Systems Protection Board. Noncompliance by
 4 any employee who is a Presidential appointee shall be re-
 5 ported to the President by the Special Counsel.

6 “(h) (1) Except as provided in paragraph (2) of this
 7 subsection, if the Special Counsel determines that discipli-
 8 nary action should be taken against any employee—

9 “(A) after any investigation under this section, or
 10 “(B) on the basis of any knowing and willful re-
 11 fusal or failure by an employee to comply with an order
 12 of the Special Counsel under subsection (b) or (c) of
 13 this section or an order of the Merit Systems Protection
 14 Board.

15 the Special Counsel shall prepare a written complaint against
 16 such employee containing such determination, together with
 17 a statement of supporting facts, and present such complaint
 18 and statement to the employee and the Merit Systems Protec-
 19 tion Board in accordance with section 1207 of this title.

20 “(2) In the case of a Presidential appointee, any com-
 21 plaint and statement regarding proposed disciplinary action
 22 shall be presented to the President for appropriate action in
 23 lieu of being presented under section 1207 of this title.

24 “(j) (i) The Special Counsel may appoint such legal,

1 administrative, and support personnel as may be necessary
 2 to perform the functions of the Special Counsel.

3 “(k) (j) The Special Counsel may prescribe such regu-
 4 lations as may be necessary for investigations under this
 5 section relating to the receipt and investigation of matters
 6 under the jurisdiction of the Special Counsel. Such regula-
 7 tions shall be published in the Federal Register.

8 “(l) (k) The Special Counsel shall not issue any ad-
 9 visory opinion concerning any law, rule, or regulation (other
 10 than chapter 15 and subchapter III of chapter 73 of this
 11 title, or any rule or regulation thereunder).

12 “(m) The Special Counsel shall prepare and submit an
 13 annual report to the President and to the Congress on—

14 “(1) the investigation and disposition of each case
 15 considered by the Special Counsel during the annual
 16 period covered by such report; and

17 “(2) actions by the Special Counsel on each case
 18 referred by the Special Counsel to the President during
 19 such annual period.

20 “§ 1207. Hearings and decisions on complaints filed by the
 21 Special Counsel

22 “Any employee against whom a complaint has been
 23 presented to the Merit Systems Protection Board or a hear-
 24 ing examiner under section 1206 of this title shall be entitled
 25 to an agency hearing on the record before the Board or a

1 hearing examiner appointed under section 3105 of this title
 2 and designated by the Board. In the case of a State or local
 3 officer or employee under chapter 15 of this title, such hear-
 4 ing shall be conducted in accordance with section 1505 of
 5 this title. There may be no administrative appeal from a final
 6 order of the Board. A final order of the Board may impose
 7 disciplinary action including removal, demotion, debarment
 8 from Federal employment for a period not to exceed 5 years,
 9 suspension, reprimand, or a civil penalty not to exceed
 10 \$1,000. In the case of any State or local officer or employee
 11 under chapter 15 of this title, the Board shall act in accord-
 12 ance with section 1506 of this title. An employee subject to
 13 a final order imposing disciplinary action may obtain judicial
 14 review of the final order of the Board in the United States
 15 Court of Appeals for the circuit in which such employee was
 16 employed at the time of the action."

17 "(a) Any employee against whom a complaint has been
 18 presented to the Merit Systems Protection Board under sec-
 19 tion 1206 of this title shall be entitled to—

20 "(1) a reasonable time to answer orally and in
 21 writing and to furnish affidavits and other documentary
 22 evidence in support of the answer;

23 "(2) be represented by an attorney or other repre-
 24 sentative;

1 "(3) a hearing before the Board, an administrative
 2 law judge appointed under section 3105 of this title and
 3 designated by the Board, or such other employee of the
 4 Board designated by the Board to conduct such hearing;

5 "(4) have a transcript kept of any hearing under
 6 paragraph (3); and

7 "(5) a written decision and reasons therefor at
 8 the earliest practicable date including a copy of any
 9 final order imposing disciplinary action.

10 "(b) A final order of the Board may impose disciplinary
 11 action consisting of removal, reduction in grade, debarment
 12 from Federal employment for a period not to exceed 5 years,
 13 suspension, reprimand, or an assessment of a civil penalty
 14 not to exceed \$1,000.

15 "(c) There may be no administrative appeal from an
 16 order of the Board. An employee subject to a final order
 17 imposing disciplinary action under this section may obtain
 18 judicial review of such order in the United States district
 19 court for the judicial district in which such employee resides.

20 "(d) In the case of any State or local officer or em-
 21 ployee under chapter 15 of this title, the Board shall con-
 22 sider such case in accordance with the provisions of such
 23 chapter."

24 (b) Any term of office of any member of the Merit
 25 Systems Protection Board serving on July 1, 1978, shall

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1 continue in effect until such time as such term would expire
2 under section ~~1202~~ 1102 of title 5, United States Code, as
3 in effect immediately before the effective date of this Act,
4 and upon expiration of such term, appointments to such
5 office shall be made under ~~such~~ section 1202 of such title 5
6 as amended by this Act.

7 (c) (1) Section 5314 (17) of title 5, United States
8 Code, is amended by striking out "Chairman of the United
9 States Civil Service Commission" and inserting in lieu there-
10 of "Chairman of the Merit Systems Protection Board".

11 (2) Section 5315 (66) of such title is amended by
12 striking out "Members, United States Civil Service Com-
13 mission" and inserting in lieu thereof "Members, Merit
14 Systems Protection Board".

15 (3) Section 5315 of such title is further amended by
16 adding at the end thereof the following new paragraph:

17 " (123) Special Counsel of the Merit Systems
18 Protection Board."

19 (4) Paragraph (99) of section 5316 of such title is
20 hereby repealed.

21 (d) The table of chapters for part II of title 5, United
22 States Code, is amended by inserting after the item relating
23 to chapter 11 the following new item:

"12. Merit Systems Protection Board and Special Counsel.... 1201".

PERFORMANCE APPRAISAL

1
2 SEC. 203. (a) Chapter 43 of title 5, United States
3 Code, is amended to read as follows:

4 "Chapter 43.—PERFORMANCE APPRAISAL

"SUBCHAPTER I—GENERAL PROVISIONS

- "Sec.
- "4301. Definitions.
- "4302. Establishment of performance appraisal systems.
- "4303. Actions based on unacceptable performance.
- "4304. Responsibilities of Office of Personnel Management.
- "4305. Regulations.

9 "§ 4301. Definitions

10 "For the purpose of this subchapter—

11 " (1) 'agency' means—

12 " (A) an Executive agency;

13 " (B) the Administrative Office of the United
14 States Courts; and

15 " (C) the Government Printing Office;

16 but does not include—

17 " (i) the General Accounting Office;

18 " (ii) the Central Intelligence Agency, the De-
19 fense Intelligence Agency, and the National Secu-
20 rity Agency, and, as determined by the President,
21 an Executive agency, or unit thereof, which con-
22 ducts foreign intelligence or counterintelligence
23 activities;

24 " (iii) a government corporation; and

25 " (iv) an agency or unit of an agency excluded

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1 from coverage of this subchapter by regulation of
2 the Office of Personnel Management; and

3 “(2) ‘employee’ means an individual employed in
4 or under an agency, but does not include—

5 “(A) an employee outside the United States
6 who is paid in accordance with local native pre-
7 vailing wage rates for the area in which employed;

8 “(B) an individual in the Foreign Service of
9 the United States;

10 “(C) a physician, dentist, nurse, or other em-
11 ployee in the Department of Medicine and Surgery,
12 Veterans’ Administration, whose pay is fixed under
13 chapter 73 of title 38;

14 “(D) a hearing examiner *an administrative*
15 *law judge* appointed under section 3105 of this title;

16 “(E) an individual in the Senior Executive
17 Service;

18 “(F) an individual appointed by the President,
19 or

20 “(G) an individual occupying a position ex-
21 cluded from coverage of this ~~chapter~~ *subchapter*
22 by regulations of the Office of Personnel Manage-
23 ment.

24 “(3) ‘unacceptable performance’ means perform-

1 ~~ance which fails to meet established requirements in~~
2 ~~one or more critical elements of the job.~~

3 “(3) ‘unacceptable performance’ means perform-
4 *ance of an employee which fails to meet established per-*
5 *formance standards in one or more critical elements of*
6 *such employee’s position.*

7 “§ 4302. Establishment of performance appraisal systems

8 “(a) Each agency shall develop one or more perform-
9 *ance appraisal systems which—*

10 “(1) provide for periodic appraisals of job perform-
11 *ance of employees;*

12 “(2) encourage employee participation in estab-
13 *lishing performance objectives standards; and*

14 “(3) use the results of performance appraisals as
15 *a basis for training, rewarding, reassigning, promoting,*
16 *demoting, reducing in grade, retaining, and separating*
17 *employees.*

18 “(b) Under such regulations as the Office of Personnel
19 Management shall prescribe, each performance appraisal
20 system shall provide for—

21 “(1) ~~establishing performance standards for each~~
22 ~~employee under such system, communicating such stand-~~
23 ~~ards to such employee at the beginning of an appraisal~~
24 ~~period, and evaluating such employee during such period~~
25 ~~on such standards;~~

1 “(2) recognizing and rewarding employees whose
2 performance so warrants;

3 “(3) assisting employees whose performance is un-
4 acceptable to improve; and

5 “(4) reassigning, demoting, or separating em-
6 ployees whose performance continues to be unacceptable.

7 “(1) establishing performance standards for each
8 employee under such system;

9 “(2) communicating such standards to such em-
10 ployee at the beginning of an appraisal period and in-
11 dicating to the employee at such time which of such
12 standards are for critical elements of the employee's
13 position;

14 “(3) evaluating such employee during such period
15 on such standards;

16 “(4) recognizing and rewarding employees whose
17 performance so warrants;

18 “(5) assisting employees in improving unacceptable
19 performance; and

20 “(6) reassigning, reducing in grade, or separating
21 employees who continue to have unacceptable perform-
22 ance.

23 “§ 4303. Actions based on unacceptable performance

24 “(a) Subject to the provisions of this section, the head

1 of an agency may at any time demote or remove an employee
2 whose performance is unacceptable.

3 “(b) An employee subject to demotion or removal from
4 the service under this section is entitled to—

5 “(1) at least 30 days' advance written notice of
6 the proposed action which identifies the expected stand-
7 ard of performance and the areas in which the employ-
8 ee's performance is unacceptable;

9 “(2) an attorney or other representative;

10 “(3) reply to the notice orally and in writing;

11 “(4) an opportunity during the notice period to
12 demonstrate acceptable performance; and

13 “(5) a written decision which states the reasons for
14 the decision and which, unless proposed by the agency
15 head, has been concurred in by an employee who is in a
16 higher position than the employee who proposed the
17 action.

18 “(c) The head of an agency may, under regulations
19 prescribed by such agency head, extend the notice period
20 under subsection (b) of this section for not more than 30
21 days. An agency head may extend such a notice period for
22 more than 30 days only in accordance with regulations issued
23 by the Office of Personnel Management. The decision to
24 retain, remove, or demote an employee shall be made within
25 30 days after the date of the expiration of the notice period

1 and may take into account other failures to perform accept-
 2 ably during the 1-year period ending on the date on which
 3 the action is commenced.

4 "(d) If no action is taken because of performance
 5 improvement during the notice period and the employee's
 6 performance continues to be acceptable for one year from
 7 the date of the written advance notice provided under sub-
 8 section (b) of this section, any entry or other notation of
 9 the unacceptable performance shall be removed from official
 10 records relating to such employee.

11 "(e) An employee who is a preference eligible or is
 12 in the competitive service and who has been demoted or
 13 removed under the provisions of subsection (b) of this sec-
 14 tion may appeal the action to the Merit Systems Protection
 15 Board. The appeal shall be conducted in accordance with
 16 the procedures established in section 7701 of this title. The
 17 appeals officer shall conduct an evidentiary hearing only if
 18 there are disputes concerning material issues of fact requiring
 19 presentation of evidence. When there is no genuine issue
 20 as to any material fact, the appeals officer shall grant a
 21 summary decision for the party entitled to such decision as
 22 a matter of law. The decision of the agency shall be sus-
 23 tained by the appeals officer unless the employee shows
 24 that—

1 "~~(1)~~ the agency's procedures contained error that
 2 substantially impaired the rights of the employee;

3 "~~(2)~~ the demotion or removal was based on dis-
 4 crimination prohibited by section 2302(b)(1) of this
 5 title; or

6 "~~(3)~~ the decision to demote or remove was arbi-
 7 trary or capricious.

8 "*§ 4303. Actions based on unacceptable performance*

9 "*(a) Subject to the provisions of this section, an agency*
 10 *may remove or reduce in grade an employee for unacceptable*
 11 *performance.*

12 "*(b) An employee whose removal or reduction in grade*
 13 *is proposed under this section is entitled to—*

14 "*(1) 30 days' advance written notice of the pro-*
 15 *posed action which identifies—*

16 "*(A) the instances of unacceptable performance*
 17 *by the employee which occurred during the 1-year*
 18 *period ending on the date of the notice and on*
 19 *which such action is based; and*

20 "*(B) the critical elements of the employee's*
 21 *position involved in such instances of unacceptable*
 22 *performance;*

23 "*(2) be represented by an attorney or other*
 24 *representative;*

25 "*(3) reply to the notice orally and in writing;*

1 “(A) an opportunity during the notice period to
2 demonstrate acceptable performance; and

3 “(B) a written decision which—

4 “(A) specifies the instances of unacceptable
5 performance by the employee and on which the
6 reduction in grade or removal is based, and

7 “(B) unless proposed by the agency head, has
8 been concurred in by an employee who is in a
9 higher position than the employee who proposed the
10 action.

11 “(C) An agency may, under regulations prescribed by
12 the head of such agency, extend the notice period under sub-
13 section (b) (1) of this section for not more than 30 days.
14 An agency may extend such notice period for more than
15 30 days only in accordance with regulations issued by the
16 Office of Personnel Management. The decision to retain, re-
17 move, or reduce in grade an employee—

18 “(1) shall be made within 30 days after the date of
19 the expiration of the notice period, and

20 “(2) may be based only upon those instances of
21 unacceptable performance by the employee for which
22 the notice and other requirements of this section are com-
23 plied with.

24 “(D) If no action is taken because of performance im-
25 provement by the employee during the notice period and

1 the employee's performance continues to be acceptable for
2 one year from the date of the written advance notice pro-
3 vided under subsection (b) (1) of this section, any entry
4 or other notation of the unacceptable performance for which
5 action was proposed under this section shall be removed
6 from agency records relating to such employee.

7 “(E) An employee who is a preference eligible or is
8 in the competitive service and who has been reduced in grade
9 or removed under the provisions of subsection (b) of this
10 section may appeal the action to the Merit Systems Protection
11 Board. The appeal shall be conducted in accordance with
12 the appellate procedures established in section 7701 of this
13 title.

14 “(F) This section does not apply to—

15 “(1) the demotion reduction to the grade previously
16 held of a supervisor who has not completed the proba-
17 tionary period under section 3321 (a) (2) of this title
18 in an initial supervisory position.

19 “(2) the separation or demotion reduction in grade
20 of an individual in the competitive service who has not
21 completed is serving a probationary or trial period or
22 who has not completed one year of current continuous
23 employment under other than a temporary appointment
24 limited to one year or less, or

25 “(3) the separation or demotion reduction in grade
26 of an individual in the excepted service who has not com-

1 pleted one year of current continuous employment in
2 the same or similar positions.

3 "§ 4304. Responsibilities of the Office of Personnel Man-
4 agement

5 "(a) The Office of Personnel Management shall make
6 technical assistance available to agencies in the development
7 of performance appraisal systems.

8 "(b) If the Office of Personnel Management determines
9 that a system does not meet the requirements of this sub-
10 chapter (including regulations prescribed under section
11 4305), the Office of Personnel Management shall direct the
12 agency to implement an appropriate system or to correct
13 operations under the system, and any such agency shall
14 take any action so required.

15 "§ 4305. Regulations

16 "The Office of Personnel Management may prescribe
17 regulations to carry out the purposes of this subchapter."

18 (b) The item relating to chapter 43 in the table of
19 chapters for part III of title 5, United States Code, is
20 amended by striking out "Performance Rating" and inserting
21 in lieu thereof "Performance Appraisal".

22 ADVERSE ACTIONS

23 SEC. 204. (a) Chapter 75 of title 5, United States
24 Code, is amended by striking out subchapters I and II and
25 inserting in lieu thereof the following:

1 "SUBCHAPTER I—SUSPENSION FOR 30 14 DAYS
2 OR LESS

3 "§ 7501. Definitions

4 "For the purpose of this subchapter—

5 "(1) 'employee' means an individual in the com-
6 petitive service who has completed *is not serving a* pro-
7 bationary or trial period under an initial appointment
8 *or as a supervisor or manager* or who has completed 1
9 year of current continuous employment in the same or
10 similar positions under other than a temporary appoint-
11 ment limited to 1 year or less, but does not include—

12 "~~(A)~~ an individual in the Senior Executive
13 Service; or

14 "~~(B)~~ an individual occupying a position ex-
15 cluded from coverage of this subchapter by regula-
16 tion of the Office of Personnel Management; and

17 "(2) 'suspension' means the placing of an em-
18 ployee, for disciplinary reasons, in a temporary status
19 without duties and pay.

20 "§ 7502. Actions covered

21 "This subchapter applies to a suspension for 30 14 days
22 or less, but does not apply to a suspension under section 7532
23 of this title or an action initiated under *section 204 of Re-*
24 *organization Plan Numbered 2 of 1978. section 1206 of this*
25 *title.*

1 "§ 7503. Cause and procedure

2 " (a) Under regulations prescribed by the Office of
3 Personnel Management, an employee may be suspended for
4 ~~30~~ 14 days or less only for such cause as will promote the
5 efficiency of the service.

6 " (b) An employee against whom a suspension for ~~30~~ 14
7 days or less is proposed is entitled to—

8 " (1) ~~a~~ an advance written notice stating the *spe-*
9 *cific* reasons for the proposed action;

10 " (2) a reasonable time to answer orally and in
11 writing and to furnish affidavits and other documentary
12 evidence in support of the answer;

13 " (3) ~~be accompanied~~ represented by an attorney or
14 other representative; and

15 " (4) a written decision and the *specific* reasons
16 therefor at the earliest practicable date.

17 " (c) An agency may provide, by regulation, for a hear-
18 ing which may be in lieu of or in addition to the opportunity
19 to answer provided under subsection (b) (2) of this section.

20 " (d) Copies of the notice of proposed action, the answer
21 of the employee if written, a summary thereof if made orally,
22 the notice of decision and reasons therefor, and any order
23 effecting the suspension, together with any supporting ma-
24 terial, shall be maintained by the agency and shall be fur-
25 nished to the Merit Systems Protection Board upon its re-

1 *quest and to the individual affected upon such individual's*
2 *request.*

3 "§ 7504. Regulations

4 "The Office of Personnel Management may prescribe
5 regulations to carry out the purposes of this subchapter.

6 "SUBCHAPTER II—REMOVAL, SUSPENSION FOR
7 MORE THAN ~~30~~ 14 DAYS, REDUCTION IN
8 GRADE OR PAY, OR FURLOUGH FOR 30 DAYS
9 OR LESS

10 "§ 7511. Definitions; application

11 " (a) For the purpose of this subchapter—

12 " (1) 'employee' means—

13 " (A) an individual in the competitive service
14 who ~~has completed~~ is not serving a probationary or
15 trial period under an initial appointment. ~~or as a~~
16 ~~supervisor or manager~~ or who has completed 1
17 year of current continuous employment under other
18 than a temporary appointment limited to 1 year or
19 less; and

20 " (B) a preference eligible in an Executive
21 agency in the excepted service, and a preference
22 eligible in the United States Postal Service and
23 the Postal Rate Commission, who has completed one
24 year of current continuous service in the same or
25 similar positions;

1 “(2) ‘suspension’ has the meaning as set forth in
2 section 7501 of this title;

3 “(3) ‘grade’ means a level of classification under
4 a position classification system;

5 “(4) ‘pay’ means the rate of basic pay fixed by
6 law or administrative action for the position held by
7 an employee; and

8 “(5) ‘furlough’ means the placing of an employee
9 in a temporary status without duties and pay because
10 of lack of work or funds or other nondisciplinary reasons.

11 “(b) This subchapter does not apply to an employee—

12 “(1) whose appointment is required to be con-
13 firmed by, or made by and with the advice and con-
14 sent of, the Senate;

15 “(2) whose position has been determined to be of
16 a confidential, policy-determining, or policy-advocating
17 character by—

18 “(A) the Office of Personnel Management for
19 a position that it has excepted from the competitive
20 service; or

21 “(B) the head of an agency for a position
22 which is excepted from the competitive service by
23 statute; or

24 “(3) whose position is in the Senior Executive
25 Service.

1 “(c) The Office of Personnel Management may provide
2 for the application of this subchapter to any position or
3 group of positions excepted from the competitive service by
4 regulation of the Office of Personnel Management.

5 “§ 7512. Actions covered

6 “‘This subchapter applies to—

7 “(1) a removal;

8 “(2) a suspension for more than 30 14 days;

9 “(3) a reduction in grade;

10 “(4) a reduction in pay of an amount exceeding
11 one step of the employee's grade or 2 percent of the
12 employee's basic pay; and

13 “(5) a furlough of 30 days or less;

14 but does not apply to—

15 “(A) a suspension or removal under section 7532
16 of this title;

17 “(B) a reduction in force action under section
18 3502 of this title;

19 “(C) the demotion *reduction in grade* of a super-
20 visor who has not completed the probationary period
21 under section 3321 (a) (2) of this title in an initial
22 supervisory position if such ~~demotion~~ *reduction* is to
23 the grade held immediately before becoming such a
24 supervisor,

1 “(D) a demotion reduction in grade or removal
2 under section 4303 of this title, or

3 “(E) an action initiated under section 204 of Re-
4 organization Plan Numbered 2 of 1978. section 1206
5 of this title.

6 “§ 7513. Cause and procedure

7 “(a) Under regulations prescribed by the Office of Per-
8 sonnel Management, an agency may take an action covered
9 by this subchapter against an employee only for such cause
10 as will promote the efficiency of the service.

11 “(b) An employee against whom an action is pro-
12 posed is entitled to—

13 “(1) at least 30 days' advance written notice, ex-
14 cept when there is reasonable cause to believe the em-
15 ployee has committed a crime for which a sentence of
16 imprisonment can be imposed, stating the specific rea-
17 sons for the proposed action;

18 “(2) a reasonable time, but not less than 7 days,
19 to answer orally and in writing and to furnish affidavits
20 and other documentary evidence in support of the
21 answer;

22 “(3) be accompanied represented by an attorney or
23 other representative; and

1 “(4) a written decision and the specific reasons
2 therefor at the earliest practicable date.

3 “(c) An agency may in its discretion provide by regu-
4 lation for a hearing which may be in lieu of or in addition to
5 the opportunity to answer provided under subsection (b) (2)
6 of this section.

7 “(d) An employee against whom an action is taken
8 under this section is entitled to appeal to the Merit Systems
9 Protection Board under section 7701 of this title.

10 “(e) Copies of the notice of proposed action, the answer
11 of the employee when written, a summary thereof when
12 made orally, the notice of decision and reasons therefor, and
13 any order effecting an adverse action covered by this sub-
14 chapter, together with the supporting material, shall be main-
15 tained by the agency and shall be furnished to the Merit
16 Systems Protection Board upon its request and to the indi-
17 vidual affected upon such individual's request.

18 “§ 7514. Regulations

19 “The Office of Personnel Management may prescribe
20 regulations to carry out the purposes of this subchapter.”.

21 “(b) The table of sections for chapter 75 of title 5,
22 United States Code, is amended by striking out all the items
23 preceding the item relating to subchapter III and inserting
24 in lieu thereof the following:

1 "Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 30 14 DAYS OR LESS

"Sec.
"7501. Definitions; application.
"7502. Actions covered.
"7503. Cause and procedure.
"7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE
THAN 30 14 DAYS, REDUCTION IN GRADE OR PAY, OR
FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application.
"7512. Actions covered.
"7513. Cause and procedure.
"7514. Regulations."

10 APPEALS

11 SEC. 205. Chapter 77 of title 5, United States Code, is
12 amended to read as follows:

13 "Chapter 77.—APPEALS

"Sec.
"7701. Appellate procedures.
"7702. Judicial review of decisions of the Merit Systems Protection
Board.

16 "§ 7701. Appellate procedures

17 "(a) An employee, or applicant for employment, may
18 submit an appeal to the Merit Systems Protection Board
19 from any action which is appealable to the Board under
20 any law, rule, or regulation. An appellant shall have the
21 right—to be accompanied by an attorney or other representa-
22 tive. The appeal shall be processed in accordance with regu-
23 lations prescribed by the Board.

24 "(1) to a hearing for which a transcript will be
25 kept; and

1 "(2) to be represented by an attorney or other
2 representative.

3 Any such appeal shall be processed in accordance with
4 regulations prescribed by the Board.

5 "(b) The Board may refer any case appealable to it to
6 an appeals officer, or a hearing examiner appointed under
7 section 3105 of this title, who hear any case appealed to it
8 or may refer such case to an administrative law judge ap-
9 pointed under section 3105 of this title or other employee
10 of the Board designated by the Board to hear such cases.
11 The Board, administrative law judge, or other employee
12 (as the case may be) shall make a decision—

13 "~~(1)~~ on the record after receipt of the written
14 representations of the parties and after opportunity for
15 a hearing under subsection (a)(1) of this section. ; or

16 "~~(2)~~ where there are material issues of fact re-
17 quiring presentation of evidence, after conducting an
18 evidentiary hearing.

19 "~~(c)~~ The decision of the agency shall be sustained by
20 the appeals officer or hearing examiner unless the employee
21 shows that—

22 "(1) the agency's procedures contained error that
23 substantially impaired the rights of the employee;

24 "(2) such decision was based on discrimination pro-
25 hibited by section 2302(b)(1) of this title; or

1 ~~“(3) such decision was arbitrary or capricious.~~
 2 “(a)(1) Subject to paragraph (2) of this subsection,
 3 the decision of the agency shall be sustained under subsec-
 4 tion (b) only if the agency’s decision is supported by a pre-
 5 ponderance of evidence.
 6 “(2) Notwithstanding paragraph (1), the agency’s de-
 7 cision may not be sustained under subsection (b) if the
 8 employee—
 9 “(A) shows harmful error in the application of
 10 the agency’s procedures in arriving at such decision;
 11 “(B) shows that such decision was based on dis-
 12 crimination prohibited by section 2302(b)(1) of this
 13 title; or
 14 “(C) shows that such decision was not in accordance
 15 with law;
 16 “(d)(1) Any decision under subsection (b) of this sec-
 17 tion shall be final unless a party to the appeal or the Director
 18 of the Office of Personnel Management petitions the Board
 19 for a review within 30 days after receipt of the decision,
 20 unless the Board, for good cause shown, extends the 30-day
 21 period or reopens and reconsiders a case on its own motion.
 22 One member of the Board may grant a petition or otherwise
 23 direct that a decision be reviewed by the full Board. This
 24 procedure The preceding sentence shall not apply if, by law,

1 a decision of a hearing examiner an administrative law
 2 judge is required to be acted upon by the Board.
 3 “(2) The Director of the Office of Personnel Manage-
 4 ment may petition the Board for a review under paragraph
 5 (1) of this subsection only if the Director is of the opinion
 6 that the decision is erroneous and will have a substantial
 7 impact on civil service laws, rules, or regulations under the
 8 jurisdiction of the Office of Personnel Management.
 9 “(c)(1) Subject to paragraph (2) of this subsection,
 10 in the case of any complaint of discrimination which under
 11 title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e
 12 et seq.) is required to be heard by the Board, an appeals
 13 officer assigned to hear discrimination complaints filed under
 14 section 717(b) of the Civil Rights Act of 1964 (42 U.S.C.
 15 2000e-16(b)) may make a decision on the record or con-
 16 duct an evidentiary hearing, as the circumstances may war-
 17 rant, pursuant to regulations prescribed by the Board.
 18 “(3) An appeal may be heard under paragraph (1) of
 19 this subsection if the employee, or applicant for Federal
 20 employment, submits the discrimination complaint to the
 21 agency, which shall have 60 days to resolve the complaint.
 22 If the complaint is not resolved to the satisfaction of the
 23 complainant or if the agency fails to issue a final decision
 24 thereon within 60 days, the complainant may appeal to the
 25 Board. Such an appeal must be submitted within 30 days of

1 notice to the complainant of the agency's decision or follow-
 2 ing expiration of the 60-day period if the agency has failed
 3 to issue a decision on the complaint. Class complaints of
 4 discrimination may be processed by an appeals officer pur-
 5 suant to regulations prescribed by the Board.

6 ["(e) The Equal Employment Opportunity Commis-
 7 sion may delegate to the Merit Systems Protection Board
 8 the authority to provide an employee with a preliminary
 9 determination on the issue of discrimination whenever, as
 10 part of a complaint or appeal before the Merit Systems
 11 Protection Board on other grounds, the employee involved
 12 alleges a violation of section 717 of the Civil Rights Act of
 13 1964 (42 U.S.C. 2000e-16), the Age Discrimination in
 14 Employment Act of 1967 (29 U.S.C. 631, 633a), or sec-
 15 tion 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).
 16 Nothing in the subsection shall be construed to authorize
 17 the Equal Employment Opportunity Commission to dele-
 18 gate the function of making a final determination concerning
 19 such issue of discrimination.]

20 "(f) Members of the Board and hearing examiners or
 21 appeals officers assigned by the Board The Board, or an ad-
 22 ministrative law judge or other employee of the Board desig-
 23 nated to hear a case, may—

24 "(1) consolidate appeals filed by two or more
 25 appellants, or

1 "(2) join two or more appeals filed by the same
 2 appellant and hear and decide them concurrently,
 3 if the Board or the appeals officer, as the case may be,
 4 determines in its discretion if the deciding official or officials
 5 hearing such cases are of the opinion that such action could
 6 result in the appeals' being processed more expeditiously
 7 and such action would not prejudice the parties adversely
 8 affect any party.

9 "~~(g)~~ Notwithstanding any other provision of law, an
 10 employee who has been affected by an action appealable to
 11 the Board and who alleges that discrimination prohibited
 12 by section 2302(b)-(1) of this title was a basis for the action
 13 shall have both the issue of discrimination and the appeal-
 14 able action decided by the Board in the appeal decision under
 15 the Board's appellate procedures.

16 "~~(h)~~ (g) Members of the Board, hearing examiners,
 17 and appeals officers assigned by the Board The Board, or an
 18 administrative law judge or other employee of the Board
 19 designated to hear a case, may require payment by the
 20 agency which is the losing party to a proceeding before the
 21 Board, involved, of reasonable attorney fees incurred by an
 22 employee, if the employee is the prevailing party and the
 23 deciding official or officials determine that payment by the
 24 agency is warranted. on the grounds that the agency's action
 25 was wholly without basis in fact or law.

1 “(i) The Board may, by regulation, provide for alterna-
2 tive methods for settling matters subject to the appellate
3 jurisdiction of the Board.

4 “(h) The Board may, by regulation, provide for one
5 or more alternative methods for settling matters subject to
6 the appellate jurisdiction of the Board which shall be appli-
7 cable at the election of an employee who is not in a unit for
8 which a labor organization has been accorded exclusive recog-
9 nition, and shall be in lieu of other procedures provided for
10 under this section. A decision under such a method shall be
11 final, unless the Board reopens and reconsiders a case at the
12 request of the Office of Personnel Management under sub-
13 section (c) of this section.

14 “(j)(i) The Merit Systems Protection Board may pre-
15 scribe regulations to carry out the purposes of this section.
16 “§ 7702. Judicial review of decisions of the Merit Systems
17 Protection Board

18 “(a) Any employee, or applicant for employment,
19 adversely affected or aggrieved by a final order or decision
20 of the Merit Systems Protection Board may obtain judicial
21 review of such an order or decision.

22 “(b) A petition to review a final order or decision of the
23 Board shall be filed in the Court of Claims or a United States
24 Court of Appeals district court as provided in chapters 91
25 and 158, 85, respectively, of title 28, except for action filed

1 in the United States district courts under section 717(e)
2 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(e));
3 under section 15 of the Age Discrimination in Employment
4 Act of 1967 (29 U.S.C. 623a(e)), or under section 8715
5 or 8012 of this title. Notwithstanding any other provision
6 of law, any petition for review must be filed within 30 days
7 after the date the petitioner received notice of the final
8 order or decision of the Board.

9 “(c) In cases filed in the United States Court of Claims
10 or a United States Court of Appeals district court, the court
11 shall review the administrative record for the purpose of
12 determining whether the findings were arbitrary or capri-
13 cious, and not are in accordance with law, and whether
14 the procedures required by statute and regulations were
15 followed. The administrative findings of the Board are con-
16 clusive if supported by substantial the evidence in the adminis-
17 trative record. If the court determines that further evidence
18 is necessary, it shall remand the case to the Board. The
19 Board, after such further proceedings as may be required,
20 may modify its findings, and shall file with the court the
21 record of such proceedings. The findings of the Board are
22 conclusive if supported by substantial the evidence in the ad-
23 ministrative record as supplemented.

24 “(d) The Director of the Office of Personnel Manage-
25 ment may obtain review of any final order or decision of

1 the Board by filing a petition for judicial review in the
 2 United States Court of Appeals for the District of Columbia
 3 if the Director disagrees with a legal interpretation by the
 4 Board of a law, rule, or regulation involving personnel
 5 management and for which such Office has official respon-
 6 sibility. *If the Director of the Office of Personnel Management*
 7 *determines, in his sole discretion, that the Board erred in*
 8 *interpreting a civil service law, rule, regulation, or policy*
 9 *directive affecting personnel management and that the Board's*
 10 *final decision or order will have a substantial impact on a*
 11 *civil service law, rule, or regulation, the Director may file a*
 12 *petition for judicial review of such order or decision in the*
 13 *United States District Court for the District of Columbia.*
 14 In addition to the named respondent, the Board and all other
 15 parties to the proceedings before the Board shall have the
 16 right to appear in the proceeding before the Court of Ap-
 17 peals court. The granting of the petition for judicial review
 18 shall be at the discretion of the Court of Appeals court."

19 TECHNIOAL AND CONFORMING AMENDMENTS

20 SEC. 206. Section 2342 of title 28, United States Code,
 21 is amended—

- 22 (1) by striking out "and" at the end of paragraph
 23 (2);
 24 (2) by striking out the period at the end of para-
 25 graph (1) and inserting in lieu thereof "; and"; and

1 (2) by adding at the end thereof the following new
 2 paragraph:

3 "(5) all final orders of the Merit Systems Protec-
 4 tion Board except as provided for in section 7702 (b)
 5 of title 5."

6 TITLE III—STAFFING

7 VOLUNTEER SERVICES

8 SEC. 301. (a) Chapter 31 of title 5, United States
 9 Code, is amended by adding at the end thereof the following
 10 new section:

11 "§ 3111. Acceptance of volunteer service

12 "(a) For the purpose of this section, 'student' means
 13 an individual who is enrolled, not less than half-time, in
 14 a high school, trade school, technical or vocational institute,
 15 junior college, college, university, or comparable recognized
 16 educational institution. An individual who is a student is
 17 deemed not to have ceased to be a student during an
 18 interim between school years if the interim is not more
 19 than 5 months and if such individual shows to the satisfaction
 20 of the Office of Personnel Management that such individual
 21 has a bona fide intention of continuing to pursue a course
 22 of study or training in the same or different educational
 23 institution during the school semester (or other period into
 24 which the school year is divided) immediately after the
 25 interim.

1 “(b) Notwithstanding section 665(b) of title 31, sec-
 2 tion 3679(b) of the Revised Statutes (31 U.S.C. 665(b)),
 3 the head of an agency may accept, subject to regulations
 4 issued by the Office of Personnel Management, voluntary
 5 service for the United States if the service—

6 “(1) is performed by a student, with the permission
 7 of the institution at which the student is enrolled, as
 8 part of an agency program established for the purpose
 9 of providing educational experiences for such students;

10 “(2) is to be uncompensated; and

11 “(3) ~~will not be used to displace any employee.~~
 12 *would not, under the facts and circumstances, be per-*
 13 *formed by an employee in the absence of such voluntary*
 14 *service.*

15 “(c) An individual who provides voluntary service
 16 under subsection (b) of this section shall not be considered
 17 a Federal employee for any purpose other than for pur-
 18 poses of chapter 81 of this title (relating to compensation
 19 for injury) and sections 2671 through 2680 of title 28
 20 (relating to tort claims).”

21 (b) The analysis of chapter 31 of title 5, United States
 22 Code, is amended by adding at the end thereof the following
 23 new item:

 “3111. Acceptance of volunteer service.”

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

1 [SEC. 302. Section 2108 of title 5, United States Code,
 2 is amended—

3 [(1) by striking out “and” at the end of para-
 4 graph (2),

5 [(2) by inserting in paragraph (3) after “means”
 6 the following: “, except as provided in paragraph (4)
 7 of this subsection”,

8 [(3) by striking out the period at the end of para-
 9 graph (3) and inserting in lieu thereof a semicolon;
 10 and

11 [(4) by adding at the end thereof the following
 12 new paragraphs:

13 [“(4) except for purposes of chapter 75 of this
 14 title, ‘preference eligible’ does not include a retired
 15 member of the armed forces unless—

16 [“(A) the individual is a disabled veteran; or

17 [“(B) the individual retired below the rank of
 18 major or its equivalent; and

19 [“(5) ‘retired member of the armed forces’ means
 20 a member or former member of the armed forces who
 21 is entitled, under statute, to retired, retirement, or re-
 22 tainer pay on account of service as such a member.”
 23

1 **[NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED**2 **VETERANS**

3 **[SEC. 303. (a)** Chapter 31 of title 5, United States
4 Code, is amended by adding at the end thereof the following
5 new section:

6 **[“§ 3112. Preference eligibles; disabled; noncompetitive**
7 **appointment**

8 **[“Under such regulations as the Office of Personnel**
9 **Management may prescribe, an agency may make a non-**
10 **competitive appointment leading to conversion to career or**
11 **career-conditional employment of a disabled veteran who**
12 **has a compensable service-connected disability of 50 per-**
13 **cent or more, or is enrolled in or has successfully completed**
14 **a course of job related training prescribed by the Adminis-**
15 **trator of Veterans’ Affairs under chapter 31 of title 38.”.**

16 **[(b)** The analysis of chapter 31 of title 5, United States
17 Code, is amended by adding at the end thereof the following
18 new item:

[“3112. Preference eligible; disabled; noncompetitive appointment.”.

20 **[EXAMINATION, CERTIFICATION, AND APPOINTMENT OF**
21 **PREFERENCE ELIGIBLES**

22 **[SEC. 304. (a)** Chapter 33 of title 5, United States
23 Code, is amended by adding after section 3303 the following
24 new section:

1 **[“§ 3303a. Preference eligibles; appointment; time limit**

2 **[“ (a)** For the purpose of this subchapter—

3 **[“ (1)** the status of an individual, who is not a re-
4 tired member of the armed forces, as a preference eligi-
5 ble under section 2108 (3) (A) or (B) of this title for
6 purposes of preference in consideration for appointment
7 shall terminate at the end of the 10-year period begin-
8 ning on the date of such individual’s separation from
9 active duty in the armed forces; and

10 **[“ (2)** the status of an individual as a preference
11 eligible under section 2108 (3) (A) or (B) of this
12 title, who is a retired member of the armed forces and
13 who retired below the rank of major or its equivalent,
14 shall terminate at the end of the 3-year period begin-
15 ning on the date of such individual’s separation from
16 active duty in the armed forces.”.

17 **[(b)** Section 3305 of title 5, United States Code, is
18 amended to read as follows:

19 **[“§ 3305. Competitive service; preference eligibles; appli-**
20 **cations**

21 **[“On the ~~applications~~ application of a preference eligible**
22 **a competitive examination shall be held for any position for**
23 **which there is an appropriate list of eligibles.”.**

24 **[(c)** Section 3309 of title 5, United States Code, is
25 amended to read as follows:

1 ["§ 3309. Preference eligibles; examinations; additional
2 credit for

3 ["(a) Preference eligibles shall be referred for appoint-
4 ment according to the regulations issued under section 3318
5 (d) of this title. A preference eligible who qualifies in an
6 examination for entrance into the competitive service is
7 entitled to additional points above the individual's earned
8 rating, as follows:

9 ["(1) *subject to section 3303a of this title, a pref-*
10 *erence eligible under section 2108 (3) (A) or (B) of*
11 *this title—5 points; and*

12 ["(2) a preference eligible under section 2108 (3)
13 (C) - (G) of this title—10 points.

14 ["(b) A preference eligible under section 2108 (3) (C)
15 of this title who has a compensable service-connected dis-
16 ability of 10 percent or more, shall be placed at the head of
17 the list of eligibles, except that in the case of scientific and
18 professional positions in GS-9 or higher, the eligible shall be
19 placed on the list of eligibles in the order of the eligible's
20 rating, including points added under paragraph (2) of sub-
21 section ~~(b)~~ (a).

22 ["(c) If other rating systems are used, preference eli-
23 gibles are entitled to comparable preference."

24 ["(d) Section 3314 of title 5, United States Code, is
25 amended by striking out "Civil Service Commission" and

1 inserting in lieu thereof "Office of Personnel Management"
2 and by striking out ", in the order named by section 3313
3 of this title".

4 ["(e) Section 3315 of title 5, United States Code, is
5 amended—

6 ["(1) in the first sentence of subsection (a) by
7 striking out ", in the order named by section 3313 of
8 this title";

9 ["(2) in the second sentence of subsection (a), by
10 striking out "Civil Service Commission" and inserting
11 in lieu thereof "Office of Personnel Management"; and

12 ["(3) in the first sentence of subsection (b), by
13 striking out "Commission" and inserting in lieu thereof
14 "Office of Personnel Management".

15 ["(f) Section 3317 (a) of title 5, United States Code, is
16 amended to read as follows:

17 ["(a) The Office of Personnel Management shall pre-
18 scribe regulations for the referral of eligibles to a nominat-
19 ing or appointing authority for consideration for appoint-
20 ment to each vacancy in the competitive service."

21 ["(g) Section 3318 (a) of title 5, United States Code, is
22 amended to read as follows:

23 ["(a) The nominating or appointing authority shall
24 select for appointment to each vacancy from the highest 7
25 eligibles available for appointment, unless the Office of Per-

1 sonnel Management determines that another referral and
2 selection procedure is appropriate.”

3 [(h) Section 3318 of title 5, United States Code, is
4 amended by adding at the end thereof the following new
5 subsection:

6 [(“ (d) The Office of Personnel Management may pre-
7 scribe regulations for the referral and selection of qualified
8 eligibles.”

9 [(i) Section 3321 of title 5, United States Code, is
10 amended to read as follows:

11 [“§ 3321. Competitive service; probations; period of

12 [(a) The President may take such action, including
13 the issuance of rules, regulations, and directives, as shall
14 provide as nearly as conditions of good administration war-
15 rant, for a period of probation—

16 [(1) before an appointment in the competitive
17 service becomes final; and

18 [(2) before initial appointment to a supervisory
19 or managerial position becomes final.

20 [(b) An individual—

21 [(1) who has been transferred, assigned, or pro-
22 moted from a position to a supervisory or managerial
23 position, and

24 [(2) who does not satisfactorily complete the pro-

1 bationary period under subsection (a) (2) of this
2 section,

3 shall be returned to a position of no lower grade and pay
4 than the position formerly occupied by the individual.
5 Nothing in this section prohibits an agency from instituting
6 an adverse action against an individual serving a probat-
7 ary period under subsection (a) (2) for cause unrelated to
8 supervisory or managerial performance.”

9 [(j) Section 3326 of title 5, United States Code, is
10 amended—

11 [(1) in subsection (b) (1), by striking out “, and,
12 if the position is in the competitive service, after ap-
13 proval by the Civil Service Commission”; and

14 [(2) in subsection (c), by striking out “, or the
15 authorization and approval, as the case may be,”.

16 [(k) The following sections of chapter 33 of title 5,
17 United States Code are repealed:

18 [(1) section 3313 (related to registers of eligi-
19 bles); and

20 [(2) section 3319 (related to members of family
21 restriction).

22 [(l) The analysis for chapter 33 of title 5, United
23 States Code, is amended—

24 [(1) by inserting after the item relating to section
25 3303 the following new item:

"3808a. Preference eligibles, appointment; time limit.;"

1 [(2) by amending the item relating to section 3305
2 to read as follows:

"3805. Competitive service; preference eligibles; applications.;"

3 [(3) by amending the item relating to section
4 3309 to read as follows:

"3809. Preference eligibles; examinations; additional credit for.;" and

5 [(4) by striking out the items relating to sections
6 3313 and 3319.

7 [RETENTION PREFERENCE

8 [SEC. 305. (a) Section 3501 (a) of title 5, United
9 States Code, is amended—

10 [(1) by striking out "and" at the end of para-
11 graph (2).

12 [(2) by striking out the period at the end of para-
13 graph (3) and inserting in lieu thereof "; and", and

14 [(3) by adding at the end thereof the following
15 new paragraph:

16 ["(4) 'employee with limited preference' means
17 any preference eligible who is a veteran (other than a
18 veteran preference eligible under section 2108 (3) (C)-
19 (G) of this title or subsection (a) (3) (A) of this
20 section)."

21 [(b) Section 3502 (b) of title 5, United States Code,
22 is amended to read as follows:

1 ["(b) (1) An employee with limited preference is en-
2 titled to military preference in retention under this section
3 only during the 3-year period following the date of such
4 employee's initial appointment in or under an Executive
5 agency, or if later, during the 3-year period following the
6 date of such employee's initial return following a leave of
7 absence during which such employee was performing active
8 service in the armed forces.

9 ["(2) Any employee with limited preference who is no
10 longer entitled by reason of paragraph (1) of this subsec-
11 tion to military preference is entitled to credit for 5 addi-
12 tional years in computing such employee's length of service
13 for purposes of subsection (a) of this section."

14 [(c) Section 3502 (a) (2) of title 5, United States
15 Code, is amended by striking out "~~3501(a)(2)~~" and in-
16 serting in lieu thereof "~~3501(a)(4)~~"; to read as follows:

17 ["(2) military preference, subject to subsection (b)
18 of this section and section 3501(a)(3) of this title;".

19 [(d) Section 3502 of title 5, United States Code, is
20 further amended by adding at the end thereof the following
21 new subsection:

22 ["(c). An employee who is entitled to retention pref-
23 erence and whose performance meets a standard of adequacy
24 under a performance appraisal system implemented under

1 chapter 43 of this title is entitled to be retained in preference
2 to other competing employees.”.

3 [(e) Section 3503 of title 5, United States Code, is
4 amended—

5 [(1) in subsection (a), by striking out “each
6 preference eligible employed” and inserting in lieu
7 thereof “each competing employee”; and

8 [(2) in subsection (b) by striking out “each pref-
9 erence eligible employed” and inserting in lieu thereof
10 “each competing employee.”.]

11 TRAINING

12 SEC. 306. Section 4103 of title 5, United States Code,
13 is amended by inserting “(a)” before “In order to increase”
14 and by adding at the end thereof the following new
15 subsection:

16 “(b) (1) Notwithstanding any other provision of this
17 chapter, an agency may train any of its employees to pre-
18 pare such employee for placement in another agency if the
19 head of the agency determines that such employee will
20 otherwise be separated under conditions which would en-
21 title such employee to severance pay under section 5595
22 of this title.

23 “(2) Before undertaking any training under this sub-
24 section, the head of the agency shall obtain verification from

1 the Office of Personnel Management that there exists a rea-
2 sonable expectation of placement in another agency.

3 “(3) In selecting an employee for training under this
4 subsection, the head of the agency shall consider—

5 “(A) the extent to which the current skills, knowl-
6 edge, and abilities of the employee may be utilized in
7 the new position;

8 “(B) the employee’s capability to learn new skills
9 and acquire new knowledge and abilities needed in the
10 new position; and

11 “(C) the benefits to the Government which would
12 result from retaining competent employees in the Fed-
13 eral service.”.

14 TRAVEL, TRANSPORTATION, AND SUBSISTENCE

15 SEC. 307. Section 5723 (d) of title 5, United States
16 Code, is amended by striking out “not”.

17 RETIREMENT

18 SEC. 308. Section 8336 (d) (2) of title 5, United States
19 Code, is amended to read as follows:

20 “(2) voluntarily, during a period when the agency
21 in which the employee is serving is undergoing a major
22 reorganization, a major reduction-in-force, or a major
23 transfer of function, as determined by the Office of Per-
24 sonnel Management, and such employee is serving in a
25 geographic area designated by the Office;”.

1 **[EXTENSION OF VETERANS READJUSTMENT**
 2 **APPOINTMENT AUTHORITY**

3 **[SEC. 309. Section 2014 (b) of title 38, United States**
 4 Code, is amended to read as follows:

5 **[" (b) To further this policy, veterans of the Vietnam**
 6 era shall be eligible, in accordance with regulations which
 7 the Office of Personnel Management shall prescribe for vet-
 8 erans readjustment appointments and subsequent career-
 9 conditional appointments, under the terms and conditions of
 10 Executive Order Numbered 11521 (March 26, 1970), ex-
 11 cept that these appointments may be made up to and includ-
 12 ing GS-7 level or the equivalent and, for disabled veterans,
 13 the fourteen years of education limit shall not apply. Not-
 14 withstanding any limitations with respect to the period of
 15 eligibility as prescribed in Executive Order Numbered 11521,
 16 a veteran of the Vietnam era who was eligible for appoint-
 17 ment under that Executive order on April 9, 1970, or a vet-
 18 eran of the Vietnam era who was separated on or after that
 19 date, may be appointed at any time. No veterans readjust-
 20 ment appointment may be made under authority of this sub-
 21 section after September 30, 1980."]

22 **[EFFECTIVE DATE**

23 **[SEC. 310. The amendments relating to the following**
 24 sections of title 5, United States Code shall take effect on
 25 October 1, 1980:

- 1 **[(1) section 2108 (4) and (5),**
 2 **[(2) section 3303a,**
 3 **[(3) section 3305, and**
 4 **[(4) section 3309.]**

5 * * * * *
 6 **(This committee print proposed to strike**
 7 **all if title IV of the introduced bill and**
 8 **insert the new matter which appears in**
 9 **italic on pages 130-172.)**

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TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

“§ 2101a. The Senior Executive Service

“The ‘Senior Executive Service’ consists of Senior

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Executive Service positions (as defined in section 3132(a)(2) of this title).”.

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out “and” at the end of subparagraph (A);

(2) by adding “and” at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

“(C) positions in the Senior Executive Service;”.

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: “or the Senior Executive Service”.

(d) Section 2108(3) of title 5, United States Code, is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following: “but does not include applicants for, or members of the Senior Executive Service.”.

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"§101a. The Senior Executive Service."

AUTHORITY FOR EMPLOYMENT

1
2 **SEC. 402. (a)** Chapter 31 of title 5, United States Code,
3 is amended by inserting after section 3112, as added by this
4 Act, the following new subchapter:

5 **"SUBCHAPTER II—THE SENIOR EXECUTIVE**
6 **SERVICE**

7 **"§ 3131. The Senior Executive Service**

8 **"(a)** It is the purpose of this subchapter to establish a
9 Senior Executive Service in order to ensure that the manage-
10 ment of the Government of the United States is responsive
11 to the needs, policies, and goals of the Nation and otherwise
12 is of the highest quality. The Senior Executive Service shall
13 be administered so as to—

14 **"(1)** provide for a compensation system, including
15 salaries, benefits, and incentives, and for other conditions
16 of employment, designed to attract and retain highly com-
17 petent senior executives;

18 **"(2)** ensure that compensation, retention, and tenure
19 are contingent on managerial success which is to be
20 measured on the basis of individual and organizational
21 performance (including such factors as improvements in
22 quality of work or service, cost efficiency, and timeliness
23 of performance);

24 **"(3)** recognize exceptional accomplishment;

1 **"(4)** enable the head of an agency to reassign senior
2 executives to best accomplish the agency's mission;

3 **"(5)** provide for severance pay, retirement benefits,
4 and placement assistance for senior executives who are
5 removed from the Senior Executive Service for non-
6 disciplinary reasons;

7 **"(6)** protect senior executives from arbitrary or
8 capricious actions;

9 **"(7)** provide for both program continuity and pol-
10 icy advocacy in the management of public programs;

11 **"(8)** maintain a merit personnel system free of im-
12 proper political interference;

13 **"(9)** ensure accountability for honest, economical,
14 and efficient Government;

15 **"(10)** ensure compliance with all applicable civil
16 service laws, rules, and regulations including those relat-
17 ing to equal employment opportunity, political activity,
18 and conflicts of interest; and

19 **"(11)** provide for the initial and continuing sys-
20 tematic development of highly competent senior executives.

21 **"§ 3132. Definitions and exclusions**

22 **"(a)** For the purpose of this subchapter—

23 **"(1)** 'agency' means an Executive agency, the
24 Administrative Office of the United States Courts, and

1 the Government Printing Office, except that such term
2 does not include—

3 “(A) a Government corporation;

4 “(B) the Central Intelligence Agency, the
5 Defense Intelligence Agency, the National Security
6 Agency, and any Executive agency or unit thereof
7 which is designated by the President and which
8 conducts foreign intelligence or counterintelligence
9 activities; and

10 “(C) the General Accounting Office;

11 “(2) ‘Senior Executive Service position’ means
12 any position in an agency which is in GS-16, 17, or 18
13 of the General Schedule or in level IV or V of the
14 Executive Schedule, or an equivalent position, which
15 (other than a position in the Foreign Service of the
16 United States) is not required to be filled by an appoint-
17 ment by the President, by and with the advice and con-
18 sent of the Senate, and in which an employee—

19 “(A) directs the work of an organizational
20 unit;

21 “(B) is held accountable for the success of one
22 or more specific programs or projects;

23 “(C) supervises the work of employees other
24 than personal assistants;

1 “(3) ‘senior executive’ means a member of the
2 Senior Executive Service;

3 “(4) ‘career appointee’ means an individual in a
4 Senior Executive Service position whose appointment
5 to such position or previous appointment to another
6 Senior Executive Service position was based on—

7 “(A) approval by the Office of Personnel Man-
8 agement of the managerial qualifications of such
9 individual; and

10 “(B) selection through a competitive staffing
11 process consistent with Office of Personnel Manage-
12 ment regulations;

13 “(5) ‘limited term appointee’ means an individual
14 appointed under a nonrenewable appointment for a term
15 of three years or less to a Senior Executive Service posi-
16 tion the duties of which will expire at the end of such
17 term;

18 “(6) ‘limited emergency appointee’ means an in-
19 dividual appointed under a nonrenewable appointment,
20 not to exceed 18 months, to a Senior Executive Service
21 position established to meet a bona fide, unanticipated,
22 urgent need;

23 “(7) ‘noncareer appointee’ means an individual in
24 a Senior Executive Service position who is not a career

1 *appointee, a limited term appointee, or a limited emer-*
 2 *gency appointee;*

3 “(8) ‘career reserved position’ means a position
 4 which is required to be filled by a career appointee and
 5 which is designated under subsection (b) of this section;
 6 and

7 “(9) ‘general position’ means any position, other
 8 than a career reserved position, which may be filled
 9 by either a career appointee, noncareer appointee, lim-
 10 ited emergency appointee, or limited term appointment
 11 appointee.

12 “(b) (1) For the purpose of paragraph (8) of subsec-
 13 tion (a) of this section, the Office of Personnel Management
 14 shall prescribe the criteria and regulations governing the
 15 designation of career reserved positions. Such criteria and
 16 regulations shall provide that restricting the filling of such
 17 position to a career appointee is justifiable in order to ensure
 18 impartiality, or the public’s confidence in the impartiality,
 19 of the Government. The head of each agency shall be re-
 20 sponsible for designating career reserved positions in such
 21 agency in accordance with such criteria and regulations.

22 “(2) A position for which a designation is in effect
 23 under this subsection may be held only by a career appointee.

24 “(3) The Office of Personnel Management shall period-
 25 ically review general positions to determine if such positions

1 *should be designated as career reserved. If the Office deter-*
 2 *mines that any such position should be so designated, it shall*
 3 *order the agency to make such designation.*

4 “(A) Not later than March 1 of each year, the head of
 5 each agency shall publish in the Federal Register a list of
 6 positions in such agency which were career reserved positions
 7 during the preceding calendar year.

8 “(c) An agency may file an application with the Office
 9 of Personnel Management, setting forth reasons why it, or a
 10 unit thereof, should be excluded from any provision or re-
 11 quirement of this subchapter. The Office of Personnel Man-
 12 agement shall—

13 “(1) review such application and stated reasons,

14 “(2) undertake such other investigation as it con-
 15 siders appropriate to determine whether the agency or
 16 unit should be excluded from any provision or require-
 17 ment of this subchapter, and

18 “(3) upon completion of its review, recommend to
 19 the President whether the agency or unit should be so
 20 excluded from any provision or requirement of this sub-
 21 chapter.

22 If the Office recommends that an agency or unit thereof be
 23 excluded from any provision or requirement of this sub-
 24 chapter, the President may, on written determination, make

1 such exclusion to such extent and for such period as the Presi-
2 dent determines appropriate.

3 “(d) The Office of Personnel Management may at any
4 time recommend to the President that any exclusion pre-
5 viously granted to an agency or unit under subsection (c)
6 of this section be revoked. Upon recommendation of the Office,
7 the President may revoke, by written determination, any ex-
8 clusion made under subsection (c) of this section.

9 “(e) If—

10 “(1) any agency is excluded under subsection (c)
11 of this section, or

12 “(2) any exclusion is revoked under subsection (d)
13 of this section,

14 the Office of Personnel Management, shall within 30 days
15 after such action, transmit to the Congress a report concern-
16 ing the exclusion or revocation.

17 “§ 3133. Authorization of positions; authority for appoint-
18 ment

19 “(a) On or before December 31 of each odd-numbered
20 calendar year, each agency shall—

21 “(1) examine its needs for Senior Executive Serv-
22 ice positions for each of the two fiscal years beginning
23 after such calendar year; and

24 “(2) submit to the Office of Personnel Management

1 a written request for a specific number of Senior Execu-
2 tive Service positions for each of such fiscal years.

3 “(b) Each agency request submitted under subsection
4 (a) of this section shall be based on—

5 “(1) the anticipated type and extent of program
6 activities of the agency for each of the two fiscal years
7 involved;

8 “(2) such other factors as may be prescribed from
9 time to time by the Office of Personnel Management.

10 “(c) The Office of Personnel Management, upon con-
11 sultation with the Office of Management and Budget shall
12 review the request of each agency and shall authorize, for
13 each of the two fiscal years covered by requests required under
14 subsection (b) of this section, a specific number of Senior
15 Executive Service positions for each agency.

16 “(d) (1) The Office may, on a written request of an
17 agency or on its own initiative, make an adjustment in the
18 number of positions authorized for any agency. Each agency
19 request under this paragraph shall be submitted in such form,
20 and shall be based on such factors, as the Office of Personnel
21 Management shall prescribe.

22 “(2) The total number of positions in the Senior Execu-
23 tive Service may not at any time during any fiscal year
24 exceed the total number of positions authorized under sub-

1 section (a) of this section for such fiscal year plus 5 percent
2 of such total number.

3 “(e) Appointments to the Senior Executive Service may
4 be made by appropriate appointing authorities of agencies
5 subject to the requirements and limitations of this title.

6 “§ 3134. Limitations on noncareer appointments

7 “(a) On or before December 31 of each calendar year,
8 each agency shall—

9 “(1) examine its needs for employment of noncareer
10 appointees for the fiscal year beginning in the following
11 year; and

12 “(2) submit to the Office of Personnel Management,
13 in accordance with regulations prescribed by the Office,
14 a written request for authority to employ a specific
15 number of noncareer appointees for such fiscal year.

16 “(b) The number of noncareer appointees in each agency
17 will be determined annually by the Office of Personnel Man-
18 agement on the basis of demonstrated need of the agency for
19 such appointees, except that the total number of noncareer
20 appointees in all agencies may not exceed 10 percent of the
21 total number of Senior Executive Service positions in all
22 agencies.

23 “(c) The number of Senior Executive Service positions
24 in any agency which are filled by noncareer appointees may
25 not at any time exceed the greater of—

1 “(1) 25 percent of the total number of such posi-
2 tions in such agency; or

3 “(2) the number of positions in such agency which
4 were filled on the date of the enactment of the Civil
5 Service Reform Act of 1978 by—

6 “(A) noncareer executive assignments under
7 subpart F of part 305 of title 5, Code of Federal
8 Regulations, as in effect on such date, or

9 “(B) appointments to level IV or V of the
10 Executive Schedule which were not required to be
11 made by and with the advice and consent of the
12 Senate.

13 This subsection shall not apply in the case of any agency
14 having less than 4 Senior Executive Service positions.

15 “§ 3135. Biennial report

16 “(a) The Office of Personnel Management shall submit
17 to each House of the Congress, at the time the budget is
18 submitted by the President to the Congress during each even-
19 numbered calendar year, a report on the Senior Executive
20 Service. The report shall include—

21 “(1) the number of Senior Executive Service posi-
22 tions authorized for the then current fiscal year, in the
23 aggregate and by agency, and the projected number of
24 Senior Executive Service positions to be authorized for
25 the next two fiscal years, in the aggregate and by agency;

1 “(2) a description of each exclusion in effect dur-
2 ing then current fiscal year under section 3132(c) of this
3 title;

4 “(3) the authorized number of career appointees,
5 noncareer appointees, limited-term appointees, and lim-
6 ited emergency appointees, in the aggregate and by
7 agency, for such fiscal year;

8 “(4) the titles of career reserved positions author-
9 ized for such fiscal year;

10 “(5) the percentage of senior executives at each pay
11 rate and the distribution and amount of performance
12 awards, in the aggregate and by agency; and

13 “(6) such other information regarding the Senior
14 Executive Service as the Office of Personnel Manage-
15 ment considers appropriate.

16 “(b) The Office of Personnel Management shall submit
17 to each House of the Congress, at the time the budget is sub-
18 mitted to the Congress each odd-numbered year, an interim
19 report showing changes in matters required to be reported
20 under subsection (a) of this section.

21 “§ 3136. Regulations

22 “The Office of Personnel Management shall prescribe
23 such regulations as may be necessary to carry out the purpose
24 of this subchapter.”.

1 (b) Section 3109 of title 5, United States Code, is
2 amended by inserting at the end thereof the following new
3 subsection:

4 “(c) Positions in the Senior Executive Service may not
5 be filled under the authority of subsection (b) of this
6 section.”.

7 (c) The chapter analysis of chapter 31 of title 5, United
8 States Code, is amended—

9 (1) by striking out the heading for chapter 31 and
10 inserting in lieu thereof the following:

11 “CHAPTER 31—AUTHORITY FOR EMPLOYMENT
12 “SUBCHAPTER I—EMPLOYMENT
13 AUTHORITIES”; and

14 (2) by inserting at the end thereof the following:

“SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

“Sec.

“§131. The Senior Executive Service.

“§132. Definitions and exclusions.

“§133. Authorization of positions; authority for appointment.

“§134. Limitations on noncareer appointments.

“§135. Biennial report.

“§136. Regulations.”.

15 EXAMINATION, CERTIFICATION, AND APPOINTMENT

16 SEC. 403. (a) Chapter 33 of title 5, United States Code,
17 is amended by adding at the end thereof the following new
18 subchapter:

1 "SUBCHAPTER VIII—APPOINTMENT, REAS-
 2 SIGNMENT, TRANSFER, AND DEVELOP-
 3 MENT IN THE SENIOR EXECUTIVE SERV-
 4 ICE

5 "§ 3391. Definitions

6 "For the purpose of this subchapter, X 'agency', 'Senior
 7 Executive Service position', 'senior executive', 'career
 8 appointee', 'limited term appointee', 'limited emergency
 9 appointee', 'noncareer appointee', and 'general position' have
 10 the meanings given such terms under section 3132 (a) of this
 11 title.

12 "§ 3392. General appointment provisions

13 "(a) Qualification standards shall be established by the
 14 head of each agency for each Senior Executive Service posi-
 15 tion in such agency and shall be in accordance with require-
 16 ments established by the Office of Personnel Management.

17 "(b) An individual may be appointed to a Senior Execu-
 18 tive Service position only if the appointing authority has de-
 19 termined in writing that the individual meets the qualification
 20 requirements of such position.

21 "(c) If a career appointee is appointed by the Presi-
 22 dent, by and with the advice and consent of the Senate, to
 23 a civilian position in the executive branch which is not
 24 in the Senior Executive Service, and the rate of basic pay
 25 payable for which is equal to or greater than the rate pay-

1 able for level V of the Executive Schedule employee may
 2 elect (at such time and in such manner as the Office of
 3 Personnel Management may prescribe) to continue to have
 4 the provisions of this title relating to basic pay, performance
 5 awards, awarding of ranks, severance pay, and retirement
 6 apply as if such employee remained in the Senior Executive
 7 Service position from which he was appointed.

8 Such provisions shall apply—

9 "(1) in lieu of the provisions which would otherwise
 10 apply—

11 "(A) to the extent provided under regulations
 12 prescribed by the Office, and

13 "(B) so long as the employee continues to serve
 14 under such Presidential appointment."

15 "§ 3393. Career appointments

16 "(a) Each agency shall establish a recruitment program,
 17 in accordance with guidelines which shall be issued by the
 18 Office of Personnel Management, which provides for recruit-
 19 ment of career appointees from—

20 "(1) all groups of qualified individual applicants
 21 within the civil service; or

22 "(2) all groups of qualified individual applicants
 23 whether or not within the civil service.

24 "(b) Each agency shall establish one or more executive
 25 resources boards, as appropriate, the members of which

1 shall be appointed by the head of such agency from among
2 employees of such agency. It is the function of such boards,
3 in accordance with competitive staffing requirements estab-
4 lished by the Office of Personnel Management, to—

5 “(1) review the qualifications of candidates for
6 appointment as career appointees; and

7 “(2) make written recommendations concerning such
8 applicants to the appropriate appointing authorities.

9 “(c)(1) The Office of Personnel Management shall
10 establish one or more qualifications review boards, as ap-
11 propriate, the members of which shall be appointed by the
12 Director from within and outside the civil service on the
13 basis of their knowledge of public management and other
14 appropriate occupational fields. It is the function of such
15 boards to certify the managerial qualifications of candidates
16 for entry as career appointees into the Senior Executive Serv-
17 ice in accordance with regulations prescribed by the Office
18 of Personnel Management.

19 “(2) The Office of Personnel Management shall, in
20 consultation with the various qualification review boards,
21 prescribe criteria for establishing managerial qualifications
22 for appointment to the Senior Executive Service. Such cri-
23 teria shall provide for—

24 “(A) consideration of demonstrated managerial ex-
25 perience;

1 “(B) consideration of successful participation in a
2 career executive development program which is approved
3 by the Office of Personnel Management; and

4 “(C) sufficient flexibility to allow for the appoint-
5 ment of individuals who have special or unique qualities
6 which indicate a likelihood of managerial success and
7 who would not otherwise be eligible for appointment.

8 “(d) An individual's initial appointment as a career
9 appointee shall become final only after such individual has
10 served a 1-year probationary period as a career appointee.

11 “§ 3394. Noncareer and limited appointments

12 “(a) Each noncareer appointee, limited term appointee,
13 and limited emergency appointee shall meet the qualifications
14 of the position to which appointed, as determined by the ap-
15 pointing authority.

16 “(b) An individual may not be appointed as a limited
17 term appointee or as a limited emergency appointee without
18 the prior approval of the exercise of such appointing author-
19 ity by the Office of Personnel Management.

20 “§ 3395. Reassignment and transfer within the Senior
21 Executive Service

22 “(a) A career appointee in an agency—

23 “(1) may be reassigned to any Senior Executive
24 Service position in the same agency for which the ap-
25 pointee is qualified; and

1 “(2) may transfer to a Senior Executive Service
2 position in another agency for which the appointee is
3 qualified, with the approval of that agency.

4 “(b)(1) A limited emergency appointee may be reas-
5 signed to another Senior Executive Service position in the
6 same agency established to meet a bona fide, unanticipated,
7 urgent need, except that such appointee may not serve in one
8 or more positions in such agency under such appointment in
9 excess of 18 months.

10 “(2) A limited term appointee may be reassigned to an-
11 other Senior Executive Service position in the same agency
12 the duties of which will expire at the end of a term of 3
13 years, except that such appointee may not serve in one or
14 more positions in such agency under such appointment in
15 excess of 3 years.

16 “(c) A limited term appointee or a limited emergency
17 appointee may not be appointed to, or continue to hold, a
18 position under such an appointment if, within the preceding
19 48 months, such individual has served more than 36 months,
20 in the aggregate, under any combination of such types of
21 appointment.

22 “(d) A noncareer appointee in an agency—

23 “(1) may be reassigned to any general position in
24 such agency for which the appointee is qualified; and

25 “(2) may transfer to a general position in another

1 agency with the approval of such other agency.

2 “(e) A career appointee in an agency may not be in-
3 voluntarily reassigned within 120 days after an appoint-
4 ment of the head of such agency.

5 “§ 3396. Development for and within the Senior Executive
6 Service

7 “(a) The Office of Personnel Management shall estab-
8 lish programs for the systematic development of candidates
9 for the Senior Executive Service and for the continuing
10 development of senior executives or require agencies to estab-
11 lish such programs, which meet criteria prescribed by the
12 Office of Personnel Management.

13 “(b) The Office of Personnel Management shall assist
14 agencies in the establishment of programs required under
15 subsection (a) of this section and shall monitor the imple-
16 mentation of such programs. If the Office of Personnel Man-
17 agement finds that any agency's program under subsection
18 (a) is not in compliance with the criteria prescribed under
19 such subsection, it shall require such agency to take such
20 corrective action as may be necessary to bring such program
21 into compliance with such criteria.

22 “(c)(1) An agency head may grant a sabbatical leave
23 to a career appointee for not to exceed 11 months in order
24 to permit such appointee to engage in study or uncompen-

1 sated work experience which will contribute to the appointee's
 2 development and effectiveness. Such leave shall not result
 3 in loss of, or reduction in, pay, leave to which the career
 4 appointee is otherwise entitled, credit for time or service, or
 5 performance or efficiency rating. The agency head may au-
 6 thorize in accordance with chapter 57 of this title such
 7 travel and per diem costs as such agency head may deter-
 8 mine to be essential for such study or experience.

9 “(2) Sabbatical leave under this subsection may not be
 10 granted to any career appointee—

11 “(A) more than once in any ten-year period;

12 “(B) unless such appointee has completed 7 years
 13 of service—

14 “(i) in one or more positions in the Senior
 15 Executive Service;

16 “(ii) in one or more other positions in the
 17 civil service the level of duties and responsibilities of
 18 which are equivalent to the level of duties and re-
 19 sponsibilities of positions in the Senior Executive
 20 Service; or

21 “(iii) in any combination of such positions;
 22 except that not less than 2 years of such 7 years of
 23 service must be in the Senior Executive Service; and

24 “(C) if such appointee is eligible for voluntary
 25 retirement with a right to an immediate annuity under

1 section 8336 of this title.

2 Any period of assignment under section 3373 of this title,
 3 relating to assignments of employees to State and local gov-
 4 ernments, shall not be considered a period of service for the
 5 purpose of subparagraph (B) of this paragraph.

6 “(3)(A) Any career appointee in an agency may be
 7 granted sabbatical leave under this subsection only if such
 8 appointee agrees, as a condition of accepting such sabbatical
 9 leave, to serve with such agency upon the completion of such
 10 leave, for a period of two consecutive years.

11 “(B) Each agreement required under subparagraph
 12 (A) of this paragraph shall provide that in the event the
 13 career appointee fails to carry out such agreement (except
 14 for good and sufficient reason as determined by the head of
 15 the agency involved) such appointee shall be liable to the
 16 United States for payment of all expenses (including salary)
 17 of such sabbatical leave. Such amount shall be treated as a
 18 debt due the United States.

19 “§ 3397. Regulations

20 The Office of Personnel Management shall prescribe such
 21 regulations as may be necessary to carry out the purpose of
 22 this subchapter.”.

23 (b) The chapter analysis for chapter 33 of title 5,
 24 United States Code, is amended by inserting after the item
 25 relating to section 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT,
TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"3591. Definitions.

"3592. General appointment provisions.

"3593. Career appointments.

"3594. Noncareer and limited appointments.

"3595. Reassignment and transfer within the Senior Executive Service.

"3596. Development for and within the Senior Executive Service.

"3597. Regulations."

RETENTION PREFERENCE

1
2 SEC. 404. (a) Section 3501(b) of title 5, United
3 States Code, is amended by striking out the period at the
4 end thereof and inserting in lieu thereof: "or a member of
5 the Senior Executive Service."

6 (b) Chapter 35 of title 5, United States Code, is
7 amended by adding at the end thereof the following new
8 subchapter:

9 "SUBCHAPTER V—REMOVAL, REINSTATE-
10 MENT, AND GUARANTEED PLACEMENT
11 PROVISIONS IN THE SENIOR EXECUTIVE
12 SERVICE

13 "§ 3591. Definitions

14 "For purposes of this subchapter, X 'agency', 'Senior
15 Executive Service position', 'senior executive', 'career ap-
16 pointee', 'limited term appointee', 'limited emergency ap-
17 pointee', 'noncareer appointee', and 'general position' have
18 the meanings given such terms under section 3132(a) of this
19 title.

1 "§ 3592. Removal from the Senior Executive Service

2 "(a) A career appointee may be removed from the
3 Senior Executive Service to a civil service position outside
4 of the Senior Executive Service—

5 "(1) during the one year period of probation under
6 section 3393(b) of this title; or

7 "(2) at any time for less than fully successful man-
8 agerial performance as determined under subchapter II
9 of chapter 43 of this title.

10 "(b) A limited emergency appointee, limited term ap-
11 pointee, or noncareer appointee may be removed from the
12 service at any time.

13 "§ 3593. Reinstatement in the Senior Executive Service

14 "(a) A former career appointee may be reinstated,
15 without regard to section 3393(b) of this title, to any Senior
16 Executive Service position for which such appointee is
17 qualified if—

18 "(1) such appointee has successfully completed the
19 probationary period established under section 3393(d)
20 of this title; and

21 "(2) such appointee left the Senior Executive Serv-
22 ice for reasons other than misconduct, neglect of duty,
23 or malfeasance, or less than fully successful managerial
24 performance by such appointee as determined under sub-
25 chapter II of chapter 43 of this title.

1 “(b) A career appointee who is appointed by the
2 President to any civil service position outside the Senior
3 Executive Service and who leaves such position for reasons
4 other than misconduct, neglect of duty, or malfeasance shall
5 be entitled to be placed in the Senior Executive Service if
6 the appointee applies to the Office of Personnel Management
7 within 90 days after separation from the Presidential
8 appointment.

9 “§ 3594. Guaranteed placement in other personnel systems

10 “(a) A career appointee who was appointed from a civil
11 service position under a career or career-conditional appoint-
12 ment (or an appointment of equivalent tenure), as determined
13 by the Office of Personnel Management, and who, for reasons
14 other than misconduct, neglect of duty, or malfeasance, is re-
15 moved from the Senior Executive Service during the proba-
16 tionary period under section 3393(d) of this title, shall be
17 entitled to be placed in a civil service position in any agency
18 other than a Senior Executive Service position.

19 “(b) A career appointee—

20 “(1) who has completed the probationary period un-
21 der section 3393(d) of this title;

22 “(2) who has not completed in the aggregate, 5 years
23 of service in the Senior Executive Service; and

24 “(3) who is removed from the Senior Executive
25 Service for less than fully successful performance as

1 determined under subchapter II of chapter 43 of this
2 title;

3 shall be entitled to be placed in a civil service position in any
4 agency other than a Senior Executive Service position.

5 “(c)(1) For purposes of subsections (a) and (b) of
6 this section—

7 “(A) the position in which any career appointee
8 is placed under such subsections shall be a permanent,
9 full-time position at GS-15 or above of the General
10 Schedule, or an equivalent position;

11 “(B) any career appointee placed under subsection
12 (a) or (b) shall be entitled to receive basic pay at the
13 higher of—

14 “(i) the maximum rate of basic pay in effect
15 for the position to which placed;

16 “(ii) the rate of basic pay in effect at the time
17 of such placement for the position such appointee held
18 in the civil service immediately before being
19 appointed to the Senior Executive Service; or

20 “(iii) the rate of basic pay in effect for such
21 appointee immediately before being placed under
22 subsection (a) or (b); and

23 “(C) the placement of any career appointee under
24 subsection (a) or (b) may not be made to a position

1 which would cause the separation or reduction in grade
2 of any other employee.

3 "(2) An employee who is receiving basic pay under
4 paragraph (1)(B)(ii) or (iii) of this subsection is entitled
5 to have such basic pay rate increased by 50 percent of the
6 amount of each increase in the maximum rate of basic pay
7 for the grade of the position to which such employee is placed
8 under subsection (a) or (b) until such rate is equal to the
9 rate in effect under paragraph (1)(B)(i) for the position
10 to which such employee is placed.

11 "§ 3595. Regulations

12 "The Office of Personnel Management shall prescribe
13 such regulations as may be necessary to carry out the pur-
14 pose of this subchapter."

15 (b) The chapter analysis for chapter 35 of title 5,
16 United States Code, is amended by inserting the following
17 new item:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUAR-
ANTEED PLACEMENT PROVISIONS IN THE SENIOR EX-
ECUTIVE SERVICE

"Sec.

"3591. Definitions.

"3592. Removal from the Senior Executive Service.

"3593. Reinstatement in the Senior Executive Service.

"3594. Guaranteed placement in other personnel systems.

"3595. Regulations."

PERFORMANCE RATING

18 SEC. 405. Chapter 43 of title 5, United States Code, is
19 amended by adding at the end thereof the following:
20

"SUBCHAPTER II—PERFORMANCE APPRAISAL
IN THE SENIOR EXECUTIVE SERVICE

1 "§ 4311. Definitions

2
3 "For the purpose of this subchapter, 'agency', 'senior
4 executive', and 'career appointee' have the meanings given
5 such terms under section 9132(a) of this title.

6 "§ 4312. Senior Executive Service performance appraisal
7 systems

8
9 "(a) Each agency shall, in accordance with standards
10 established by the Office of Personnel Management, develop
11 one or more performance appraisal systems designed to—

12 "(1) provide for systematic appraisals of perform-
13 ance by senior executives;

14 "(2) encourage excellence in performance by senior
15 executives; and

16 "(3) provide a basis for making eligibility deter-
17 minations for Senior Executive Service retention and
18 performance awards.

19 "(b) Each performance appraisal system established by
20 an agency under subsection (a) of this section shall provide—

21 "(1) that, on or before the beginning of each rating
22 period, performance requirements for each senior execu-
23 tive in such agency are established in consultation with
24 such executive and communicated to such executive;

1 “(2) that written appraisals of performance are
2 based on the individual and organizational performance
3 requirements established for the rating period involved;
4 and

5 “(3) that each senior executive in such agency is
6 provided a copy of the appraisal and rating under sec-
7 tion 4314 of this title and is given an opportunity to
8 respond in writing to such appraisal and rating and
9 have such appraisal and rating reviewed by an employee
10 in a higher managerial level in such agency before such
11 appraisal and rating becomes final.

12 “(c) If the Office of Personnel Management determines
13 that an agency performance appraisal system does not comply
14 with the requirements of this subchapter or regulations under
15 this subchapter, the Office of Personnel Management shall
16 order the agency to take such corrective action as may be
17 necessary to bring such system into compliance.

18 **“§ 4313. Criteria for performance appraisals**

19 “Appraisals of performance in the Senior Executive
20 Service shall be based on both individual and organizational
21 performers, taking into account such factors as—

22 “(1) improvements in quality of work or service;

23 “(2) cost efficiency; and

24 “(3) timeliness of performance.

1 **“§ 4314. Ratings for performance appraisals**

2 “(a) Each performance appraisal system shall provide
3 for annual summary ratings of levels of performance as
4 follows:

5 “(1) one or more fully successful levels,

6 “(2) a minimally satisfactory level, and

7 “(3) an unsatisfactory level.

8 “(b) Each performance appraisal system shall pro-
9 vide that—

10 (1) any appraisal and rating under such system—

11 “(A) is made only after review and evaluation
12 by a performance review board established under
13 subsection (c) of this section;

14 “(B) is conducted at least annually, subject
15 to the limitation of paragraph (3) of this sub-
16 section;

17 “(C) in the case of a career appointee, may
18 not be made within 120 days after the beginning of
19 a new Presidential administration; and

20 “(D) is based on performance during a per-
21 formance appraisal period the duration of which
22 shall be determined under guidelines established by
23 the Office of Personnel Management, but which may
24 be terminated in any case in which the agency
25 conducting such appraisal determines that an ad-

1 *quate basis exists on which to appraise and rate the*
 2 *employee's performance;*

3 *"(2) any career appointee receiving a rating*
 4 *at any of the fully successful levels under subsection*
 5 *(a)(1) of this section may be given a performance*
 6 *award as prescribed in section 5384 of this title;*

7 *"(3) any senior executive receiving an unsatis-*
 8 *factory rating under subsection (a)(3) of this sec-*
 9 *tion shall be reassigned or transferred within the Senior*
 10 *Executive Service, or separated from the Senior Execu-*
 11 *tive Service, except that any employee who receives 2*
 12 *such unsatisfactory ratings in any period of 5 consecu-*
 13 *tive years shall be separated from the Senior Executive*
 14 *Service, and*

15 *"(4) any senior executive who twice in any period*
 16 *of 3 consecutive years receives less than fully successful*
 17 *ratings shall be separated from the Senior Executive*
 18 *Service.*

19 *"(c) Each agency shall establish, in accordance with*
 20 *regulations prescribed by the Office of Personnel Manage-*
 21 *ment, one or more performance review boards, as appropri-*
 22 *ate. It is the function of such boards to make recommenda-*
 23 *tions to the appropriate appointing authority of such agency*
 24 *relating to the performance of senior executives in such*
 25 *agency. The members of such a board shall be appointed by*

1 *the head of such agency from among employees of such*
 2 *agency other than senior executives with respect to which rec-*
 3 *ommendations are being made by such board. In making any*
 4 *such recommendation with respect to a career appointee, such*
 5 *a board shall include at least 1 career appointee.*

6 **"§ 4315. Regulations**

7 *"The Office of Personnel Management shall prescribe*
 8 *such regulations as may be necessary to carry out the pur-*
 9 *poses of this subchapter."*

10 *(b) The chapter analysis for chapter 43 of title 5,*
 11 *United States Code, is amended by inserting at the end of*
 12 *the chapter analysis the following:*

**"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE
 SENIOR EXECUTIVE SERVICE**

"Sec.

"§311. Definitions.

"§312. Senior Executive Service performance appraisal systems.

"§313. Criteria for performance appraisals.

"§314. Ratings for performance appraisals.

"§315. Regulations."

AWARDING OF RANKS

13
 14 **SEC. 406.** *(a) Chapter 45 of title 5, United States Code*
 15 *is amended by adding at the end thereof the following new*
 16 *section:*

17 **"§ 4507. Awarding of ranks in the Senior Executive Service**

18 *"(a) For the purpose of this section, 'agency', 'senior*
 19 *executive', and 'career appointee' have the meanings given*
 20 *such terms under section 3132 (a) of this title.*

1 “(b) Each agency shall forward annually to the Office
2 of Personnel Management any recommendation of career
3 appointees in such agency to be awarded the rank of Meri-
4 torious Executive or Distinguished Executive. The Office of
5 Personnel Management shall review such recommendations
6 and provide to the President recommendations as to which
7 of the agency recommended appointees should receive such
8 rank.

9 “(c) During any fiscal year, the President may, sub-
10 ject to subsection (d), award to any career appointee recom-
11 mended by the Office of Personnel Management the rank of—

12 “(1) Meritorious Executive, for sustained accom-
13 plishment, or

14 “(2) Distinguished Executive, for sustained ex-
15 traordinary accomplishment.

16 “(d) During any fiscal year—

17 “(1) the number of career appointees awarded the
18 rank of Meritorious Executive may not exceed 5 percent
19 of the Senior Executive Service; and

20 “(2) the number of career appointees awarded the
21 rank of Distinguished Executive may not exceed 1 per-
22 cent of the Senior Executive Service.

23 “(e)(1) Receipt by a career appointee of the rank of
24 Meritorious Executive entitles such individual to a lump-
25 sum payment of \$2,500.

1 “(2) Receipt by a career appointee of the rank of Dis-
2 tinguished Executive entitles such individual to a lump-sum
3 payment of \$5,000.”

4 “(b) The analysis for chapter 45 of title 5, United
5 States Code, is amended by adding at the end thereof the
6 following new item:

 “4507. Awarding of Ranks in the Senior Executive Service.”

7 PAY RATES AND SYSTEMS

8 SEC. 407. (a) Chapter 53 of title 5, United States
9 Code, is amended by adding at the end thereof the following
10 new subchapter:

11 “SUBCHAPTER VII—PAY FOR THE SENIOR
12 EXECUTIVE SERVICE

13 “§ 5381. Definitions

14 “For the purpose of this subchapter, ‘agency’, ‘Senior
15 Executive Service position’, and ‘senior executive’ have the
16 meanings given such terms under section 3132 (a) of this title.

17 “§ 5382. Establishment and adjustment of rates of pay for
18 the Senior Executive Service

19 “(a) There shall be 5 or more rates of basic pay for
20 the Senior Executive Service, and each senior executive
21 shall be paid at one of such rates. Such rates of basic pay
22 shall be initially established and thereafter adjusted by the
23 President subject to subsection (b) of this section.

24 “(b) In setting rates of basic pay, the lowest rate for

1 the Senior Executive Service shall not be less than the
 2 minimum rate of basic pay payable for GS-16 of the
 3 General Schedule and the highest rate shall not exceed the
 4 rate for level IV of the Executive Schedule. The payment
 5 of such rates shall not be subject to the pay limitation of sec-
 6 tion 5308 of this title.

7 “(a) Subject to subsection (b) of this section, effective
 8 at the beginning of the first applicable pay period commenc-
 9 ing on or after the first day of the month in which an
 10 adjustment takes effect under section 5305 of this title in the
 11 rates of pay under the General Schedule, each rate of basic
 12 pay for the Senior Executive Service shall be adjusted by
 13 an amount, rounded to the nearest multiple of \$100 (or
 14 if midway between multiples of \$100, to the next higher
 15 multiple of \$100), equal to the percentage of such rate of
 16 basic pay which corresponds to the overall average per-
 17 centage (as set forth in the report transmitted to the Con-
 18 gress under such section 5305) of the adjustment in the rates
 19 of pay under the General Schedule. The adjusted rates of
 20 basic pay for the Senior Executive Service shall be included
 21 in the report transmitted to the Congress by the President
 22 under section 5305(a)(3) or (c)(1) of this title.

23 “(d) The rates of basic pay that are established and
 24 adjusted under this section shall be printed in the Federal

1 Register and shall supersede any prior rates of basic pay for
 2 the Senior Executive Service.

3 “§ 5383. Setting individual executive pay

4 “(a) Each appointing authority shall determine, in
 5 accordance with criteria established by the Office of Personnel
 6 Management, which of the rates established under section
 7 5382 of this title shall be paid to each senior executive under
 8 such appointing authority.

9 “(b) In no event may the aggregate amount paid to a
 10 senior executive for any fiscal year under sections 4507
 11 5382, and 5384 of this title exceed 95 percent of the annual
 12 rate payable for positions at level II of the Executive Sched-
 13 ule in effect at the end of such fiscal year.

14 “(e) Except for any pay adjustment under section 5382
 15 of this title, the rate of basic pay for any senior executive
 16 may not be adjusted more than once during any 12-month
 17 period.

18 “§ 5384. Performance awards for the Senior Executive
 19 Service

20 “(a)(1) To encourage excellence in performance by
 21 career appointees, performance awards shall be paid to ca-
 22 reer appointees in accordance with the provisions of this
 23 section.

24 “(2) Such awards shall be paid in a lump sum and
 25 shall be in addition to the basic pay paid under section 5382

1 of this title or any award paid under section 4507 of this
2 title.

3 "(b) (1) No performance award under this section shall
4 be paid to any career appointee whose performance was deter-
5 mined to be less than fully successful at the time of the such
6 appointee's most recent performance appraisal and rating
7 under subchapter II of chapter 43 of this title.

8 "(2) The amount of a performance award under this
9 section shall be determined by the agency head but may not ex-
10 ceed 20 percent of the career appointee's rate of basic pay.

11 "(3) The number of career appointees in any agency
12 paid performance awards under this section during any fiscal
13 year may not exceed 50 percent of the number of Senior
14 Executive Service positions in such agency. This subsection
15 shall not apply in the case of any agency which has less than
16 4 Senior Executive Service positions.

17 "(c) Performance awards paid by any agency under
18 this section shall be based on recommendations by performance
19 review boards established by such agency under section 4514
20 of this title.

21 "§ 5385. Regulations

22 "The Office of Personnel Management shall prescribe
23 such regulations as are necessary to carry out the purpose of
24 this subchapter and may provide guidance to agencies con-
25 cerning the proportion of funds available for Senior Execu-

1 tive Service salary expenses which may be used for perform-
2 ance awards."

3 (c) The analysis of chapter 53 of title 5, United States
4 Code, is amended by adding at the end thereof the following
5 new items:

"SUBCHAPTER VII—PAY FOR THE SENIOR EXECUTIVE
SERVICE

"Sec.

"5381. Purpose; definitions.

"5382. Establishment and adjustment of rates of pay for the Senior Exec-
utive Service.

"5383. Setting individual executive pay.

"5384. Performance awards for the Senior Executive Service.

"5385. Regulations."

PAY ADMINISTRATION

6
7 SEC. 408. Chapter 55 of title 5, United States Code, is
8 amended—

9 (1) by inserting "other than an employee or in-
10 dividual excluded by section 5541(2) (xvi) of this sec-
11 tion" immediately before the period at the end of section
12 5504(a) (B);

13 (2) by amending section 5541(2) by striking out
14 "or" after paragraph (xiv), by striking out the period
15 after paragraph (xv) and inserting "; or" in lieu
16 thereof, and by adding the following paragraph at the
17 end thereof:

18 "(xvi) member of the Senior Executive Serv-
19 ice."; and

20 (3) by inserting "other than a member of the

1. (Senior Executive Service" after "employee" in section
2 5595(a)(2)(i).

3 TRAVEL, TRANSPORTATION, AND SUBSISTENCE

4 SEC. 409. (a) Section 5723(a)(1) of title 5, United
5 States Code, is amended by striking out "; and" and insert-
6 ing in lieu thereof "or of a new appointee to the Senior Ex-
7 ecutive Service; and".

8 (b) Subchapter IV of chapter 57 of title 5, United
9 States Code, is amended by adding at the end thereof the
10 following new section:

11 "§ 5752. Travel expenses of Senior Executive Service can-
12 didates

13 "Employing agencies may pay candidates for Senior
14 Executive Service positions travel expenses incurred incident
15 to preemployment interviews requested by the employing
16 agency."

17 (c) The analysis for chapter 57 of title 5, United States
18 Code, is amended by inserting after the item relating to sec-
19 tion 5751 the following new item:

"5752. Travel expenses of Senior Executive Service candidates."

20 LEAVE

21 Sec. 410. Chapter 63 of title 5, United States Code, is
22 amended by inserting in subsection (a) of section 6304 "(e),
23 and (f)" in lieu of "and (e)," and by adding at the end of
24 such section the following new subsection:

1 "(f) Annual leave accrued by an individual while
2 serving in a position in the Senior Executive Service shall
3 not be subject to the limitation on accumulation otherwise im-
4 posed by this section."

5 DISCIPLINARY ACTIONS

6 SEC. 411. Chapter 75 of title 5, United States Code,
7 is amended—

8 (1) by inserting the following in the chapter
9 analysis after subchapter IV.:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.
"7641. Definitions.
"7642. Actions covered.
"7643. Cause and procedure."; and

10 (2) by adding the following after subchapter IV.:

11 "SUBCHAPTER V—SENIOR EXECUTIVE
12 SERVICE

13 "§ 7541. Definitions

14 "For the purpose of this subchapter—

15 "(1) 'employee' means an individual in the Senior
16 Executive Service who—

17 "(A) has completed the probationary period
18 prescribed under section 3393(d) of this title; or

19 "(B) was covered by the provisions of sub-
20 chapter II of this chapter immediately before
21 appointment to the Senior Executive Service; and

1 “(2) ‘suspension’ has the meaning set forth in
2 section 7501 of this title.

3 “§ 7542. Actions covered

4 “*This subchapter applies to a removal from the civil serv-*
5 *ice or suspension for more than 14 days, but does not apply*
6 *to a suspension or removal under section 7532 of this title*
7 *or to a removal under section 3592 of this title.*

8 “§ 7543. Cause and procedure

9 “(a) *Under regulations prescribed by the Office of Per-*
10 *sonnel Management, an agency may take an action covered*
11 *by this subchapter against an employee only for such cause*
12 *as will promote the efficiency of the service.*

13 “(b) *An employee against whom an action covered by*
14 *this subchapter is proposed is entitled to—*

15 “(1) *at least 30 days advance written notice unless*
16 *there is reasonable cause to believe that the employee has*
17 *committed a crime for which a sentence of imprisonment*
18 *can be imposed, stating specific reasons for the proposed*
19 *action;*

20 “(2) *a reasonable time, but not less than 7 days,*
21 *to answer orally and in writing and to furnish affidavits*
22 *and other documentary evidence in support of the*
23 *answer;*

24 “(3) *be represented by an attorney or other repre-*
25 *sentative; and*

1 “(4) *a written decision and specific reasons there-*
2 *for at the earliest practicable date.*

3 “(c) *An agency may provide, by regulation, for a hear-*
4 *ing which may be in lieu of or in addition to the opportunity*
5 *to answer provided under subsection (b) (2) of this section.*

6 “(d) *An employee against whom an action is taken un-*
7 *der this section is entitled to appeal to the Merit Systems*
8 *Protection Board under section 7701 of this title.*

9 “(e) *Copies of the notice of proposed action, the answer*
10 *of the employee when written, and a summary thereof when*
11 *made orally, the notice of decision and reasons therefor, and*
12 *any order effecting an action covered by this subchapter, to-*
13 *gether with supporting material, shall be maintained by the*
14 *agency and shall be furnished to the Merit Systems Pro-*
15 *tection Board upon its request and to the individual affected*
16 *upon such individual's request.*

17 RETIREMENT

18 SEC. 412. (a) *Section 8336 of title 5, United States*
19 *Code, is amended by redesignating subsection (h) as sub-*
20 *section (i) and inserting immediately after subsection (g)*
21 *the following new subsection:*

22 “(h) *A member of the Senior Executive Service who*
23 *is separated from the Senior Executive Service for less than*
24 *fully successful performance (as determined under sub-*
25 *chapter 11 of chapter 43 of this title) after completing 25*

1 years of service or after becoming 50 years of age and com-
 2 pleting 20 years of service is entitled to an annuity."

3 (b) Section 8339(h) of title 5, United States Code, is
 4 amended by striking out "section 8336(d)" and inserting in
 5 lieu thereof "section 8336(d) or (h)".

6 **CONVERSION TO THE SENIOR EXECUTIVE SERVICE**

7 **SEC. 413. (a)** During the period beginning on the date
 8 of the enactment of this title and ending on the effective date
 9 of this title, each agency under the guidance and review of the
 10 Office of Personnel Management and the definitions in chapter
 11 51 of title 5, United States Code, as amended by this title,
 12 shall designate those positions which are to be incorporated
 13 into the Senior Executive Service and shall designate those
 14 positions which are career reserved.

15 (b) Each agency shall also submit a request for total
 16 Senior Executive Service position allocations and for the num-
 17 ber of noncareer appointees needed. The Office of Personnel
 18 Management shall establish interim authorizations in accord-
 19 ance with sections 3133 and 3194 of title 5, United States
 20 Code, as amended by this Act.

21 (c) (1) Each employee serving in a position at the time
 22 it is designated as a position in the Senior Executive Service
 23 may elect to—

24 (A) decline conversion and remain in a position
 25 under such employee's current appointment and pay sys-

1 tem, retaining the grade, seniority, and other rights and
 2 benefits associated with career and career-conditional ap-
 3 pointment; or

4 [(B) convert to a Senior Executive Service appoint-
 5 ment according to the automatic appointment conversion
 6 provisions of subsections (d), (e), (f), (g), and (h) of
 7 this section.

8 The placement of an employee because of an election under
 9 subparagraph (A) shall not cause the separation or reduc-
 10 tion in grade of any other employee.

11 [(2) The employee shall be notified in writing that such
 12 employee's position has been brought into the Senior Execu-
 13 tive Service and what the employee's options are under sub-
 14 sections (d), (e), (f), (g), and (h) of this section. The
 15 employee shall be given 90 days from the date of such notifica-
 16 tion to elect one of the options.

17 [(d) Each employee who has elected an automatic ap-
 18 pointment conversion, is serving immediately before the effec-
 19 tive date in a position designated as a Senior Executive
 20 Service position, and is currently under—

21 [(1) a career or career-conditional appointment;

22 or

23 [(2) a similar type of appointment in an excepted
 24 service as determined by the Office of Personnel Manage-
 25 ment;

1 shall receive a career appointment to that position in the
2 Senior Executive Service not subject to section 3393 (c) and
3 (d) of title 5, United States Code.

4 [(e) Each employee who has elected an automatic ap-
5 pointment conversion and is currently under an excepted ap-
6 pointment in a position which is not designated a career
7 reserved position in the Senior Executive Service, but is—

8 [(1) a position in Schedule C of subpart C of part
9 213 of title 5, Code of Federal Regulations;

10 [(2) a position filled by noncareer executive assign-
11 ment under subpart F of part 305 of title 5, Code of
12 Federal Regulations; or

13 [(3) a position in the Executive Schedule under
14 subchapter II of chapter 53 of title 5, United States
15 Code, except career Executive Schedule positions;

16 shall receive a noncareer appointment in the Senior Execu-
17 tive Service.

18 [(f) Each employee described in subsection (e) of this
19 section who is serving immediately before the effective date in
20 a position designated as a Senior Executive Service career
21 reserved position shall be reassigned to an appropriate Senior
22 Executive Service general position or terminated.

23 [(g) Each employee described in subsection (e) of this
24 section who is serving immediately before the effective date,
25 in a position designated as a Senior Executive Service posi-

1 tion and who has reinstatement eligibility to a position in the
2 competitive service, may request the reinstatement of the em-
3 ployee's career status from the Office of Personnel Manage-
4 ment and be converted to a career appointee in the Senior
5 Executive Service. The names and grounds for status of all
6 such employees who are so reinstated and converted shall be
7 published in the Federal Register.

8 [(h) Each employee who has elected an automatic ap-
9 pointment conversion and is under a limited executive assign-
10 ment under subpart F of part 305 of title 5, Code of Federal
11 Regulations, shall—

12 [(1) be converted to a Senior Executive Service
13 limited term appointee if the position encumbered im-
14 mediately before the effective date will terminate within
15 3 years of the effective date;

16 [(2) be converted to a Senior Executive Service
17 noncareer appointee if the position encumbered im-
18 mediately before the effective date is designated as a
19 Senior Executive Service general position; or

20 [(3) be converted to a Senior Executive Service
21 noncareer appointee and reassigned to a Senior Ex-
22 ecutive Service general position if the encumbered posi-
23 tion immediately before the effective date is designated as
24 a Senior Executive Service career reserved position.

1 [(i) Employees whose actual base pay at the time of
 2 conversion exceeds the pay of the rate to which they are
 3 converted shall retain their pay. If there are comparability
 4 increases under section 5305 of title 5, United States Code,
 5 these employees will receive half of each comparability in-
 6 crease until the base pay equals the established Senior Ex-
 7 ecutive Service rate.

8 [(j) The Office of Personnel Management shall pre-
 9 scribe regulations to carry out the purpose of this section.
 10 The regulations shall provide a right of appeal to the Merit
 11 Systems Protection Board for an employee who believes
 12 such employee's agency has violated the employee's rights
 13 under this section. An agency shall take the corrective action
 14 that the Merit Systems Protection Board orders in its de-
 15 cision on an appeal under this subsection.]

16 LIMITATION ON EXECUTIVE POSITIONS

17 SEC. 414. (a)(1)(A) Subsections (b) through (g)
 18 of section 5108 of title 5, United States Code, relating to
 19 special authority to place positions at GS-16, GS-17, and
 20 GS-18 of the General Schedule, are hereby repealed.

21 (B) Notwithstanding the provisions of any law (other
 22 than section 5108 of such title 5), the authority granted to
 23 an agency (within the meaning of section 5102(a)(1) of
 24 such title 5) under any such provisions to place one or more

1 positions in GS-16, GS-17, or GS-18 of the General
 2 Schedule, is hereby terminated.

3 (C) Subsection (a) of section 5108 of title 5, United
 4 States Code, is amended to read as follows: "The Director
 5 of the Office of Personnel Management may establish, and
 6 from time to time revise, the maximum numbers of positions
 7 (not to exceed an aggregate of) which may at any
 8 one time be placed in—

9 (i) GS-16, GS-17, and GS-18 of the General
 10 Schedule; and

11 (ii) the Senior Executive Service, in accordance
 12 with section 3133 of title 5, United States Code (as
 13 added by this Act).

14 A position may be placed in GS-16, GS-17, or GS-18 of
 15 the General Schedule, only by action of the Director of the
 16 Office of Personnel Management.

17 (2)(A) Notwithstanding the provisions of any other
 18 provision of law (other than section 3104 of title 5, United
 19 States Code), the authority granted to an agency (within
 20 the meaning of section 5102(a)(1) of such title 5) to estab-
 21 lish scientific or professional positions outside of the Gen-
 22 eral Schedule is hereby terminated.

23 (B) Section 3104 of title 5, United States Code, is
 24 amended by striking out subsections (a) and (b) and in-
 25 serting in lieu thereof the following:

1 “(a)(1) The Director of the Office of Personnel Man-
2 agement may establish, and from time to time revise, the
3 maximum number of scientific or professional positions (not
4 to exceed) for carrying out research and develop-
5 ment functions which require the services of specially quali-
6 fied personnel which may be established outside of the Gen-
7 eral Schedule. Any such position may be established only by
8 action of the Director of the Office of Personnel Manage-
9 ment.

10 “(2) The provisions of paragraph (1) of this subsection
11 shall not apply to any Senior Executive Service position (as
12 defined in section 3132(a) of this title).”.

13 (C) Subsection (c) of such section 3104 is amended—

14 (i) by striking out “(c)” and inserting in lieu
15 thereof “(b)”; and

16 (ii) by striking out “to establish and fix the pay
17 of positions under this section and” and inserting in lieu
18 thereof “to fix under section 5361 of this title the pay for
19 positions established under this section”.

20 (3) (A) The provisions of paragraphs (1) and (2) of
21 this subsection shall not apply with respect to any position so
22 long as the individual occupying such position on the day
23 before the date of the enactment of this Act continues to occupy
24 such position.

25 (B) The Director of the Office of Personnel Manage-
26 ment—

1 (i) in establishing under section 5108 of title 5,
2 United States Code, the maximum number of provisions
3 which may be placed in GS-16, GS-17, and GS-18,
4 and

5 (ii) in establishing under section 3104 of such title
6 5 the maximum number of scientific or professional posi-
7 tions which may be established,
8 shall take into account positions to which subparagraph (A)
9 of this paragraph applies.

10 (b)(1) Section 5311 of title 5, United States Code, is
11 amended by inserting “(a)” before “The Executive Sched-
12 ule,” and by adding at the end thereof the following new
13 subsection:

14 “(b)(1) Not later than 180 days after the date of the
15 enactment of the Civil Service Reform Act of 1978, the
16 Director of the Office of Personnel Management shall deter-
17 mine the number and classification of executive level posi-
18 tions in existence in the executive branch on such date of
19 enactment, and shall publish such determination in the Fed-
20 eral Register. Effective beginning on the date of such publi-
21 cation, the number of executive level positions within the
22 executive branch may not exceed the number published under
23 this subsection.

24 “(2) For the purpose of this subsection, ‘executive level
25 position’ means—

1 “(A) any office or position in the civil service the
2 rate of pay for which is equal to or greater than the
3 rate of basic pay payable for positions under section
4 5316 of this title, or

5 “(B) any such office or position the rate of pay
6 for which may be fixed by administrative action at a
7 rate equal to or greater than the rate of basic pay
8 payable for positions under section 5316 of this title;
9 except that such position does not include any Senior Exec-
10 utive Service position, as defined in section 3132(a) of this
11 title.”.

12 “(2) The President shall transmit to Congress by Janu-
13 ary 1, 1980, a plan for authorizing executive level positions
14 in the executive branch which shall include the maximum
15 number of executive level positions necessary by level and
16 a justification for the positions.

17 EFFECTIVE DATE

18 SEC. 415. The provisions of this title shall take effect
19 9 months after the date of the enactment of this title with the
20 exception of section 413, regarding conversion procedures,
21 which shall take effect immediately upon enactment.

22 TITLE V—MERIT PAY

23 PAY FOR PERFORMANCE AMENDMENTS

24 SEC. 501. (a) Part III of title 5, United States Code,
25 is amended by inserting after chapter 53 the following new
26 chapter:

“Chapter 54.—MERIT PAY

“Sec.
“5401. Purpose.
“5402. Merit pay system.
“5403. Reports.
“5404. Regulations.

2 “§ 5401. Purpose

3 “*It is the purpose of this chapter to provide for a merit*
4 *pay system which shall—*

5 “(1) within available funds, recognize and reward
6 quality performance by varying merit pay adjustments;

7 “(2) use performance appraisals as the basis for
8 determining merit pay adjustments;

9 “(3) within available funds, provide for training to
10 improve objectivity and fairness in the evaluation of
11 performance; and

12 “(4) regulate the costs of merit pay by establishing
13 a merit pay budget and other appropriate control
14 techniques.

15 “§ 5402. Merit pay system

16 “(a) In accordance with the purposes set forth in sec-
17 tion 5401 of this title, the Office of Personnel Management
18 shall establish a merit pay system which shall cover any
19 employee in a position which regularly requires the exercise
20 of managerial or supervisory responsibilities which is a
21 supervisor or management official position (as defined in
22 chapter 71 of this title) and which is in GS-13 through
23 GS-15.

1 “(b) The merit pay system established under subsection
2 (a) of this section shall provide for a range of basic pay for
3 each grade to which it applies, which range shall be limited
4 by the minimum and maximum rate of basic pay of each
5 such grade.

6 “(c) (1) Concurrent with each adjustment under sec-
7 tion 5305 of this title, the Office of Personnel Management in
8 consultation with the Office of Management and Budget shall
9 determine the extent to which such adjustment shall be
10 made in rates of basic pay for all employees covered by the
11 merit pay system.

12 “(c) (1) Effective at the beginning of the first applicable
13 pay period commencing on or after the first day of the month
14 in which an adjustment takes effect under section 5305 of this
15 title, the rate of basic pay for any position under this sub-
16 chapter shall be adjusted by an amount, rounded to the
17 nearest multiple of \$100 (or if midway between multiples of
18 \$100, to the next higher multiple of \$100), equal to the
19 percentage of such annual rate of pay which corresponds to
20 the percentage generally applicable to positions in the same
21 grade as such position.

22 “(2) Any employee whose position is brought under the
23 merit pay system shall, so long as such employee continues
24 in such position, be entitled to receive basic pay at a rate of
25 basic pay not less than the rate such employee was receiving

1 when such position was brought under the merit pay system,
2 plus any subsequent adjustment under paragraph (1) of
3 this subsection.

4 “(2) (3) An increase in pay under this subsection is
5 not an equivalent increase in pay within the meaning of sec-
6 tion 5335 of this title. Any such increase shall not result in
7 such pay being considered as fixed by administrative action.

8 “(2) (4) No employee may be paid less than the mini-
9 mum rate of basic pay of the grade of such employee's
10 position.

11 “(d) (1) Under regulations prescribed by the Office of
12 Personnel Management, the head of each agency may pro-
13 vide for within-grade pay rate increases within the range of
14 basic pay for any employee covered by a merit pay system.

15 “(2) Determinations to provide pay increases under this
16 subsection to an employee—

17 “(A) may take into account both individual per-
18 formance and organizational accomplishment, and

19 “(B) shall be based on factors such as—

20 “(i) improvements in efficiency, productivity,
21 and quality of work or service;

22 “(ii) cost savings efficiency; and

23 “(iii) timeliness of performance;

24 “(C) shall be subject to review only in accordance

1 with and to the extent provided by procedures estab-
2 lished by the agency head; and

3 “(D) shall be made in accordance with guidelines
4 issued by the Office of Personnel Management which
5 relate to the distribution of increases available under
6 this subsection.

7 “(3) For any fiscal year, the head of any agency may
8 exercise authority under paragraph (1) of this subsection
9 only to the extent of the funds available for purposes of
10 this subsection.

11 “(4) The funds available for purposes of this subsection
12 to the head of an agency for any fiscal year shall be deter-
13 mined by the Office of Personnel Management on an annual
14 basis, after consultation with the Office of Management and
15 Budget, before the beginning of such fiscal year. The amount
16 so available for any such agency shall be determined by
17 the Office on the basis of—

18 “(A) the additional amount of the adjustments
19 under section 5305 of this title; and

20 “(B) the amount estimated by the Office to reflect
21 within-grade step increases and quality step increases,
22 which would have occurred if the employees covered by the
23 merit pay system in such agency were not so covered.

24 “(e) (1) The head of an agency may pay a cash award
25 to, and incur necessary expenses for the honorary recogni-

1 tion of, any employee covered by a merit pay system who—

2 “(A) by such employee's suggestion, invention,
3 superior accomplishment, or other personal effort con-
4 tributes to the efficiency, economy, or other improve-
5 ment of Government operations; or

6 “(B) performs a special act or service in the pub-
7 lic interest in connection with or related to such em-
8 ployee's official employment.

9 “(2) The President may pay a cash award to, and
10 incur necessary expenses for the honorary recognition of,
11 any employee covered by a merit pay system who—

12 “(A) by such employee's suggestion, invention,
13 superior accomplishment, or other personal effort con-
14 tributes to the efficiency, economy, or other improvement
15 of Government operations; or

16 “(B) performs an exceptionally meritorious special
17 act or service in the public interest in connection with or
18 related to such employee's official employment.

19 A Presidential award may be in addition to an agency award
20 under paragraph (1) of this subsection.

21 “(3) A cash award under this subsection is in addition
22 to the basic pay and any merit increase to basic pay of the
23 employee receiving the award. Acceptance of a cash award
24 under this subsection constitutes an agreement that the use by
25 the Government of an idea, method, or device for which the

1 award is made does not form the basis of a further claim of
2 any nature against the Government by the employee, his
3 heirs, or assigns.

4 “(4) A cash award to, and expenses for the honorary
5 recognition of, any employee covered by a merit pay system
6 may be paid from the fund or appropriation available to the
7 activity primarily benefiting or the various activities bene-
8 fitting. The head of the agency concerned shall determine the
9 amount to be paid by each activity for an agency award
10 under paragraph (1) of this subsection. The President shall
11 determine the amount to be paid by each activity for a Presi-
12 dential award under paragraph (2) of this subsection.

13 “(5) Except as provided by paragraph (6) of this
14 subsection, a cash award under this subsection may not ex-
15 ceed \$10,000.

16 “(6) If the head of an agency certifies to the Office
17 of Personnel Management that the suggestion, invention,
18 superior accomplishment, or other meritorious effort for
19 which the award is proposed is highly exceptional and un-
20 usually outstanding, a cash award in excess of \$10,000 but
21 not in excess of \$25,000 may be granted with the approval
22 of such office.

23 “(7) An agency may pay or grant an award under
24 this subsection notwithstanding the death or separation from
25 the service of the employee concerned, if the suggestion,

1 invention, superior accomplishment, other meritorious effort
2 for which the award is proposed was made or performed
3 while the employee was in the employ of the Government.

4 “(f) Under regulations prescribed by the Office of Per-
5 sonnel Management, the benefit of advancement through the
6 range of basic pay shall be preserved for an employee cov-
7 ered by the merit pay system, whose continuous service is
8 interrupted in the public interest by service with the armed
9 forces, or by service in essential non-Government civilian
10 employment during a period of war or national emergency.

11 “(g) For purposes of section 5941 of this title, rates
12 of basic pay subject to increases under the merit pay system
13 are considered pay fixed by statute.

14 “§ 5403. Reports

15 “The Office of Personnel Management shall periodically
16 submit to the Congress reports on the operation of the merit
17 pay system.

18 “§ 5404. Regulations

19 “The Office of Personnel Management shall prescribe
20 regulations necessary for the administration of this chapter.”.

21 CONFORMING AND TECHNICAL AMENDMENTS

22 SEC. 502. (a) Section 4501 (2) (A) of title 5, United
23 States Code, is amended by striking out “; and” and inserting
24 in lieu thereof “but does not include an individual paid under

1 the merit pay system established under section 5402 of this
2 title; and".

3 (b) Section 4502 (a) of title 5, United States Code,
4 is amended by striking out "\$5,000" and inserting in lieu
5 thereof "\$10,000".

6 (c) Section 4502 (b) of title 5, United States Code, is
7 amended—

8 (1) by striking out "Civil Service Commission"
9 and inserting in lieu thereof "Office of Personnel
10 Management";

11 (2) by striking out "\$5,000" and inserting in lieu
12 thereof "\$10,000"; and

13 (3) by striking out "the Commission" and insert-
14 ing in lieu thereof "the Office".

15 (d) Section 4506 of title 5, United States Code, is
16 amended by striking out "Civil Service Commission may"
17 and inserting in lieu thereof "Office of Personnel Manage-
18 ment shall".

19 (e) Section 5332 (a) of title 5, United States Code, is
20 amended by inserting after "applies" the following: "except
21 an employee covered by chapter 54 of this title."

22 (e) Section 5331 (b) of title 5, United States Code, is
23 amended by adding at the end thereof the following new sen-
24 tence: "This subchapter shall not apply to any position cov-
25 ered by chapter 54 of this title."

1 (f) Section 5334 of title 5, United States Code, is
2 amended—

3 (1) in paragraph (2) of subsection (c) by insert-
4 ing " or for an employee appointed to a position covered
5 by the merit pay system, any dollar amount," after
6 "step"; and

7 (2) by adding at the end thereof the following
8 new subsection:

9 "(g) In the case of an employee covered by the merit
10 pay system, all references in this section to 'two steps' or
11 'two step-increases' shall be deemed to mean 6 percent."

12 (g) Section 5335 (e) of title 5, United States Code, is
13 amended by inserting after "individual" the following: "cov-
14 ered by chapter 54 of this title, or,"

15 (h) Section 5336 (c) of title 5, United States Code, is
16 amended by inserting after "individual" the following: "cov-
17 ered by chapter 54 of this title, or,"

18 (i) The table of chapters for part III of title 5, United
19 States Code, is amended by inserting after the item relating
20 to chapter 53 the following new item:

"54. Merit Pay----- 5401".

EFFECTIVE DATE

22 SEC. 503. The provisions of this title shall take effect on
23 the first day of the first applicable pay period which begins
24 on or after the 90th 180th day after the date of the enact-

1 ment of this ~~Act~~ Act, except that such provisions may take
2 effect with respect to any category or categories of positions
3 before such 180th day to the extent the Director of the Office
4 of Personnel Management prescribes.

5 TITLE VI—RESEARCH, DEMONSTRATION, AND
6 OTHER PROGRAMS

7 RESEARCH AND DEMONSTRATION PROJECTS

8 SEC. 601. Part III of title 5, United States Code, is
9 amended by adding at the end of subpart C thereof the
10 following new chapter:

11 "Chapter 47.—PERSONAL PERSONNEL RESEARCH
12 AND DEMONSTRATION PROJECTS

"Sec.

"4701. Definitions.

"4702. Research and development functions.

"4703. Demonstration projects.

"4704. Allocation of funds.

"4705. Reports.

"4706. Regulations.

13 "§ 4701. Definitions

14 "For the purpose of this chapter—

15 "(1) 'agency' means an agency as defined in sec-
16 tion 2201 (a) (without regard to paragraph (2) (D)
17 thereof);

18 "(1) 'agency' means an Executive agency, the Ad-
19 ministrative Office of the United States Courts, and the
20 Government Printing Office, except that such term does
21 not include—

1 "(A) a Government corporation;

2 "(B) the Central Intelligence Agency, the De-
3 fense Intelligence Agency, the National Security
4 Agency, and any Executive agency or unit thereof
5 which is designated by the President and which con-
6 ducts foreign intelligence or counterintelligence ac-
7 tivities; and

8 "(C) the General Accounting Office.

9 "(2) 'employee' means an individual employed in
10 or under an agency;

11 "(3) 'eligible' means an individual who has quali-
12 fied for appointment in an agency and whose name has
13 been entered on the appropriate register or list of eli-
14 gibles;

15 "(4) 'demonstration project' means a project con-
16 ducted by the Office of Personnel Management, or un-
17 der its supervision, to determine whether a specified
18 change in personnel management policies or procedures
19 would result in improved Federal personnel manage-
20 ment; and

21 "(5) 'research program' means a planned study of
22 the manner in which public management policies and
23 systems are operating, the effects of those policies and
24 systems, the possibilities for change, and comparisons
25 among policies and systems.

1 "§ 4702. Research and development functions
 2 "The Office of Personnel Management shall—
 3 " (1) establish and maintain (and assist in the es-
 4 tablishment and maintenance of) research and develop-
 5 ment projects of improved methods and technologies in
 6 Federal personnel management;
 7 " (2) evaluate projects, and proposed projects,
 8 described in paragraph (1);
 9 " (3) establish and maintain a program for the
 10 collection and public dissemination of information relat-
 11 ing to personnel management research and for encour-
 12 aging and facilitating the exchange of information among
 13 interested persons and entities; and
 14 " (4) carry out the preceding functions directly or
 15 through agreement or contract.
 16 "§ 4703. Demonstration projects
 17 " (a) Except as provided in this section, the Office of
 18 Personnel Management may directly or through agreement
 19 or contract with one or more Federal agencies and other
 20 public and private organizations conduct and evaluate dem-
 21 onstration projects. The conduct of demonstration projects
 22 shall not be limited by any lack of specific authority to take
 23 the action contemplated, or by any provision or provisions of
 24 law existing at the time inconsistent with such action, in-
 25 cluding laws or regulations relating to—

1 " (1) the methods of establishing qualification re-
 2 quirements for, recruitment for, and appointment to
 3 positions;
 4 " (2) the methods of classifying positions and com-
 5 pensating employees, except that no variation is hereby
 6 authorized in employee benefits provided by chapter 63
 7 or subpart G of part III of this title;
 8 " (3) the methods of assigning, reassigning, or
 9 promoting employees;
 10 " (4) the methods of disciplining employees;
 11 " (5) the methods of providing incentives to em-
 12 ployees, including the provision of group or individual
 13 incentive bonuses or pay;
 14 " (6) hours of work per day or per week;
 15 " (7) the methods of involving employees, unions,
 16 and employee organizations in personnel decisions; and
 17 " (8) the methods of reducing overall agency staff
 18 and grade levels.
 19 Notwithstanding the provisions of this subsection, no dem-
 20 onstration project shall affect leave under chapter 63 of
 21 this title or insurance or annuities under subpart G of part III
 22 of this title.
 23 " (b) Before conducting or entering into any agreement
 24 to conduct a demonstration project, the Office of Personnel
 25 Management shall—

1 " (1) develop a plan for such project which iden-
2 tifies—

3 " (A) purposes;

4 " (B) the types of employees or eligibles,
5 categorized by organizational occupational series,
6 grade, or organizational unit;

7 " (C) the number of employees or eligibles to
8 be included, in total amount or by category;

9 " (D) the methodology;

10 " (E) the duration;

11 " (F) the training to be provided;

12 " (G) the anticipated costs; and

13 " (H) the methodology and criteria for
14 evaluation;

15 " (I) a specific description of any lack of specific
16 authority for any aspect of such project; and

17 " (J) a specific citation to any provision or
18 provisions of law, rule, or regulation which, if not
19 waived under this section, would prohibit the con-
20 ducting of such project as proposed.

21 " (2) publish such plan in the Federal Register;

22 and

23 " (3) submit such plan so published to public
24 hearing, hearing; and

25 " (4) transmit a copy of such plan, taking into ac-

1 count any revision resulting from such hearing, to each
2 House of the Congress.

3 Any such plan shall not be implemented until it is approved
4 by each agency involved.

5 " (c) (1) Any research or demonstration project under
6 this section may not be undertaken, or any contract with
7 respect to such project may not be entered into unless the
8 plan under subsection (b) of this section for such project
9 is approved by each agency involved in it and a copy of such
10 plan, as so approved, is transmitted to each House of the
11 Congress and such plan is not disapproved by either House
12 of the Congress during the first period of 60 calendar days
13 of continuous session of Congress after the plan is transmitted.

14 " (2) For the purpose of paragraph (1) of this sub-
15 section—

16 " (A) the continuity of a session is broken only by
17 an adjournment of the Congress sine die; and

18 " (B) the days on which either House of the Congress
19 is not in session because of an adjournment of more than
20 3 calendar days to a day certain are excluded in the
21 computation of the 60-day period.

22 " (d) No research or demonstration project under this
23 section may provide for a waiver of—

24 " (1) any provision of chapter 63 (relating to

1 *leave) or subpart G (relating to insurance and an-*
 2 *nuities) of this title;*

3 *“(2) any provision of law prohibiting discrimina-*
 4 *tion described in section 2302(b)(1) of this title, pro-*
 5 *viding for equal employment opportunity through*
 6 *affirmative action under any such law, or providing any*
 7 *right or remedy available to any employee or applicant*
 8 *for employment in the civil service under any such law;*

9 *“(3) any provision of chapter 15 or subchapter III*
 10 *of chapter 73 of this title (relating to political activity);*
 11 *or*

12 *“(4) any rule or regulation issued under the pro-*
 13 *visions of law referred to in paragraphs (1), (2), and*
 14 *(3) of this subsection.*

15 *“(e) (e) (1) Each demonstration project shall—*

16 *“(1) (A) involve no more than 5,000 individuals*
 17 *other than individuals in any control groups necessary to*
 18 *validate the results of the project; and*

19 *“(2) (B) terminate before the end of the 5-year*
 20 *2-year period beginning on the date of approval by the*
 21 *Office of Personnel Management except that research*
 22 *may continue beyond such date to the extent necessary*
 23 *to validate the results of the project.*

24 *“(2) No more than 5 research or demonstration projects*
 25 *may be contracted for or conducted at any time.*

1 *“(4) (f) Subject to the terms of any written agreement*
 2 *between the Office of Personnel Management and an agency,*
 3 *a demonstration project involving an agency may be termi-*
 4 *nated by the Office of Personnel Management, or such*
 5 *agency, if either determines that the project creates a sub-*
 6 *stantial hardship on, or is not in the best interests of, the*
 7 *public, the Federal Government, employees, or eligibles.*

8 *“(e) (g) Employees within a unit with respect to which*
 9 *an organization of Government employees has been ac-*
 10 *corded exclusive recognition shall not be included within*
 11 *any project under subsection (b) of this section—*

12 *“(1) if such project would violate a negotiated*
 13 *agreement between such agency and such organization,*
 14 *unless there is a written agreement with respect to such*
 15 *project between such agency and such organization; or*
 16 *“(2) if such project is not covered by a negotiated*
 17 *agreement, until there has been consultation or negotia-*
 18 *tion, as appropriate, with such organization.*

19 *“(4) (h) Employees within any unit with respect to*
 20 *which an organization of Government employees has not*
 21 *been accorded exclusive recognition shall not be included*
 22 *within any project under subsection (b) of this section un-*
 23 *less there has been agency consultation regarding the project*
 24 *with the employees in such unit.*

1 “(g) (i) Evaluation of the results of the project and its
2 impact on improving public management shall be undertaken
3 for each project.

4 “(h) (j) Upon the request of the Director of the Office of
5 Personnel Management, agencies shall cooperate with and
6 assist the Office as far as practical in the performance of this
7 function and provide the Office with requested information
8 and reports relating to the conduct of demonstration projects
9 in their respective agencies.

10 “§ 4704. Allocation of funds

11 “Funds appropriated to the Office of Personnel Manage-
12 ment for the purposes of this subchapter may be allocated by
13 the Office of Personnel Management to any agency conduct-
14 ing demonstration projects or assisting the Office of Personnel
15 Management in conducting such projects. Funds so allocated
16 shall remain available for such period as may be specified in
17 appropriation Acts. No contract shall be entered into under
18 this section unless such contract has been provided for in ad-
19 vance in appropriation Acts.

20 “§ 4705. Reports

21 “‘The Office of Personnel Management shall include in
22 the annual report required by section 1308 of this title a
23 summary of research and demonstration projects conducted
24 during the year, the effect of that research on improving
25 public management and increasing efficiency, and recom-

1 mendations of policies and procedures which will improve
2 the attainment of general research objectives.

3 “§ 4706. Regulations

4 “‘The Office of Personnel Management shall prescribe
5 regulations for the administration of this chapter.”

6 INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

7 SEC. 602. (a) Section 208 of the Intergovernmental
8 Personnel Act of 1970 is amended—

9 (1) by striking out the section heading and insert-
10 ing in lieu thereof the following:

11 “TRANSFER OF FUNCTIONS AND ADMINISTRATION OF
12 MERIT POLICIES”;

13 (2) by redesignating subsections (b), (c), (d),
14 (e), (f), and (g) as subsections (c), (d), (e), (f),
15 (g), and (i), respectively, and by inserting after sub-
16 section (a) the following new subsection:

17 “(b) In accordance with regulations of the Office of
18 Personnel Management, Federal agencies may require as a
19 condition of participation in assistance programs, systems of
20 personnel administration consistent with personnel standards
21 prescribed by the Office of Personnel Management for posi-
22 tions engaged in carrying out such programs. Such standards
23 shall include the merit principles in section 2 of this Act.”;
24 and

25 (3) by inserting after subsection (g), as re-

1 designated by this section, the following new subsection:
 2 “(h) Effective one year after the date of the enactment
 3 of this subsection, all statutory personnel requirements estab-
 4 lished as a condition of the receipt of Federal grants-in-aid
 5 by State and local governments, are hereby abolished,
 6 except—
 7 “(1) those requirements listed in subsection (a)
 8 of this section,
 9 “(2) those that generally prohibit discrimination
 10 in employment or require equal employment opportunity,
 11 “(3) the Davis-Bacon Act (40 U.S.C. 276 et
 12 seq.), and
 13 “(4) chapter 15, Political Activities of Certain
 14 State and Local Employees, of title 5, United States
 15 Code.”
 16 (b) Section 401 of such Act is amended by striking the
 17 period after “institutions of higher education” and inserting
 18 in lieu thereof “and other organizations.”
 19 (c) Section 403 of such Act is amended by striking
 20 out “(less applicability to commissioned officers of the Pub-
 21 lic Health Service)”.
 22 (d) Section 502 of such Act is amended in paragraph
 23 (3) by inserting “the Trust Territory of the Pacific Islands,”
 24 before “and a territory or possession of the United States,”.
 25 (e) Section 506 of such Act is amended—

1 (1) by inserting in subsection (b) (2) “the Com-
 2 monwealth of Puerto Rico, Guam, American Samoa, and
 3 the Virgin Islands)” after “(Other than the District of
 4 Columbia,”; and
 5 (2) by striking out of subsection (b) (5) “and the
 6 District of Columbia,” and by inserting in lieu thereof
 7 “the District of Columbia, the Commonwealth of Puerto
 8 Rico, Guam, American Samoa, and the Virgin Islands.”.
 9 AMENDMENTS TO THE MOBILITY PROGRAM
 10 SEC. 603. (a) Section 3371 of title 5, United States
 11 Code, is amended—
 12 (1) by inserting “the Trust Territory of the Pacific
 13 Islands,” after “Puerto Rico,” in paragraph (1) (A);
 14 and
 15 (2) by striking out “and” at the end of paragraph
 16 (1), by striking out the period at the end of paragraph
 17 (2) and inserting a semicolon in lieu thereof, and by
 18 adding at the end thereof the following:
 19 “(3) ‘Federal agency’ means an executive agency,
 20 a military department, a court of the United States, the
 21 Administrative Office of the United States Courts, the
 22 Library of Congress, the Botanic Garden, the Govern-
 23 ment Printing Office, the Congressional Budget Office,
 24 the United States Postal Service, the Postal Rate Com-
 25 mission, the Office of the Architect of the Capitol, the

1 Office of Technology Assessment, and such other ap-
 2 propriate agencies of the legislative and judicial branches
 3 as determined by the Office of Personnel Management;
 4 and

5 (4) "other organizations" means—

6 (A) a national, regional, State-wide, or met-
 7 ropolitan organization representing member State
 8 or local governments;

9 (B) an association of State or local public
 10 officials; or

11 (C) a nonprofit organization, one of whose
 12 principal functions is to offer professional advisory,
 13 research, development, or related services to gov-
 14 ernments or universities concerned with public
 15 management.

16 (b) Sections 3372 through 3375 of title 5, United
 17 States Code, are amended by striking out "executive
 18 agency" and "an executive agency" each place they appear
 19 and by inserting in lieu thereof, respectively, "Federal
 20 agency" and "a Federal agency".

21 (c) Section 3372 (a) (1) of title 5, United States
 22 Code, is further amended by inserting immediately before
 23 the semicolon the following: "except that an employee
 24 in a Federal agency does not include an employee in the
 25 Senior Executive Service serving under a non-career appoint-

1 ment and an employee in the excepted service who is serving
 2 in a confidential or policy-determining or policy-advocating
 3 position".

4 (d) Section 3372 of title 5, United States Code, is
 5 amended—

6 (1) in subsection (b) (1), by striking out "and"
 7 after "higher education";

8 (2) in subsection (b) (2), by striking out the
 9 period after "executive agency" and inserting in lieu
 10 thereof a semicolon; and

11 (3) by adding at the end thereof of subsection (b)
 12 the following:

13 " (3) an employee of a Federal agency to another
 14 organization; and

15 " (4) an employee of another organization to a
 16 Federal agency."; and

17 (4) by adding at the end thereof the following new
 18 subsection:

19 "(c) (1) An employee of a Federal agency may be
 20 assigned under this subchapter only if such employee agrees,
 21 as a condition of accepting an assignment to a State or local
 22 government under this subchapter, to serve with such agency
 23 upon the completion of such assignment for a period equal
 24 to the length of the assignment.

25 "(2) Each agreement required under paragraph (1) of

1 this subsection shall provide that in the event the recipient
 2 fails to carry out such agreement (except for good and suffi-
 3 cient reason as determined by the head of the Federal agency
 4 involved) such employee shall be liable to the United States
 5 for payment of all expenses (excluding salary) of such
 6 assignment. Such amount shall be treated as a debt due the
 7 United States.

8 (e) Section 3374 of title 5, United States Code, is
 9 amended—

10 (1) by adding the following new sentence at the
 11 end of subsection (b):

12 "The above exceptions shall not apply to non-Federal em-
 13 ployees who are covered by chapters 83, 87, and 89 of this
 14 title by virtue of their non-Federal employment immediately
 15 before assignment and appointment under this section.";

16 (2) in subsection (c) (1), by striking out the semi-
 17 colon at the end thereof and by inserting in lieu thereof
 18 the following: " , except to the extent that the compen-
 19 sation received from the State or local government is
 20 less than the appropriate rate of pay which the duties
 21 would warrant under the applicable pay provisions of
 22 this title or other applicable authority;" ; and

23 (3) by striking out the period at the end of sub-
 24 section (c) and adding the following: " , or for the

1 contribution of the State or local government, or a part
 2 thereof, to employee benefit systems."

3 (g) Section 3375 (a) of title 5, United States Code, is
 4 amended by striking out "and" at the end of paragraph (4),
 5 by redesignating paragraph (5) as paragraph (6), and by
 6 inserting after paragraph (4) thereof the following:

7 " (5) section 5724a (b) of this title, to be used by
 8 the employee for miscellaneous expenses related to
 9 change of station where movement or storage of house-
 10 hold goods is involved; and"

11 **TITLE VII—LABOR-MANAGEMENT RELATIONS**

12
 13 **[New title relating to labor-management relations to be
 14 supplied.]**

15
 16 **TITLE VII VIII—MISCELLANEOUS**

17 **SAVINGS PROVISIONS**

18 **SEC. 701 801.** (a) Except as provisions of this Act may
 19 govern, all Executive orders, rules, and regulations affecting
 20 the Federal service shall continue in effect, according to their
 21 terms, until modified, terminated, superseded, or repealed by
 22 the President, the Office of Personnel Management, or the
 23 Merit Systems Protection Board, the *Equal Employment*
 24 *Opportunity Commission*, or the *Federal Labor Relations*
 25 *Authority* as to matters within their respective jurisdictions.

1 (b) No provision of this Act shall affect any ad-
 2 ministrative proceedings pending at the time such provision
 3 takes effect. Orders shall be issued in such proceedings and
 4 appeals shall be taken therefrom as if this Act had not been
 5 enacted.

6 (c) No suit, action, or other proceeding lawfully com-
 7 menced by or against the Director of the Office of Personnel
 8 Management or the board members of the Merit Systems
 9 Protection Board, or officers or employees thereof in their
 10 official capacity or in relation to the discharge of their offi-
 11 cial duties, as in effect immediately before the effective date
 12 of this Act, shall abate by reason of enactment of this Act.
 13 Such suits, actions, or other proceedings shall be determined
 14 as if this Act had not been enacted.

15 AUTHORIZATION OF APPROPRIATIONS

16 SEC. 702 802. There are authorized to be appropriated,
 17 out of any moneys in the Treasury not otherwise appro-
 18 priated, such sums as may be necessary to carry out the pro-
 19 visions of this Act.

20 POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS

21 PROVISIONS

22 SEC. 703 803. Except as expressly provided in this
 23 Act, nothing contained herein shall be construed to limit, cur-
 24 tail, abolish, or terminate any function of, or authority avail-
 25 able to, the President which the President had immediately

1 before the effective date of this Act; or to limit, curtail, or
 2 terminate the President's authority to delegate, redelegate,
 3 or terminate any delegation of functions.

4 TECHNICAL AND CONFORMING AMENDMENTS

5 SEC. 704 804. The President or his designee shall, as
 6 soon as practicable but in any event not later than 30 days
 7 after the date of the enactment of this Act, submit to the
 8 Committee on Post Office and Civil Service of the House of
 9 Representatives and the Committee on Governmental Affairs
 10 of the Senate a draft of any technical and conforming amend-
 11 ments to title 5, United States Code, which have not been
 12 made by the provisions of this Act and which are necessary
 13 to reflect throughout such title the amendments to the sub-
 14 stantive provisions of law made by this Act and by Reorgani-
 15 zation Plan Numbered 2 of 1978.

16 EFFECTIVE DATES

17 SEC. 705 805. Except as otherwise expressly provided
 18 in this Act, the provisions of this Act shall take effect 90
 19 days after the date of the enactment of this Act.

[COMMITTEE PRINT]

JULY 10, 1978

[The following reflects the proposed draft of title VII (labor-management relations) to be used in the consideration of the committee print of H.R. 11280 (dated June 15, 1978), but does not include necessary technical and conforming amendments.]

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

“Subpart F—Labor-Management and Employee Relations

“Chapter 71—LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER I—GENERAL PROVISIONS

- “Sec.
“7101. Findings and purpose.
“7102. Employees’ rights.
“7103. Definitions.
“7104. Federal Labor Relations Authority.
“7105. Powers and duties of the Authority.
“7106. Management rights.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

- “Sec.
“7111. Exclusive recognition of labor organizations.
“7112. Determination of appropriate units for labor organization representation.
“7113. National consultation rights.
“7114. Representation rights and duties.
“7115. Allotments to representatives.
“7116. Unfair labor practices.
“7117. Duty to bargain in good faith; compelling need.
“7118. Prevention of unfair labor practices.
“7119. Negotiation impasses; Federal Service Impasses Panel.
“7120. Standards of conduct for labor organizations.

“SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

- “Sec.
“7121. Appeals from adverse decisions.
“7122. Grievance procedures.
“7123. Judicial review.

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

- “Sec.
“7131. Reporting requirements for standards of conduct.
“7132. Official time.
“7133. Subpenas.
“7134. Compilation and publication of data.
“7135. Issuance of regulations.
“7136. Continuation of existing laws, recognitions, agreements, and procedures.

“SUBCHAPTER I—GENERAL PROVISIONS

“§ 7101. Findings and purpose
“(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and

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1 *their employers involving conditions of employment. There-*
 2 *fore, labor organizations and collective bargaining in the*
 3 *Federal Service are in the public interest.*

4 “(b) *It is the purpose of this chapter to prescribe*
 5 *certain rights and obligations of the employees of the Fed-*
 6 *eral Government and to establish procedures which are de-*
 7 *signed to meet the special requirements and needs of the*
 8 *Federal Government.*

9 “§ 7102. *Employees' rights*

10 “*Each employee shall have the right to form, join, or*
 11 *assist any labor organization, or to refrain from any such*
 12 *activity, freely and without fear of penalty or reprisal, and*
 13 *each such employee shall be protected in the exercise of such*
 14 *right. Except as otherwise provided under this chapter, such*
 15 *right includes the right—*

16 “(1) *to act for a labor organization in the capacity*
 17 *of a representative and the right, in such capacity, to*
 18 *present the views of such labor organization to agency*
 19 *heads and other officials of the executive branch of the*
 20 *Government, the Congress, or other appropriate*
 21 *authorities,*

22 “(2) *to bargain collectively over conditions of em-*
 23 *ployment through representatives chosen by them under*
 24 *this chapter, and*

25 “(3) *to engage in other lawful activities for the*

1 *purpose of establishing, maintaining, and improving*
 2 *conditions of employment.*

3 “§ 7103. *Definitions; application*

4 “*For the purpose of this chapter—*

5 “(1) *‘person’ means an individual, labor organiza-*
 6 *tion, or agency;*

7 “(2) *‘employee’ means an individual—*

8 “(A) *employed in an agency;*

9 “(B) *employed in a nonappropriated fund in-*
 10 *strumentality described in section 2105(c) of this*
 11 *title and with respect to whom such section 2105*
 12 *(c) applies;*

13 “(C) *employed in the Veterans' Canteen Serv-*
 14 *ice, Veterans' Administration, and with respect to*
 15 *whom section 5102(c)(14) of this title applies; or*

16 “(D) *whose work as such an employee (deter-*
 17 *mined under the preceding provisions of this para-*
 18 *graph) has ceased because of any unfair labor*
 19 *practice under section 7116 of this title and who*
 20 *has not obtained any other regular and substantially*
 21 *equivalent employment, as determined under regu-*
 22 *lations prescribed by the Federal Labor Relations*
 23 *Authority;*

24 *but does not include—*

1 “(i) an alien or noncitizen of the United States
2 who occupies a position outside the United States;

3 “(ii) a member of the armed forces;

4 “(iii) a supervisor or a management official; or

5 “(iv) an individual employed by the Govern-
6 ment of the District of Columbia or the Tennessee
7 Valley Authority;

8 “(3) ‘agency’ means any Executive agency, the
9 Library of Congress, the Government Printing Office,
10 and the Postal Rate Commission;

11 “(4) ‘labor organization’ means an organization
12 composed in whole or in part of employees of an agency,
13 in which employees participate and pay dues, and
14 which has as its primary purpose the dealing with an
15 agency concerning grievances and matters affecting con-
16 ditions of employment, except that such term does not
17 include—

18 “(A) an organization whose basic purpose is
19 purely social, fraternal, or limited to special interest
20 objectives which are only incidentally related to
21 matters affecting conditions of employment;

22 “(B) an organization which, by its constitution,
23 bylaws, tacit agreement among its members, or
24 otherwise, denies membership because of race, color,

1 creed, national origin, sex, age, preferential or non-
2 preferential civil service status, political affiliation,
3 marital status, or handicapping condition; or ;

4 “(C) an organization sponsored by an agency;

5 “(5) ‘affiliate’ means, when used with respect to
6 a labor organization, any national or international union,
7 federation, council, or department, or other organization
8 in which such labor organization is represented or with
9 which such labor organization is affiliated;

10 “(6) ‘Authority’ means the Federal Labor Rela-
11 tions Authority described in section 7104(a) of this
12 title;

13 “(7) ‘Panel’ means the Federal Service Impasses
14 Panel described in section 7119(e) of this title;

15 “(8) ‘collective bargaining agreement’ means an
16 agreement entered into as a result of collective bargain-
17 ing pursuant to the provisions of this chapter;

18 “(9) ‘grievance’ means any complaint by any
19 person—

20 “(A) concerning any matter relating to the
21 employment of such person with an agency;

22 “(B) concerning the effect or interpretation,
23 or a claim of breach, of a collective bargaining
24 agreement; or

25 “(C) concerning any claimed violation, mis-

1 interpretation, or misapplication of any law, rule,
2 or regulation, affecting conditions of employment;

3 "(10) 'supervisor' means any employee having au-
4 thority, in the interest of an agency, to hire, direct, as-
5 sign, promote, reward, transfer, lay off, recall, suspend,
6 discipline, or discharge other employees, or to adjust
7 their grievances, or to effectively recommend such ac-
8 tion, if the exercise of such authority is not merely
9 routine or clerical in nature but requires the consistent
10 exercise of independent judgment, except that with re-
11 spect to any unit which includes firefighters or nurses,
12 the term 'supervisor' includes only those employees who
13 devote a preponderance of their employment time in
14 exercising such authority;

15 "(11) 'management official' means an individual
16 employed by an agency in a position the duties and
17 responsibilities of which require or authorize such in-
18 dividual to formulate, determine, or influence the policies
19 of such agency;

20 "(12) 'collective bargaining' or 'bargaining' means
21 the performance of the mutual obligation of the repre-
22 sentatives of an agency and the exclusive representa-
23 tive of employees in a unit in such agency to meet at
24 reasonable times and to confer, consult, and bargain in
25 a good-faith effort to reach agreement with respect to

1 the conditions of employment affecting such employees
2 and to execute, if requested by either party, a written
3 document incorporating any collective bargaining agree-
4 ment reached, but such obligation does not compel either
5 party to agree to a proposal or to make a concession;

6 "(13) 'confidential employee' means an employee
7 who acts in a confidential capacity to a person who for-
8 mulates or effectuates management policies in the field
9 of labor relations;

10 "(14) 'conditions of employment' means personnel
11 policies, practices, and matters, whether established by
12 rule, regulation, or otherwise, affecting working condi-
13 tions, except that such term does not include policies,
14 practices, and matters—

15 "(A) relating to discrimination in employment
16 because of race, color, religion, sex, age, national
17 origin, or handicapping condition;

18 "(B) relating to political activities prohibited
19 under subchapter III of chapter 73 of this title; or

20 "(C) to the extent such matters are specifically
21 provided for by Federal statute;

22 "(15) 'professional employee' means—

23 "(A) an employee engaged in the performance
24 of work—

25 "(i) requiring knowledge of an advanced

1 type in a field of science or learning customarily
2 acquired by a prolonged course of specialized
3 intellectual instruction and study in an institu-
4 tion of higher learning or a hospital (as distin-
5 guished from knowledge acquired by a general
6 academic education, or from an apprenticeship,
7 or from training in the performance of routine
8 mental, manual, mechanical, or physical activi-
9 ties);

10 "(ii) requiring the consistent exercise of
11 discretion and judgment in its performance;

12 "(iii) which is predominantly intellectual
13 and varied in character (as distinguished from
14 routine mental, manual, mechanical, or physi-
15 cal work); and

16 "(iv) which is of such character that the
17 output produced or the result accomplished by
18 such work cannot be standardized in relation
19 to a given period of time; or

20 "(B) an employee who has completed the
21 courses of specialized intellectual instruction and
22 study described in subparagraph (A)(i) of this
23 paragraph and is performing related work under the
24 direction or guidance of a professional person to

1 qualify such employee as a professional employee,
2 within the meaning of subparagraph (A);

3 "(16) 'exclusive representative' means any labor
4 organization which has been—

5 "(A) selected or designated pursuant to the
6 provisions of section 7111 of this title as the repre-
7 sentative of employees in an appropriate unit; or

8 "(B) recognized by an agency before the effec-
9 tive date of this chapter as the exclusive representa-
10 tive of employees in an appropriate unit—

11 "(i) on the basis of an election, or

12 "(ii) on any basis other than an election;

13 "(17) 'firefighter' means any employee engaged
14 in the performance of work directly connected with the
15 control and extinguishment of fires or the maintenance
16 and use of firefighting apparatus and equipment;

17 "(18) 'United States' means the 50 States, the
18 District of Columbia, and any territory or possession of
19 the United States; and

20 "(19) 'dues' means dues, fees, and assessments.

21 "§ 7104. Federal Labor Relations Authority

22 "(a) The Federal Labor Relations Authority is com-
23 posed of three members, not more than two of whom may
24 be adherents of the same political party. A member shall
25 not engage in any other business or employment and none

1 of whom may hold another office or position in the Govern-
2 ment of the United States except where provided by law.

3 “(b) Members of the Authority shall be appointed by
4 the President, by and with the advice and consent of the Sen-
5 ate. Each member of the Authority may be removed by the
6 President, only upon notice and hearing, and only for mis-
7 conduct, inefficiency, neglect of duty, or malfeasance in Office.
8 The President shall designate one member to serve as Chair-
9 man of the Authority.

10 “(c) One of the original members of the Authority
11 shall be appointed for a term of 1 year, one for a term of 3
12 years, and the Chairman for a term of 5 years. Thereafter,
13 each member shall be appointed for a term of 5 years. Not-
14 withstanding the preceding provisions of this subsection, the
15 term of any member shall not expire before the earlier of (1)
16 the date on which such member's successor takes office, or
17 (2) the last day of the Congress beginning after the date
18 such member's term of office would (but for this sentence)
19 expire. An individual chosen to fill a vacancy shall be ap-
20 pointed for the unexpired term of the member replaced.

21 “(d) A vacancy in the Authority shall not impair the
22 right of the remaining members to exercise all of the powers
23 of the Authority.

24 “(e) The Authority shall make an annual report to the
25 President for transmittal to the Congress, which shall include

1 information as to the cases it has heard and the decisions it
2 has rendered.

3 “(f)(1) The General Counsel of the Authority shall be
4 appointed by the President by and with the advice and
5 consent of the Senate for a term of 5 years. The General
6 Counsel may be removed by the President, only upon notice
7 and hearing, and only for misconduct, inefficiency, neglect
8 of duty, or malfeasance in office. The General Counsel may—

9 “(A) investigate alleged violations of this chapter,

10 “(B) file and prosecute complaints filed under
11 this chapter,

12 “(C) intervene before the Authority in proceedings
13 brought under section 7118 of this title, and

14 “(D) exercise such other powers as the Authority
15 may prescribe.

16 “(2) The General Counsel shall have direct authority
17 over, and responsibility for, all employees in the office of
18 General Counsel, including employees of the General Coun-
19 sel in the regional offices of the Authority.

20 “(3) If a vacancy occurs in the Office of General Coun-
21 sel, the President shall promptly designate an Acting Gen-
22 eral Counsel and shall submit a nomination for a replacement
23 to the Senate within 40 days after the vacancy has occurred,
24 unless Congress adjourns sine die before the expiration of
25 such 40-day period, in which case the President shall submit

1 a nomination to the Senate not later than 10 days after
2 Congress reconvenes.

3 "§ 7105. Powers and duties of the Authority

4 "(a) The Authority shall provide leadership in estab-
5 lishing labor-management relations policies and guidance
6 under this chapter, and, except as otherwise provided, shall
7 be responsible for carrying out the purposes of this chapter.

8 "(b) The Authority shall adopt an official seal which
9 shall be judicially noticed.

10 "(c) The principal office of the Authority shall be in
11 the District of Columbia but it may meet and exercise any
12 or all of its powers at any time or place. Except where
13 expressly provided otherwise, the Authority may, by one or
14 more of its members or by such agents as it may designate,
15 make any inquiry necessary to carry out its duties wherever
16 persons subject to this chapter are located. A member who
17 participates in such inquiry shall not be disqualified from
18 later participating in a decision of the Authority in the same
19 case.

20 "(d) The Authority shall appoint an Executive Director,
21 administrative law judges under section 3105 of this title,
22 and other employees as it may from time to time find neces-
23 sary for the proper performance of its duties.

24 "(e)(1) The Authority may delegate to its regional
25 directors its authority under this title—

1 "(A) to determine whether a group of employees
2 is an appropriate unit,

3 "(B) to investigate and provide for hearings,

4 "(C) to determine whether a question of represen-
5 tation exists and to direct an election, and

6 "(D) to conduct secret ballot elections and certify
7 the results thereof,

8 except that upon the filing of a request therefor with the
9 Authority by any interested person, the Authority may re-
10 view any action of the regional director under authority dele-
11 gated under this paragraph, but such review shall not, unless
12 specifically ordered by the Authority, operate as a stay of
13 any action taken by the regional director.

14 "(2) The Authority may delegate to an administrative
15 law judge its authority under section 7118 of this title to deter-
16 mine whether any person has engaged in an unfair labor
17 practice. The Authority may review any action of an ad-
18 ministrative law judge under authority delegated under this
19 paragraph, but such review shall not, unless specifically
20 ordered by the Authority, operate as a stay of any action
21 taken by the administrative law judge.

22 "(f) If the Authority exercises the authority granted
23 by subsection (e) of this section to delegate any authority to
24 any regional director or administrative law judge, it may,
25 upon application by any interested person, review, and upon

1 such review, modify, affirm, or reverse the decision, certi-
 2 fication, or order of a regional director or administrative law
 3 judge if it believes substantial questions of law or fact have
 4 been raised. In the event that the Authority does not under-
 5 take to grant review within 60 days after a request for
 6 review is filed, the decision of such regional director or ad-
 7 ministrative law judge shall become the decision of the
 8 Authority.

9 “(g) In order to carry out its functions under this chap-
 10 ter, the Authority may hold hearings, subpoena witnesses,
 11 administer oaths, and take the testimony or deposition of any
 12 person under oath, and in connection therewith, may issue
 13 subpoenas requiring the production and examination of any
 14 books or papers, including those of the Federal Government
 15 to the extent otherwise available under law, relating to any
 16 matter pending before it and to take such other action as
 17 may be necessary to carry out the purpose of this chapter.
 18 “§ 7106. Management rights

19 “(a) Nothing in this chapter shall affect the authority
 20 of any management official of any agency—

21 “(1) subject to subsection (b), to determine the
 22 mission, budget, organization, and internal security
 23 practices of such agency; and

24 “(2) in accordance with applicable laws, to take

1 whatever actions as may be necessary to carry out the
 2 mission of such agency during national emergencies.

3 “(b) Nothing in this section shall preclude any agency
 4 and labor organization from negotiating—

5 “(1) procedures which management officials of such
 6 agency will observe in exercising their authority to deter-
 7 mine the mission, budget, organization, and internal
 8 security of such agency, or

9 “(2) appropriate arrangements for employees ad-
 10 versely affected by the exercise of such authority by
 11 such management officials.

12 “SUBCHAPTER II—RIGHTS AND DUTIES OF
 13 AGENCIES AND LABOR ORGANIZATIONS

14 “§ 7111. Exclusive recognition of labor organizations

15 “(a) Exclusive recognition shall be granted to a labor
 16 organization which has been selected by a majority of em-
 17 ployees in an appropriate unit who participate in an elec-
 18 tion in conformity with the requirements of this chapter.

19 “(b)(1) If a petition has been filed with the Au-
 20 thority—

21 “(A) by any person alleging—

22 “(i) in the case of an appropriate unit for
 23 which no exclusive representative has been certified,
 24 that 30 percent of the employees in the appropriate

unit wish to be represented for collective bargaining purposes by an exclusive representative, or

“(ii) in the case of an appropriate unit for which an exclusive representative has been certified, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

“(B) by any person seeking clarification of, or an amendment to, an existing certification on a matter relating to representation;

the Authority shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an opportunity for a hearing (for which a transcript will be kept) after reasonable and an appropriate hearing on the record upon due notice. Except as provided under subsection (e) of this section, if the Authority finds on the record of such hearings that such a question of representation exists, it shall, subject to paragraph (2) of this subsection, conduct an election by secret ballot and shall certify the results thereof. An election shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

“(2) (A) If, after 45 days following the date the petition is filed, unresolved issues exist concerning—

“(i) the appropriateness of the unit for the purposes of collective bargaining,

“(ii) the eligibility of one or more individuals to vote in the proposed election, or

“(iii) other matters determined by the Authority to be relevant to the election,

the Authority shall direct an election by secret ballot in the unit then sought by the petitioner and announce the results thereof.

“(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of the disputed issues relating to such election. If the Authority determines that matters raised by such issues did not affect the outcome of such election, the Authority shall certify the results of such election. If the Authority determines that such matters affected the outcome of the election, it shall direct that a new election by secret ballot occur in accordance with such requirements as is appropriate on the basis of such determination, and shall certify the results thereof.

“(c) A labor organization which—

“(1) has been designated by at least 10 percent of the employees in the unit;

1 “(2) has submitted a valid copy of a current or
2 recently expired collective bargaining agreement for
3 the unit; or

4 “(3) has submitted other evidence that it is the
5 exclusive representative of the employees involved;
6 may intervene with respect to a petition filed under sub-
7 section (b) of this section and shall be placed on the ballot
8 of any election ordered to be held under such subsection (b).

9 “(d) The Authority shall determine who is eligible to
10 vote in any election under this section and shall establish
11 rules governing the election, which shall include rules allow-
12 ing each employee eligible to vote the opportunity to
13 choose—

14 “(1) the labor organization such employee wishes
15 to be represented by from those on the ballot, or

16 “(2) not to have representation by a labor organi-
17 zation.

18 In any election in which no choice on the ballot receives
19 a majority of the votes cast, a runoff election shall be con-
20 ducted between the two choices receiving the largest number
21 of votes. A labor organization which receives the majority
22 of the votes cast in an election shall be certified by the
23 Authority as the exclusive representative.

24 “(e) The Authority may, on the petition of a labor or-

1 ganization, certify such labor organization as an exclusive
2 representative—

3 “(1) if, after investigation, it determines that the
4 conditions for a free and untrammelled election under
5 this section cannot be established because the agency
6 involved has engaged in or is engaging in an action
7 described in section 7116 of this title; or

8 “(2) if, after investigation, the Authority deter-
9 mines that—

10 “(A) the labor organization represents a ma-
11 jority of employees in an appropriate unit;

12 “(B) such majority status was achieved with-
13 out the benefit of an action described in section
14 7116 of this title;

15 “(C) no other person has filed a petition for
16 recognition under subsection (b) of this section or
17 a request for intervention under subsection (c) of
18 this section; and

19 “(D) no other question of representation exists
20 in the appropriate unit.

21 “(f) Any labor organization described in clause (ii)
22 of section 7103(a)(16)(B) of this title may petition for
23 an election for the determination of such organization as the
24 exclusive representative of any unit.

25 “(g) A labor organization seeking exclusive recognition

1 shall submit to the Authority and the agency involved a
 2 roster of its officers and representatives, a copy of its con-
 3 stitution and bylaws, and a statement of its objectives.

4 "(h) Exclusive recognition shall not be accorded to a
 5 labor organization—

6 "(1) if the Authority determines the labor orga-
 7 nization is subject to corrupt influences or influences
 8 opposed to democratic principles;

9 "(2) in the case of a petition filed pursuant to
 10 subsection (b)(1)(A), if there is not credible evi-
 11 dence that at least 30 percent of the employees in
 12 the unit described in such petition wish to be represented
 13 for the purpose of collective bargaining by the labor
 14 organization seeking exclusive recognition;

15 "(3) if there is then in effect a lawful written
 16 collective bargaining agreement between such agency
 17 and a labor organization (other than the labor orga-
 18 nization seeking recognition) covering any employees
 19 included in the unit described in the petition, unless—

20 "(A) such agreement has been in effect for
 21 more than 3 years, or

22 "(B) the petition for exclusive recognition is
 23 filed during the 4-month period which begins on the
 24 180th day before the expiration date of such agree-
 25 ment; or

1 "(4) if the Authority has, within the previous 12
 2 calendar months, conducted a secret ballot election in-
 3 volving any of the employees in the unit described in
 4 the petition and in such election a majority of the em-
 5 ployees voting chose a labor organization for certification
 6 as the unit's exclusive representative or chose not to be
 7 represented by any labor organization.

8 "(i) Nothing in this section shall be construed to prohibit
 9 the waiving of hearings by stipulation for the purpose of a
 10 consent election in conformity with regulations and rules or
 11 decisions of the Authority.

12 "§ 7112. Determination of appropriate units for labor
 13 organization representation

14 "(a)(1) The Authority shall make a determination of
 15 the appropriateness of a unit. The Authority shall deter-
 16 mine in each case whether, in order to insure employees
 17 the fullest freedom in exercising the rights guaranteed
 18 under this chapter, the appropriate unit to be established
 19 will be on an agency, plant, installation, functional, or
 20 other basis which will insure a clear and identifiable
 21 community of interest among the employees concerned and
 22 will promote effective dealings with, and efficiency of, agency
 23 operations.

24 "(b) A unit shall not be determined to be appropriate
 25 under this section solely on the basis of the extent to which

1 employees in the proposed unit have organized, nor shall a
2 unit be determined to be appropriate if it includes—

3 “(1) except as provided under section 7136(a) of
4 this title, any management official or supervisor, except
5 that, with respect to a unit a majority of which is
6 composed of firefighters or nurses, a unit which includes
7 both supervisors and nonsupervisors may be considered
8 appropriate;

9 “(2) a confidential employee;

10 “(3) an employee engaged in personnel work in
11 other than a purely clerical capacity;

12 “(4) an employee engaged in administering the
13 provisions of this chapter;

14 “(5) both professional and nonprofessional employ-
15 ees, unless a majority of the professional employees vote
16 for inclusion in the unit;

17 “(6) any employee engaged in intelligence, investi-
18 gative, or security functions of any agency which directly
19 affect national security; or

20 “(7) any employee primarily engaged in investiga-
21 tion or audit functions relating to the work of an agency’s
22 officers or employees whose duties directly affect the in-
23 ternal security of that agency but only if such functions
24 are undertaken to insure that such duties are discharged
25 honestly and with integrity.

1 “(c) Two or more units which are in an agency and for
2 which a labor organization holds exclusive recognition by
3 reason of elections within each of such units shall be consoli-
4 dated into a single larger unit if the Authority deems the
5 larger unit to be appropriate. The Authority shall certify the
6 labor organization as the exclusive representative of such new
7 unit.

8 “(d) In the case of the reorganization of one or more
9 units for which, before the reorganization, a labor organiza-
10 tion was certified as the exclusive representative of any such
11 unit, such labor organization shall continue to be the exclusive
12 representative for such unit until new elections are held or a
13 period of 45 days has elapsed, whichever first occurs.

14 “§ 7113. National consultation rights

15 “(a) If there is no labor organization having exclusive
16 recognition on an agency basis, then a labor organization
17 which has been granted exclusive recognition below the agency
18 level as the representative of a substantial number of
19 employees of the agency, determined in accordance with cri-
20 teria prescribed by the Authority, shall be granted national
21 consultation rights by such agency. National consultation
22 rights shall terminate when the labor organization no longer
23 meets the criteria prescribed by the Authority. Any issue
24 as to a labor organization’s eligibility for, or continuation of,

1 national consultation rights shall be subject to determination
2 by the Authority.

3 "(b) A labor organization having national consultation
4 rights under subsection (a) of this section shall—

5 "(1) be informed of any change in conditions of
6 employment proposed by an agency, and

7 "(2) shall be permitted reasonable time to present
8 its views and its recommendations regarding such
9 changes.

10 All views and recommendations presented under this sub-
11 section shall be considered by the agency before final action
12 is taken by the agency, and, if such views or recommenda-
13 tions are presented under this subsection, the agency shall
14 provide the organization making such presentation a written
15 statement of the reasons for its actions.

16 "(c) Nothing in this section shall be construed to
17 limit the right under this chapter to engage in collective
18 bargaining.

19 "§ 7114. Representation rights and duties

20 "(a) If a labor organization has been accorded exclu-
21 sive recognition such organization is the exclusive representa-
22 tive of employees in the appropriate unit and is entitled to
23 act for and negotiate collective bargaining agreements cover-
24 ing all employees in such unit. It is responsible for represent-

1 ing the interests of all employees in the unit without dis-
2 crimination and without regard to labor organization mem-
3 bership. Such labor organization shall be given the oppor-
4 tunity to be represented at—

5 "(1) any discussion between one or more represent-
6 atives of an agency and one or more employees or
7 their representatives concerning any grievance, person-
8 nel policy or practice,

9 "(2) any discussion between an employee and a
10 representative of an agency if the employee reasonably
11 believes such employee may be the subject of discipli-
12 nary or adverse action, or

13 "(3) any discussion regarding any other matter
14 affecting conditions of employment in the unit.

15 An agency and any labor organization accorded exclusive
16 recognition for any unit within such agency, through appro-
17 priate representatives, shall meet and negotiate in good faith
18 for the purpose of arriving at a collective bargaining agree-
19 ment. The rights of an exclusive representative under the
20 preceding provisions of this subsection shall not be con-
21 strued to preclude an employee from appointing an attor-
22 ney or other representative, other than the exclusive repre-
23 sentative, of the employee's own choosing in any appeal
24 action under procedures other than procedures negotiated
25 pursuant to this chapter.

1 “(b) The duty of an agency and a recognized labor or-
2 ganization to negotiate in good faith under subsection (a)
3 of this section shall include the obligation—

4 “(1) to approach the negotiations with a sincere
5 resolve to reach an agreement;

6 “(2) to be represented at the negotiations by duly
7 authorized representatives prepared to discuss and nego-
8 tiate on all matters affecting conditions of employment;

9 “(3) to meet at reasonable times and convenient
10 places as frequently as may be necessary, and to avoid
11 unnecessary delays;

12 “(4) in the case of an agency, to furnish to the
13 labor organization involved, or its authorized representa-
14 tive, upon request and to the extent not prohibited by
15 the provisions of Federal law, data normally main-
16 tained by the agency in the regular course of business,
17 reasonably available, and necessary for full and proper
18 discussion, understanding, and negotiation of subjects
19 within the scope of collective bargaining; and

20 “(5) if an agreement is reached, to execute on the
21 request of any party to the negotiation a written docu-
22 ment embodying the agreed terms, and to take such
23 steps as are necessary to implement the agreement.

24 “§ 7115. Allotments to representatives

25 “(a) If an agency has received from an employee in

1 an appropriate unit a written assignment which authorizes
2 the agency to deduct from the pay of such employee amounts
3 for the payment of regular and periodic dues of a labor
4 organization having exclusive recognition for such unit,
5 such assignment shall be honored. The allotments shall
6 be made at no cost to the labor organization or the em-
7 ployee. Except as required under subsection (b) of this
8 section, any such assignment may not be revoked for a
9 period of 1 year.

10 “(b) An allotment for the deduction of labor organiza-
11 tion dues terminates when—

12 “(1) the agreement between the agency and the
13 labor organization ceases to be applicable to the em-
14 ployee; or

15 “(2) the employee has been suspended or expelled
16 from the labor organization.

17 “(c)(1) If a petition has been filed with the Author-
18 ity by a labor organization which has been granted exclu-
19 sive recognition under section 7111 of this title and such
20 petition alleges that a majority of the employees in the
21 appropriate unit wish that each employee in such unit who
22 is not a member of such labor organization be required, as a
23 condition of continued employment, to pay to such labor
24 organization an amount equal to the dues which an employee
25 in such unit who is a member of such labor organization is

1 charged; the Authority shall conduct an election on such
 2 issue by secret ballot and shall certify the results thereof. Such
 3 requirement to make payments shall apply with respect to
 4 the employees in such unit—

5 “(A) only if a majority of such employees voting
 6 in such election vote in favor of such requirement, and

7 “(B) only during the period such labor organiza-
 8 tion is the exclusive representative of such unit.

9 An election under this paragraph shall not be conducted in
 10 any appropriate unit in which a valid election under this
 11 paragraph has been held during the preceding 12 calendar
 12 months.

13 “(2) If a petition signed by 30 percent of the employees
 14 of an appropriate unit has been filed with the Authority
 15 stating that such employees wish that such requirement
 16 cease to apply, the Authority shall investigate such petition,
 17 and if it has reasonable cause to believe that such petition
 18 is valid, it shall conduct an election on such issue by secret
 19 ballot and shall certify the results thereof. Such requirement
 20 shall not apply with respect to the employees of such unit
 21 if a majority of such employees voting in such election vote
 22 in favor of the inapplicability of such requirement. An elec-
 23 tion under this paragraph shall not be conducted in any
 24 unit in which a valid election under this paragraph has
 25 been held during the preceding 12 calendar months.

1 “(3) Notwithstanding any other provision of law, no
 2 employee shall be required, as a condition of employment
 3 in an agency, to make any payments to a labor organization,
 4 unless such an employee is a member of a unit which has
 5 chosen by election under this section to impose such dues on
 6 all the employees in such unit.

7 “(4) Any employee who is a member of, and adheres
 8 to established and traditional tenets or teachings of, a bona
 9 fide religion, body, or sect which has historically held
 10 conscientious objections to joining or financially supporting
 11 labor unions shall not be required to make any payments to
 12 any labor organization as a condition of employment, ex-
 13 cept that such employee in a unit exclusively represented by
 14 a labor organization may be required under this subsection
 15 to pay, in lieu of dues, sums equal to such dues to—

16 “(A) a nonreligious charitable fund exempt from
 17 taxation under section 501(c)(3) of the Internal Rev-
 18 enue Code of 1954, chosen by such employee from a list
 19 of at least three such funds, designated in a collective
 20 bargaining agreement, or

21 “(B) if the collective bargaining agreement fails to
 22 designate such funds, then to any such fund chosen by
 23 the employee.

24 “(d)(1) Subject to paragraph (2) of this subsection,
 25 if a petition has been filed with the Authority by any person

1 alleging that 10 percent of the employees in an appropriate
 2 unit have membership in a particular labor organization, the
 3 Authority shall investigate such petition to determine its
 4 validity. Upon certification by the Authority of its validity,
 5 the agency shall be obligated to negotiate with the labor
 6 organization solely concerning the establishment of a deduc-
 7 tion of dues of the organization from the pay of members of
 8 the organization who are employees in such unit and who
 9 make a voluntary allotment for such purpose.

10 "(2) (A) The provisions of paragraph (1) of this sub-
 11 section shall not apply in the case of any appropriate unit for
 12 which there is an exclusive representative.

13 "(B) Any agreement under paragraph (1) between a
 14 labor organization and an agency with respect to an appro-
 15 priate unit shall be null and void upon the certification of an
 16 exclusive representative of such unit.

17 "§ 7116. Unfair labor practices

18 "(a) For the purpose of this chapter, it shall be an un-
 19 fair labor practice for an agency—

20 "(1) to interfere with, restrain, or coerce any em-
 21 ployee in the exercise by such employee of any right
 22 assured by this chapter;

23 "(2) to encourage or discourage membership in any
 24 labor organization by discrimination in regard to hiring,
 25 tenure, promotion, or other conditions of employment;

1 except that no provision of this chapter, or any other
 2 provision of law, shall prevent an agency from requiring,
 3 as a condition of continued employment, payment of a
 4 representation fee equal to the amount of dues uniformly
 5 required, pursuant to section 7115(c) of this title;

6 "(3) to sponsor, control, or otherwise assist any
 7 labor organization, other than to furnish, if requested,
 8 customary and routine services and facilities if such serv-
 9 ices and facilities are also furnished on an impartial
 10 basis to other labor organizations having equivalent
 11 status;

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

16 "(5) to refuse to consult, confer, or negotiate in
 17 good faith with a labor organization as required by this
 18 chapter;

19 "(6) to otherwise fail or refuse to cooperate in im-
 20 passe procedures and impasse decisions as required by
 21 this chapter;

22 "(7) to fail or refuse to comply with any provision
 23 of this chapter; or

24 "(8) prescribe any rule or regulation which restricts
 25 the scope of collective bargaining permitted by this

1 chapter or which is in conflict with any applicable agree-
2 ment negotiated under this chapter.

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

5 "(1) to interfere with, restrain, or coerce an em-
6 ployee in the exercise of any right assured to such em-
7 ployee by this chapter;

8 "(2) to cause or attempt to cause an agency to
9 discriminate against an employee in the exercise of any
10 right assured to such employee by this chapter;

11 "(3) to coerce or attempt to coerce, discipline, or
12 fine a member of the labor organization as punishment
13 or reprisal for the purpose of hindering or impeding such
14 employee's work performance, productivity, or the dis-
15 charge of duties as an employee of an agency;

16 "(4) to discriminate against an employee with re-
17 gard to the terms or conditions of membership in such
18 organization because of race, color, creed, national origin,
19 sex, age, preferential or nonpreferential civil service
20 status, political affiliation, marital status, or handicap-
21 ping condition;

22 "(5) to refuse to consult, confer, or negotiate in
23 good faith with an agency as required by this chapter:

24 "(6) to fail or refuse to cooperate in impasse pro-

1 cedures and impasse decisions as required by this
2 chapter;

3 "(7) to call or engage in a strike, work stoppage,
4 or slowdown, or to condone any such activity by failing
5 to take action to prevent or stop such activity; or

6 "(8) to fail or refuse to comply with any pro-
7 vision of this chapter.

8 "(c) For the purpose of this chapter it shall be an unfair
9 labor practice for a labor organization which is accorded ex-
10 clusive recognition to deny membership to an employee in
11 the appropriate unit except for failure to meet reasonable
12 occupational standards uniformly required for admission,
13 or for failure to tender dues uniformly required as a condi-
14 tion of acquiring and retaining membership. This subsec-
15 tion does not preclude a labor organization from enforcing
16 discipline in accordance with procedures under its consti-
17 tution or bylaws, to the extent consistent with the requirements
18 of this chapter.

19 "(d) Issues which properly can be raised under—

20 "(1) an appeals procedure prescribed by or pur-
21 suant to law; or

22 "(2) the grievance procedure under section 7121
23 of this title;

24 may, at the election of the aggrieved party, be raised either
25 (A) under the appropriate appeal or grievance procedure,

1 or (B) if applicable, under the procedure for resolving com-
 2 plaints of unfair labor practices under section 7118 of this
 3 title. An election under the preceding sentence shall be made
 4 at such time and in such manner as the Authority shall
 5 prescribe. Any decision on such appeal or grievance under
 6 such a procedure shall not be construed as a determination
 7 of an unfair labor practice under this chapter nor as pre-
 8 cedent for any such determination.

9 "§ 7117. Duty to bargain in good faith; compelling need

10 "(a)(1) Subject to paragraph (2) of this subsection,
 11 the duty to bargain in good faith shall, to the extent not
 12 inconsistent with Federal law, extend to matters which are
 13 the subject of any rule or regulation which is not a Govern-
 14 ment-wide rule or regulation.

15 "(2) The duty to bargain in good faith shall, to the
 16 extent not inconsistent with Federal law, extend to matters
 17 which are the subject of any Government-wide rule or regu-
 18 lation for which the Authority has determined in a hearing
 19 under subsection (b) of this section that no compelling need
 20 (as determined under regulations prescribed by the Au-
 21 thority) exists.

22 "(b)(1) In any case of collective bargaining in which
 23 an exclusive representative alleges that no compelling need
 24 exists for any Government-wide rule or regulation governing
 25 any matter at issue in such collective bargaining, the Au-

1 thority shall conduct a hearing on the issue of compelling
 2 need in accordance with regulations prescribed by the Au-
 3 thority.

4 "(2) Any hearing under this subsection shall be expe-
 5 dited to the extent practicable and shall not include the Gen-
 6 eral Counsel as a party.

7 "(3) For the purpose of this section, a compelling need
 8 shall be determined not to exist only if—

9 "(A) the agency which issued such rule or regula-
 10 tion informs the Authority in writing that such a com-
 11 pelling need does not exist; or

12 "(B) the Authority determines after a hearing
 13 under this section that such a compelling need does not
 14 exist.

15 "(4) The agency which issued such rule or regulation
 16 shall be a necessary party at any hearing under this
 17 subsection.

18 "§ 7118. Prevention of unfair labor practices

19 "(a)(1) If an agency or labor organization is charged
 20 by any person with having engaged in or engaging in an
 21 unfair labor practice, the General Counsel shall investigate
 22 the charge and may issue and cause to be served upon such
 23 agency or labor organization a complaint. In any case in
 24 which the General Counsel does not issue a complaint because
 25 the charge fails to state an unfair labor practice, the Gen-

1 eral Counsel shall furnish the person making such charge
2 with a written statement of the reasons for not issuing a
3 complaint.

4 (2) Any complaint under paragraph (1) of this sub-
5 section shall contain a notice—

6 “(A) of the charges;

7 “(B) that a hearing will be held before the Author-
8 ity or a member thereof, or before an employee of the
9 Authority designated for that purpose;

10 “(C) of the place fixed for the hearing; and

11 “(D) of the time for the hearing which shall be
12 not earlier than 5 days after the serving of the complaint.

13 “(3) The labor organization or agency involved shall
14 have the right to file an answer to the original and any
15 amended complaint and to appear in person or otherwise
16 and give testimony at the time and place of the hearing
17 fixed in the complaint. In the discretion of the person or
18 persons conducting the hearing, any person other than the
19 labor organization or agency involved may be allowed to
20 intervene in such proceeding and to present testimony. Any
21 such proceeding shall, so far as practicable, be conducted in
22 accordance with the provisions of subchapter II of chapter
23 5 of this title, except that the parties shall not be bound by
24 rules of evidence, whether statutory, common law, or adopted
25 by rules of court.

1 “(4) No complaint shall be issued based upon an un-
2 fair labor practice which occurred more than 6 months before
3 the filing of the charge with the Authority. If the person ag-
4 grieved was prevented from filing such charge within the 6
5 months—

6 “(A) by the failure of the agency or labor orga-
7 nization against whom such charge is made to perform a
8 duty owed to the aggrieved, or

9 “(B) due to concealment which prevented dis-
10 covery of the unfair labor practice within 6 months of
11 its occurrence,

12 the 6-month period during which a charge may be filed
13 shall be computed from the day of discovery of the
14 occurrence.

15 “(5) The Authority (or a member or employee of the
16 Authority designated for such purpose) shall conduct a hear-
17 ing on the complaint not earlier than 5 days after the com-
18 plaint is served, and may compel under section 7133 of this
19 title the attendance of witnesses and the production of docu-
20 ments. A transcript shall be kept of the proceeding. There-
21 after, in its discretion, the Authority upon notice may receive
22 further evidence or hear argument. If the Authority, or its
23 designee, determines that the preponderance of the evidence
24 received demonstrates that an agency or labor organization
25 named in the complaint has engaged in or is engaging in an

1 unfair labor practice, then the Authority, or its designee,
 2 shall state its findings of fact and shall issue and cause to
 3 be served on such agency or labor organization an order to
 4 cease and desist from such unfair labor practice, and to take
 5 such action as will effectuate the policies of this chapter as
 6 may be appropriate. Such action may include—

7 “(A) directing that a collective bargaining agree-
 8 ment be amended and that such amendments be given
 9 retroactive effect;

10 “(B) requiring an award of reasonable attorney’s
 11 fees; or

12 “(C) reinstatement of employees with backpay to-
 13 gether with an award of interest thereon.

14 Where any order directs reinstatement of an employee, back-
 15 pay may be required of the agency (as provided in section
 16 5596 of this title) or of the labor organization, as the case
 17 may be, responsible for the discrimination or improper action.

18 “(6) If the Authority determines that the preponderance
 19 of the evidence received fails to demonstrate that the agency
 20 or labor organization named in the complaint has engaged in
 21 or is engaging in an unfair labor practice, then the Authority
 22 shall state its findings of fact and shall issue an order dis-
 23 missing the complaint.

24 “(b) The Authority may request from the Director of the
 25 Office of Personnel Management an advisory opinion concern-

1 ing the proper interpretation of rules, regulations, or other
 2 policy directives issued by the Office of Personnel Manage-
 3 ment in connection with any matter before the Authority in
 4 any proceeding under this section.

5 “§ 7119. Negotiation impasses; Federal Service Impasses
 6 Panel

7 “(a) Upon request, the Federal Mediation and Concilia-
 8 tion Service shall provide services and assistance to agencies
 9 and labor organizations in the resolution of negotiation
 10 impasses.

11 “(b) If voluntary arrangements including the services of
 12 the Federal Mediation and Conciliation Service or other
 13 third-party mediation fail to resolve a negotiation impasse—

14 “(1) either party may request the Federal Service
 15 Impasses Panel to consider the matter, or

16 “(2) the parties may agree to adopt a procedure
 17 for binding arbitration of a negotiation impasse.

18 “(c)(1) The Federal Service Impasses Panel is an
 19 entity within the Authority, the function of which is to pro-
 20 vide assistance in resolving collective bargaining negotiation
 21 impasses between agencies and labor organizations.

22 “(2) The Panel shall be composed of a Chairman and at
 23 least six other members, who shall be appointed by the Au-
 24 thority solely on the basis of fitness to perform the duties and
 25 functions of the office from among individuals who are fa-

1 miliar with Government operations and knowledgeable in
2 labor-management relations.

3 "(3) Two members of the Panel shall be appointed for
4 a term of 1 year, two for a term of 3 years, and the Chair-
5 man and the remaining members for a term of 5 years. Their
6 successors shall be appointed for terms of 5 years, except
7 that an individual chosen to fill a vacancy shall be appointed
8 for the unexpired term of the member whom he shall re-
9 place. A member of the Panel may be removed by the Au-
10 thority only upon notice and hearing and only for miscon-
11 duct, inefficiency, neglect of duty, or malfeasance in office.

12 "(4) The Panel may appoint an Executive Director
13 and such other employees as it may from time to time find
14 necessary for the proper performance of its duties. Each
15 member of the Panel who is not an employee is entitled to
16 pay at a rate equal to the daily equivalent of the maximum
17 annual rate of basic pay then currently paid under the Gen-
18 eral Schedule for each day he is engaged in the performance
19 of official business on the work of the Panel, including
20 traveltime, and is entitled to travel expenses and a per diem
21 allowance under section 5703 of this title.

22 "(5)(A) The Panel or its designee shall promptly
23 investigate any impasse presented to it under subsection (b)
24 of this section. The Panel shall consider the matter and shall
25 either—

1 "(i) recommend procedures to the parties for the
2 resolution of the impasse, or

3 "(ii) assist the parties in arriving at a settlement
4 through whatever methods and procedures, including
5 factfinding and recommendations, it may deem appro-
6 priate to accomplish the purposes of this section.

7 "(B) If the parties do not arrive at a settlement after
8 assistance by the Panel under subparagraph (A) of this
9 paragraph, the Panel may—

10 "(i) hold hearings,

11 "(ii) compel under section 7133 of this title the
12 attendance of witnesses and the production of docu-
13 ments, and

14 "(iii) take whatever action is necessary and not
15 inconsistent with this chapter to resolve the impasse.

16 "(C) Notice of any final action of the Panel under this
17 section shall be promptly served upon the parties, and such
18 action shall be binding upon them during the term of the
19 agreement.

20 "§ 7120. Standards of conduct for labor organizations

21 "(a) A labor organization representing or seeking to
22 represent employees pursuant to this chapter shall adopt,
23 maintain, and enforce governing requirements containing
24 explicit and detailed provisions to which it subscribes, which
25 shall include requirements providing for—

1 “(1) the maintenance of democratic procedures
2 and practices, including provisions for—

3 “(A) periodic elections to be conducted subject
4 to recognized safeguards, and

5 “(B) provisions defining and securing the right
6 of individual members to—

7 “(i) participate in the affairs of the labor
8 organization,

9 “(ii) fair and equal treatment under the
10 governing rules of the organization, and

11 “(iii) fair process in disciplinary proceed-
12 ings;

13 “(2) the prohibition of business or financial inter-
14 ests on the part of labor organization officers and agents
15 which conflict with their duty to the organization and its
16 members; and

17 “(3) the maintenance of fiscal integrity in the
18 conduct of the affairs of the labor organization, includ-
19 ing provision for accounting and financial controls and
20 regular financial reports or summaries to be made avail-
21 able to members.

22 “(b) This chapter does not authorize participation in
23 the management of a labor organization or acting as a rep-
24 resentative of such an organization by a management official
25 or a supervisor, except as specifically provided in this chap-

1 ter, or by an employee if the participation or activity
2 would result in a conflict or apparent conflict of interest or
3 would otherwise be incompatible with law or with the official
4 duties of the employee.

5 “SUBCHAPTER III—GRIEVANCES

6 “§ 7121. Grievance procedures

7 “(a) An agreement entered into by an agency and a
8 labor organization having exclusive recognition shall pro-
9 vide procedures for the settlement of grievances, including
10 questions of arbitrability. An employee having a grievance
11 to whom the agreement applies may elect to have such
12 grievance processed under either—

13 “(1) a procedure negotiated in accordance with
14 this chapter, or

15 “(2) any applicable appeals procedures established
16 by or pursuant to law (including procedures specified
17 in section 7116(d) of this title).

18 “(b) A negotiated grievance procedure required under
19 subsection (a) of this section shall—

20 “(1) be fair and simple,

21 “(2) provide for expeditious processing, and

22 “(3) shall include procedures that—

23 “(A) assure a labor organization the right, in
24 its own behalf or on behalf of any employee in the
25 unit, to present and process grievances;

1 “(B) assure an employee the right to present a
2 grievance on the employee's own behalf, and assure
3 the labor organization the right to be present when
4 the grievance is adjusted; and

5 “(C) provide that any grievance not satisfac-
6 torily settled in the grievance process shall be sub-
7 ject to binding arbitration which may be invoked
8 by either the labor organization or the agency.

9 “(c) Any party to such agreement aggrieved by the
10 failure, neglect, or refusal of the other party to proceed
11 to arbitration pursuant to the procedure provided in such
12 agreement may file a complaint in the appropriate district
13 court of the United States or in any appropriate court of the
14 State, territory, or possession of the United States for an
15 order directing that arbitration proceed pursuant to the pro-
16 cedures provided therefor in such agreement. Such court
17 shall hear the matter without jury and shall cause the
18 hearing of such case to be expedited to the maximum extent
19 practicable.

20 “(d) The foregoing provisions of this section shall not
21 apply with respect to any grievance concerning any claimed
22 violation of—

23 “(1) section 717 of the Civil Rights Act of 1964
24 (42 U.S.C. 2000e-16), the Age Discrimination in Em-
25 ployment Act of 1967 (29 U.S.C. 631, 633a), or sec-

1 tion 501 of the Rehabilitation Act of 1973 (29 U.S.C.
2 791); or

3 “(2) subchapter III of chapter 73 of this title (re-
4 lating to prohibited political activities).

5 “§ 7122. Exceptions to arbitral awards

6 “(a) Either party to arbitration may file an exception
7 with the Authority to an arbitrator's award under this
8 chapter. If upon review the Authority finds that the award
9 is deficient because—

10 “(1) it is contrary to law, rules, or regulations;

11 “(2) it was obtained by corruption, fraud, or other
12 misconduct;

13 “(3) the arbitrator exercised partiality in making
14 such award; or

15 “(4) the arbitrator exceeded powers granted to
16 such arbitrator;

17 the Authority may take such action and make such recom-
18 mendations on the award as it considers necessary, consistent
19 with applicable law, rules, or regulations.

20 “(b) If no exception to an arbitration award is filed
21 under subsection (a) of this section, the decision of an
22 arbitrator shall be final and binding. An agency shall take
23 the actions required by a final decision of an arbitrator to
24 make an employee whole in the circumstances, including
25 the payment of backpay (as provided in section 5596 of this

1 title). A final decision under this section is subject to the provi-
2 sions of section 7123 of this title.

3 "§ 7123. Judicial review; enforcement

4 "(a) Any person aggrieved by a final order of the
5 Authority under section 7118 of this title (involving an
6 unfair labor practice), under section 7122 of this title (in-
7 volving an award by an arbitrator) or under section 7112
8 of this title (involving an appropriate unit determination)
9 may, within 60 days after the date on which the order was
10 issued, institute an action for judicial review of the Author-
11 ity's order in the United States court of appeals in the
12 circuit in which such person resides or transacts business
13 or in the United States Court of Appeals for the District
14 of Columbia.

15 "(b) The Authority may petition any appropriate court
16 of appeals of the United States for the enforcement of any
17 order of the Authority and for appropriate temporary relief
18 or restraining order.

19 "(c) Upon the filing of a petition under subsection (a)
20 for judicial review or under subsection (b) for enforcement,
21 the Authority shall file in the court the record in the proceed-
22 ings, as provided in section 2112 of title 28. Upon such filing,
23 the court shall cause notice thereof to be served to the parties
24 involved, and thereupon shall have jurisdiction of the pro-
25 ceeding and of the question determined therein and may grant

1 such temporary relief or restraining order as it deems just
2 and proper, and may make and enter a decree affirming and
3 enforcing, modifying and enforcing as so modified, or setting
4 aside in whole or in part the order of the Authority. The filing
5 of a petition under subsection (a) or (b) shall not operate
6 as a stay of the Authority's order unless the court specifically
7 orders such stay. Review of the Authority's order shall
8 be on the record in accordance with section 706 of this
9 title. No objection that has been urged before the Authority,
10 or its member, agent, or agency, shall be considered
11 by the court, unless the failure or neglect to urge
12 such objection shall be excused because of extraordinary
13 circumstances. The findings of the Authority with respect to
14 questions of fact if supported by substantial evidence on the
15 record considered as a whole shall be conclusive. If any per-
16 son shall apply to the court for leave to adduce additional
17 evidence and shall show to the satisfaction of the court that
18 such additional evidence is material and that there were rea-
19 sonable grounds for the failure to adduce such evidence in the
20 hearing before the Authority, or its member, agent, or
21 agency, the court may order such additional evidence to be
22 taken before the Authority, or its member, agent, or agency,
23 and to be made a part of the record. The Authority may
24 modify its findings as to the facts, or make new findings by

1 reason of additional evidence so taken and filed, and it shall
 2 file such modified or new findings, which findings with re-
 3 spect to questions of fact if supported by substantial evidence
 4 on the record considered as a whole shall be conclusive, and
 5 shall file its recommendations, if any, for the modification
 6 or setting aside of its original order. Upon the filing of the
 7 record with it, the jurisdiction of the court shall be exclusive
 8 and its judgment and decree shall be final, except that the
 9 same shall be subject to review by the Supreme Court of the
 10 United States upon writ of certiorari or certification as
 11 provided in section 1254 of title 28.

12 “(c) The Authority may, upon issuance of a complaint
 13 as provided in section 7118 of this title charging that
 14 any person has engaged in or is engaging in an unfair labor
 15 practice, petition any United States district court, within
 16 any district wherein the unfair labor practice in question is
 17 alleged to have occurred or wherein such person resides or
 18 transacts business, for appropriate temporary relief or re-
 19 straining order. Upon the filing of any such petition the court
 20 shall cause notice thereof to be served upon such person,
 21 and thereupon shall have jurisdiction to grant such tempo-
 22 rary relief (including a temporary restraining order) as it
 23 deems just and proper.

1 “SUBCHAPTER IV—ADMINISTRATIVE AND
 2 OTHER PROVISIONS

3 “§ 7131. Reporting requirements for standards of conduct

4 “The provisions of subchapter III of chapter 11 of
 5 title 29 shall be applicable to labor organizations that have
 6 been or are seeking to be certified under this chapter, and
 7 to such organizations' officers, agents, shop stewards, other
 8 representatives and members to the extent to which such
 9 provisions would be applicable if the agency were an em-
 10 ployer under section 402 of title 29. In addition to the au-
 11 thority conferred on him under section 438 of title 29, the
 12 Secretary of Labor shall have authority, by regulations issued
 13 with the written concurrence of the Authority, to prescribe
 14 simplified reports for any such labor organization. The Sec-
 15 retary of Labor may revoke such provision for simplified
 16 reports of any such labor organization if he determines, after
 17 such investigation as he deems proper and after due notice
 18 and opportunity for a hearing, that the purposes of this
 19 chapter and of chapter 11 of title 29 would be served thereby.

20 “§ 7132. Official time

21 “(a) Employees representing an exclusively recognized
 22 labor organization—

23 “(1) at any grievance proceeding under this chap-
 24 ter, or

25 “(2) in the negotiation of an agreement under

1 this chapter, including attendance at impasse settlement
 2 proceedings,
 3 are authorized official time for such purposes during the
 4 time the employees otherwise would be in a duty status.
 5 However, the number of such employees for whom official
 6 time is authorized under this subsection shall not exceed the
 7 number of persons designated as representing the agency.
 8 "(b) Matters relating to the internal business of a labor
 9 organization (including the solicitation of membership, elec-
 10 tions of labor organization officials, and collection of dues)
 11 shall be performed during the nonduty hours of the employees
 12 concerned.
 13 "(c) Except as provided for under subsection (a) of
 14 this section, the Authority shall determine whether employees
 15 participating for, or on behalf of, a labor organization in any
 16 phase of proceedings before the Authority, shall be author-
 17 ized official time for such purposes during regular working
 18 hours.
 19 "(d) Except as provided under other subsections of this
 20 section—
 21 "(1) employees representing an exclusively recog-
 22 nized labor organization, or
 23 "(2) employees in a recognized unit in connection
 24 with any matter governed by this chapter
 25 shall be granted official time in such amount as agency

1 management and the exclusive representative shall agree to
 2 as being reasonable, necessary, and in the public interest.
 3 "§ 7133. Subpenas
 4 "(a) For the purpose of all hearings and investigations
 5 which the Authority or any member thereof, or its designee,
 6 or the Panel, or any member thereof, determines are neces-
 7 sary and proper for the exercise of its powers under the
 8 Act, the Authority or its duly authorized agent shall at all
 9 reasonable times have access to, for the purpose of exam-
 10 ination, and the right to copy any evidence of any person
 11 being investigated or proceeded against that relates to any
 12 matter under investigation or question. The Authority, any
 13 member thereof, or its designee, or the Panel, or any
 14 member thereof (hereinafter referred to in this section as
 15 the 'issuer') may upon application of any party issue to
 16 such party subpoenas requiring the attendance and testimony
 17 of witnesses or the production of any evidence in such
 18 proceeding or investigation requested in such application.
 19 Within 5 days after the service of a subpoena on any individual
 20 or organization requiring the production of any evidence in
 21 the possession or under the control of such individual or
 22 organization, such individual or organization may petition the
 23 issuer to revoke, and the issuer shall revoke, such subpoena
 24 if in its opinion the evidence the production of which is
 25 required does not relate to any matter under consideration, or

1 if in its opinion such subpoena does not describe with sufficient
 2 particularity the evidence the production of which is re-
 3 quired. The issuer, or any agent designated by the issuer for
 4 such purposes may administer oaths and affirmations, examine
 5 witnesses, and receive evidence.

6 "(b) In case of contumacy or refusal to obey a subpoena
 7 issued to any individual or organization, any district court of
 8 the United States or the United States court of any territory
 9 or possession, within the jurisdiction of which the inquiry is
 10 carried on or within the jurisdiction of which such individual
 11 or organization guilty of contumacy or refusal to obey is found
 12 or resides or transacts business, upon application by the issuer
 13 shall have jurisdiction to issue to such individual or organiza-
 14 tion an order requiring such person to appear before the issuer
 15 to produce evidence if so ordered, or to give testimony touching
 16 the matter under consideration. Any failure to obey such order
 17 of the court may be punished by such court as a contempt
 18 thereof.

19 "(c) Witnesses summoned before the issuer shall be paid
 20 the same fees and mileage that are paid witnesses in the courts
 21 of the United States, and witnesses whose depositions are taken
 22 and the persons taking the same shall severally be entitled to
 23 the same fees as are paid for like services in the courts of the
 24 United States.

25 "(d) No person shall be excused from attending and

1 testifying or from producing books, records, correspondence,
 2 documents, or other evidence in obedience to a subpoena
 3 under this section on the ground that the testimony or
 4 evidence required of such person may tend to incriminate
 5 such person or subject such person to a penalty or forfeiture;
 6 but no individual shall be prosecuted or subjected to any
 7 penalty or forfeiture for or on account of any transaction,
 8 matter, or thing concerning which such person is compelled,
 9 after having claimed privilege against self-incrimination, to
 10 testify or produce evidence, except that such person so testi-
 11 fying shall not be exempt from prosecution and punishment
 12 for perjury committed in so testifying.

13 "(e) Any person who shall willfully resist, prevent,
 14 impede, or interfere with any member of the Authority or
 15 Panel or a member, agent, or agency thereof in the per-
 16 formance of duties pursuant to this chapter shall be punished
 17 by a fine of not more than \$5,000 or by imprisonment for
 18 not more than one year, or both.

19 "§ 7134. Compilation and publication of data

20 "(a) The Authority shall maintain a file of its proceed-
 21 ings, copies of all available agreements and arbitration deci-
 22 sions, and shall publish the texts of its decisions and the
 23 actions taken by the Panel under section 7119 of this title.

24 "(b) All files maintained under subsection (a) of this

1 section shall be open to inspection and reproduction subject
2 to the provisions of sections 552 and 552a of this title.

3 "§ 7135. Issuance of regulations

4 "The Authority, the Federal Mediation and Conciliation
5 Service, and the Panel shall each prescribe rules and regula-
6 tions to carry out the provisions of this chapter applicable to
7 each of them, respectively. Unless otherwise specifically pro-
8 vided in this chapter, the provisions of subchapter II of chap-
9 ter 5 of this title shall be applicable to the issuance, revision,
10 or repeal of any such rule or regulation.

11 "§ 7136. Continuation of existing laws, recognitions, agree-
12 ments, and procedures

13 "(a) Nothing contained in this chapter shall preclude—

14 "(1) the renewal or continuation of an exclusive
15 recognition, certification of a representative, or a lawful
16 agreement between an agency and a representative of
17 its employees entered into before the effective date of
18 this chapter; or

19 "(2) the renewal, continuation, or initial according
20 of recognition for units of management officials or super-
21 visors represented by labor organizations which histori-
22 cally or traditionally represent the management officials
23 or supervisors in private industry and which hold exclu-

1 sive recognition for units of such officials or supervisors
2 in any agency on the effective date of this chapter.

3 "(b) Policies, regulations, and procedures established
4 under Executive Orders 11491, 11616, 11636, 11787, and
5 11838, or under the provision of any other Executive order
6 in effect on the effective date of this chapter, shall remain
7 in full force and effect until revised or revoked by the Presi-
8 dent, or unless superseded by specific provisions of this
9 chapter or by regulations issued pursuant to this chapter."

10 BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND
11 GRIEVANCES

12 SEC. 702. (a) Section 5596(b) of title 5, United States
13 Code, is amended to read as follows:

14 "(b) An employee of an agency who, on the basis of
15 a timely appeal or an administrative determination (includ-
16 ing an unfair labor practice or a grievance decision) is found
17 by appropriate authority under applicable law, rule, regula-
18 tion, or collective bargaining agreement, to have been affected
19 by an unjustified or unwarranted personnel action that has
20 resulted in the withdrawal or reduction of all or a part of the
21 pay, allowances, or differentials of the employee—

22 "(1) is entitled, on correction of the personnel
23 action, to receive for the period for which the personnel
24 action was in effect—

25 "(A) an amount equal to all or any part of

1 the pay, allowances, or differentials, as applicable,
 2 that the employee normally would have earned or
 3 received during that period if the personnel action
 4 had not occurred, less any amounts earned by such
 5 employee through other employment during that
 6 period;

7 "(B) interest on the amount payable under
 8 subparagraph (A) of this paragraph; and

9 "(C) reasonable attorney's fees and reason-
 10 able costs and expenses of litigation related to the
 11 personnel action; and

12 "(2) for all purposes, is deemed to have performed
 13 service for the agency during that period except that—

14 "(A) annual leave restored under this para-
 15 graph which is in excess of the maximum leave
 16 accumulation permitted by law shall be credited to
 17 a separate leave account for the employee and shall
 18 be available for use by the employee within the time
 19 limits prescribed by regulations of the Office of
 20 Personnel Management; and

21 "(B) annual leave credited under subpara-
 22 graph (A) of this paragraph but unused and still
 23 available to the employee under regulations pre-
 24 scribed by the Office shall be included in the lump-
 25 sum payment under section 5551 or 5552(1) of

1 this title but may not be retained to the credit of the
 2 employee under section 5552(2) of this title.

3 For the purpose of this subsection, 'unfair labor practice',
 4 'grievance', and 'collective bargaining agreement' have the
 5 same meanings as when used in chapter 71 of this title and
 6 'personnel action' includes the omission or failure to take
 7 action or confer a benefit."

8 (b) Section 5596(a) of title 5, United States Code, is
 9 amended by—

10 (1) by striking out "and" at the end of paragraph

11 (4);

12 (2) by striking out the period at the end of para-
 13 graph (6) and inserting in lieu thereof "; and"; and

14 (3) by adding at the end thereof the following new
 15 paragraph:

16 "(6) the Postal Rate Commission."

17 TECHNICAL AMENDMENTS

18 SEC. 703. Subchapter II of chapter 71 of title 5, United
 19 States Code, is amended—

20 (1) by redesignating sections 7151, 7152, 7153,
 21 and 7154 as sections 7201, 7202, 7203, and 7204,
 22 respectively;

23 (2) by striking out the subchapter heading and
 24 inserting in lieu thereof the following:

1 "Chapter 72—ANTIDISCRIMINATION; RIGHT TO
2 PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN
EMPLOYMENT

"Sec.

"7801. Policy.

"7808. Marital status.

"7803. Handicapping condition.

"7804. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION
CONGRESS

"7811. Employees' right to petition Congress."; and

3 (3) by adding at the end thereof the following new
4 subchapter:

5 "SUBCHAPTER II—EMPLOYEES' RIGHT TO
6 PETITION CONGRESS

7 "§ 7211. Employees' right to petition Congress

8 "The right of employees, individual or collectively, to
9 petition Congress or a Member of Congress, or to furnish
10 information to either House of Congress, or to a committee
11 or Member thereof, may not be interfered with or denied."

12 (c) The analysis for part III of title 5, United States
13 Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies 7101"

14 and inserting in lieu thereof

"Subpart F—Labor Management and Employee Relations

"71. Labor Management Relations 7101

"72. Antidiscrimination; Right to Petition Congress 7201".

15 (d) (1) Section 2105(c) (1) of title 5, United States

1 Code, is amended by striking out "and 7154" and inserting
2 in lieu thereof "and 7204".

3 (2) Section 3302(2) of title 5, United States Code, is
4 amended by striking out "7152, 7153" and inserting in lieu
5 thereof "7202, 7203".

6 (3) Sections 4540(c), 7212(a), and 9540(c) of title
7 10, United States Code, are each amended by striking out
8 "7154 of title 5" and inserting in lieu thereof "7204 of title
9 5",

10 (4) Section 410(b) (1) of title 39, United States Code,
11 is amended by striking out "chapters 71 (employee policies)"
12 and inserting in lieu thereof the following: "chapters 72 (an-
13 tidiscrimination; right to petition Congress)".

14 (5) Section 1002(g) of title 39, United States Code, is
15 amended by striking out "section 7102 of title 5" and insert-
16 ing in lieu thereof "section 7211 of title 5".

17 (e) Section 5315 of title 5, United States Code, is
18 amended by adding at the end thereof the following clause:

19 "() Chairman, Federal Labor Relations
20 Authority."

21 (f) Section 5316 of such title is amended by adding at
22 the end thereof the following clause:

23 "() Members, Federal Labor Relations Author-
24 ity (2), and its General Counsel."

MISCELLANEOUS PROVISIONS

- 1
2 *SEC. 704. (a) Except as provided in subsection (b) of*
3 *this section, the amendments made by this title shall take effect*
4 *on the first day of the first calendar month beginning more*
5 *than 90 days after the date of the enactment of this title.*
- 6 *(b) Sections 7104, 7105, and 7136 of title 5, United*
7 *State Code, as enacted by section 701 of this title, shall take*
8 *effect on the date of the enactment of this title.*

○

Union Calendar No. 764

95TH CONGRESS
2d Session

H. R. 11280

[Report No. 95-1403]

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1978

Mr. NIX (for himself and Mr. DEKRAWINKI) (by request) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

JULY 31, 1978

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

(Strike out all after the enacting clause and insert the part printed in *italics*)

A BILL

To reform the civil service laws.

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

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(The omitted language of this report is identical to H. R. 11280, as introduced, and may be found at pages 1-64 of this volume.)

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

1 **SEC. 2. The table of contents is as follows:**

TABLE OF CONTENTS

- Sec. 1. Short title.*
- Sec. 2. Table of contents.*
- Sec. 3. Findings and statement of purpose.*

TITLE I—MERIT SYSTEM PRINCIPLES

- Sec. 101. Merit system principles; prohibited personnel practices.*

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

- Sec. 201. Office of Personnel Management.*
- Sec. 202. Merit Systems Protection Board and Special Counsel.*
- Sec. 203. Performance appraisals.*
- Sec. 204. Adverse actions.*
- Sec. 205. Appeals.*

TITLE III—STAFFING

- Sec. 301. Volunteer services.*
- Sec. 302. Definitions relating to preference eligibles.*
- Sec. 303. Noncompetitive appointment of certain disabled veterans.*
- Sec. 304. Examination, certification, and appointment of preference eligibles.*
- Sec. 305. Retention preference.*
- Sec. 306. Training.*
- Sec. 307. Travel, transportation, and subsistence.*
- Sec. 308. Retirement.*
- Sec. 309. Extension of veterans readjustment appointment authority.*
- Sec. 310. Notification of vacancies in the civil service.*
- Sec. 311. Dual pay for members of the uniformed services.*
- Sec. 312. Minority recruitment program.*
- Sec. 313. Effective date.*

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. General provisions.*
- Sec. 402. Authority for employment.*
- Sec. 403. Examination, certification, and appointment.*
- Sec. 404. Retention preference.*
- Sec. 405. Performance rating.*
- Sec. 406. Awarding of ranks.*
- Sec. 407. Pay rates and systems.*
- Sec. 408. Pay administration.*
- Sec. 409. Travel, transportation, and subsistence.*
- Sec. 410. Leave.*
- Sec. 411. Disciplinary actions.*
- Sec. 412. Retirement.*
- Sec. 413. Conversion to the Senior Executive Service.*
- Sec. 414. Limitations on executive positions.*
- Sec. 415. Effective date; experimental application.*

TABLE OF CONTENTS—Continued

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.*
- Sec. 502. Technical and conforming amendments.*
- Sec. 503. Effective date.*

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

- Sec. 601. Research programs and demonstration projects.*
- Sec. 602. Intergovernmental Personnel Act amendments.*
- Sec. 603. Amendments to the mobility program.*

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

- Sec. 701. Federal service labor-management relations.*
- Sec. 702. Backpay in case of unfair labor practices and grievances.*
- Sec. 703. Technical and conforming amendments.*
- Sec. 704. Miscellaneous provisions.*

TITLE VIII—GRADE AND PAY RETENTION

- Sec. 801. Grade and pay retention.*

TITLE IX—POLITICAL ACTIVITIES

- Sec. 901. Federal employees' political activities.*
- Sec. 902. State and local employees' political activities.*
- Sec. 903. Effective date.*
- Sec. 904. Study concerning political participation by Federal employees.*

TITLE X—FIREFIGHTERS

- Sec. 1001. Basic workweek of firefighters.*
- Sec. 1002. Effective date.*

TITLE XI—MISCELLANEOUS

- Sec. 1101. Study on decentralization of governmental functions.*
- Sec. 1102. Savings provisions.*
- Sec. 1103. Authorization of appropriations.*
- Sec. 1104. Powers of President unaffected except by express provisions.*
- Sec. 1105. Technical and conforming amendments.*
- Sec. 1106. Effective date.*

FINDINGS AND STATEMENT OF PURPOSE

- 1
- 2 **SEC. 3. It is the policy of the United States that—**
- 3 **(1) the merit system principles which shall govern**
- 4 **in the competitive service and in the executive branch**
- 5 **of the Federal Government should be expressly stated**

1 to furnish guidance to Federal agencies in carrying out
2 their responsibilities in administering the public business,
3 and prohibited personnel practices should be statutorily
4 defined to enable Government officers and employees to
5 avoid conduct which undermines the merit system prin-
6 ciples and the integrity of the merit system;

7 (2) Federal employees should receive appropriate
8 protection through increasing the authority and powers
9 of the independent Merit Systems Protection Board in
10 processing hearings and appeals affecting Federal
11 employees;

12 (3) the authority and power of the Special Council
13 should be increased so that the Special Counsel may
14 investigate prohibited personnel practices and reprisals
15 against Government employees for the lawful disclosure
16 of certain information and may file complaints, against
17 agency officials and employees who engage in such
18 conduct;

19 (4) the function of filling positions and other per-
20 sonnel functions in the competitive service and in the
21 executive branch should be delegated in appropriate
22 cases to the agencies to expedite processing appoint-
23 ments and other personnel actions, with the control and
24 oversight of this delegation being maintained by the

1 Office of Personnel Management to protect against pro-
2 hibited personnel practices and the use of unsound man-
3 agement practices by the agencies;

4 (5) a Senior Executive Service should be estab-
5 lished to provide the flexibility needed by agencies to re-
6 cruit and retain the highly competent and qualified
7 managers needed to provide more effective management
8 of agencies and their functions, and the more expeditious
9 administration of the public business;

10 (6) in appropriate instances, pay increases should
11 be based on quality of performance rather than length
12 of service;

13 (7) research programs and demonstration projects
14 should be authorized to permit Federal agencies to ex-
15 periment, subject to congressional review, with new and
16 different personnel management concepts in controlled
17 situations to achieve more efficient management of the
18 Government's human resources and greater productivity
19 in the delivery of service to the public; and

20 (8) the training program of the Government should
21 include restraining of employees for positions in other
22 agencies to avoid separations during reductions in force
23 and the loss to the Government of the knowledge and
24 experience that these employees possess.

1 **TITLE I—MERIT SYSTEM PRINCIPLES**2 **MERIT SYSTEM PRINCIPLES;— PROHIBITED PERSONNEL**3 **PRACTICES**

4 **SEC. 101.** (a) Title 5, United States Code, is amended
5 by inserting after chapter 21 the following new chapter:

6 **“Chapter 23—MERIT SYSTEM PRINCIPLES**

^aSec.

^b2301. Merit system principles.

^c2302. Prohibited personnel practices.

^d2303. Responsibility of the General Accounting Office.

^e2304. Coordination with certain other provisions of law.

7 **“§ 2301. Merit system principles**

8 **“(a) This section shall apply to—**

9 **“(1) an Executive agency;**

10 **“(2) the Administrative Office of the United States**

11 **Courts; and**

12 **“(3) the Government Printing Office.**

13 **“(b) It is the policy of the Congress that in order to**
14 **provide the people of the United States with a highly**
15 **competent, honest, and productive Federal workforce re-**
16 **fective of the Nation's diversity, and to improve the quality**
17 **of public services, Federal personnel management should**
18 **be implemented consistent with the merit system principles.**

19 **“(c) The merit system principles are as follows:**

20 **“(1) Recruitment should be from qualified individ-**
21 **uals from appropriate sources in an endeavor to achieve**
22 **a work force from all segments of society, and selection**

1 **and advancement should be determined solely on the**
2 **basis of relative ability, knowledge, and skills, after fair**
3 **and open competition which assures that all receive equal**
4 **opportunity.**

5 **“(2) All employees and applicants should receive**
6 **fair and equitable treatment in all aspects of personnel**
7 **management without regard to political affiliation, race,**
8 **color, religion, national origin, sex, marital status, age,**
9 **or handicapping condition, and with proper regard for**
10 **their privacy and constitutional rights.**

11 **“(3) Equal pay should be provided for work of**
12 **equal value, with appropriate consideration of both na-**
13 **tional and local rates paid by employers in the private**
14 **sector, and appropriate incentives and recognition should**
15 **be provided for excellence in performance.**

16 **“(4) All employees should maintain high standards**
17 **of integrity, conduct, and concern for the public interest.**

18 **“(5) The Federal work force should be used effi-**
19 **ciently and effectively.**

20 **“(6) Employees should be retained on the basis of**
21 **the adequacy of their performance; inadequate perform-**
22 **ance should be corrected, and employees should be sep-**
23 **arated who cannot or will not improve their performance**
24 **to meet required standards.**

1 “(7) Employees should be provided effective educa-
2 tion and training in cases in which education and train-
3 ing would result in better organizational and individual
4 performance.

5 “(8) Employees should be—

6 “(A) protected against arbitrary action, per-
7 sonal favoritism, or coercion for partisan political
8 purposes, and

9 “(B) prohibited from using their official
10 authority for the purpose of interfering with or
11 affecting the result of an election or a nomination
12 for election.

13 “(9) Employees should be protected against reprisal
14 for the lawful disclosure of information which the em-
15 ployees reasonably believe evidences—

16 “(A) a violation of law, rule, or regulation,

17 “(B) mismanagement, a waste of funds, or an
18 abuse of authority, or

19 “(C) a substantial and specific danger to pub-
20 lic health or safety.

21 “(d) The President shall take actions, including the is-
22 suanance of rules, regulations, or directives, as the President
23 determines are necessary to carry out the policy set forth in
24 subsection (b) of this section.

1 “§ 2302. Prohibited personnel practices

2 “(a)(1) For the purpose of this title, ‘prohibited per-
3 sonnel practices’ means any action described in subsection
4 (b) of this section.

5 “(2) For the purpose of this section—

6 “(A) ‘personnel action’ means—

7 “(i) an appointment;

8 “(ii) a promotion;

9 “(iii) an action under chapter 75 of this title
10 or other disciplinary or corrective action;

11 “(iv) a detail, transfer, or reassignment;

12 “(v) a reinstatement;

13 “(vi) a restoration;

14 “(vii) a reemployment;

15 “(viii) a performance evaluation under chapter
16 43 of this title;

17 “(ix) a decision concerning pay, benefits, or
18 awards, or concerning education or training if the
19 education or training may reasonably be expected
20 to lead to an appointment, promotion, performance
21 evaluation, or other action described in this
22 paragraph; and

23 “(x) a substantial change in duties or re-
24 sponsibilities which may reasonably be expected to
25 result in a reduction in pay or grade;

1 with respect to an employee in, or applicant for, a position
2 in the competitive service in an agency or a position
3 in the excepted service in an agency (other than a position
4 which is excepted from the competitive service because
5 of its confidential, policy-determining, or policy
6 advocating character), or to a career appointee in the
7 Senior Executive Service in an agency.

8 "(B) 'agency' means an Executive agency, the Administrative
9 Office of the United States Courts, and the Government
10 Printing Office, but does not include—

11 "(i) a Government corporation;

12 "(ii) the Central Intelligence Agency, the Defense
13 Intelligence Agency, the National Security Agency, or any
14 Executive agency or unit thereof which is designated by the
15 President and which conducts foreign intelligence or counterintelligence
16 activities; or

17 "(iii) the General Accounting Office.

18 "(b) Any employee who has authority to take, direct
19 others to take, recommend, or approve any personnel action,
20 shall not, with respect to such authority—

21 "(1) discriminate for or against any employee or
22 applicant for employment—

23 "(A) on the basis of race, color, religion, sex,
24 or national origin, as prohibited under section 717
25

1 of the Civil Rights Act of 1964 (42 U.S.C.
2 2000e-16);

3 "(B) on the basis of age, as prohibited under
4 sections 12 and 15 of the Age Discrimination in
5 Employment Act of 1967 (29 U.S.C. 631, 633a);

6 "(C) on the basis of handicapping condition,
7 as prohibited under section 501 of the Rehabilitation
8 Act of 1973 (29 U.S.C. 791);

9 "(D) on the basis of marital status or political
10 affiliation, as prohibited under this title; or

11 "(E) on any basis prohibited under the provisions
12 of any other law, rule, or regulation;

13 "(2) solicit or consider any recommendation or
14 statement, oral or written, with respect to any individual
15 who requests or is under consideration for any personnel
16 action unless the recommendation or statement is based on the
17 personal knowledge or records of the person furnishing it and
18 consists of—

19 "(A) an evaluation of the work performance, ability,
20 aptitude, or general qualifications of the individual; or

21 "(B) an evaluation of the character, loyalty, or
22 suitability of the individual;

23 "(3) coerce the political activity of any person
24 (including the providing of any political contribution or
25

1 *service), or take any action against any employee or ap-*
 2 *plicant for employment as a reprisal for the refusal of*
 3 *any person to engage in such political activity;*

4 *"(4) deceive or obstruct any person with respect to*
 5 *the person's right to compete for Federal employment;*

6 *"(5) influence any person to withdraw from com-*
 7 *petition for any position for the purpose of improving*
 8 *or injuring the prospects of any other person for*
 9 *employment;*

10 *"(6) grant any preference or advantage not author-*
 11 *ized by law, rule, or regulation to any employee or*
 12 *applicant for employment (including defining the scope*
 13 *or manner of competition or the requirements for any*
 14 *position) for the purpose of improving or injuring the*
 15 *prospects of any person for Federal employment;*

16 *"(7) appoint, employ, promote, advance, or ad-*
 17 *vocate for appointment, employment, promotion, or ad-*
 18 *vancement, in or to a civilian position, any individual*
 19 *who is a relative (as defined in section 3110(a)(3) of*
 20 *this title) of an employee if the position is in the agency*
 21 *in which the employee is serving as a public official (as*
 22 *defined in section 3110(a)(2) of this title) or over*
 23 *which the employee exercises jurisdiction or control as*
 24 *a public official (as defined in section 3110(a)(2) of*
 25 *this title);*

1 *"(8) take or fail to take a personnel action with*
 2 *respect to any employee or applicant for employment as*
 3 *a reprisal for—*

4 *"(A) a disclosure of information by an em-*
 5 *ployee or applicant which the employee or applicant*
 6 *reasonably believes evidences—*

7 *"(i) a violation of any law, rule, or regu-*
 8 *lation, or*

9 *"(ii) mismanagement, a waste of funds,*
 10 *an abuse of authority, or a substantial and spe-*
 11 *cific danger to public health or safety,*
 12 *if such disclosure is not specifically prohibited by*
 13 *law or if such information is not specifically re-*
 14 *quired by Executive order to be kept secret in the*
 15 *interest of national defense or the conduct of foreign*
 16 *affairs; or*

17 *"(B) a disclosure to the Special Counsel of the*
 18 *Merit Systems Protection Board, or to the Inspector*
 19 *General of an agency or another employee desig-*
 20 *nated by the head of the agency to receive such dis-*
 21 *losures, of information which the employee or appli-*
 22 *cant reasonably believes evidences—*

23 *"(i) a violation of any law, rule, or regu-*
 24 *lation, or*

1 “(ii) mismanagement, a waste of funds, or
2 an abuse of authority, or a substantial and spe-
3 cific danger to public health or safety;

4 “(9) take or fail to take a personnel action with re-
5 spect to any employee or applicant for employment as a
6 reprisal for the exercise of any right of appeal granted
7 by law, rule, or regulation;

8 “(10) discriminate for or against any employee or
9 applicant for employment on the basis of conduct which
10 does not adversely affect the performance of the employee
11 or applicant or the performance of others, except that
12 nothing in this paragraph shall prohibit an agency from
13 taking into account in determining suitability or fitness
14 any conviction of the employee or applicant for any
15 crime of violence or moral turpitude under the laws of
16 any State, of the District of Columbia, or of the United
17 States; or

18 “(11) take or fail to take any personnel action on
19 the basis of personal favoritism.

20 “(c) The head of each agency shall be responsible for the
21 prevention of prohibited personnel practices, the compliance
22 with and enforcement of applicable civil service laws, rules,
23 and regulations and other aspects of personnel management.
24 Any individual to whom the head of an agency delegates

1 authority for personnel management, or for any aspect
2 thereof, shall be similarly responsible within the limits of
3 the delegation.

4 “(d) This section shall not be construed to extinguish
5 or lessen any effort to achieve equal employment opportunity
6 through affirmative action or any right or remedy available
7 to any employee or applicant for employment in the civil
8 service under—

9 “(1) section 717 of the Civil Rights Act of 1964
10 (42 U.S.C. 2000e-16), prohibiting discrimination on
11 the basis of race, color, religion, sex, or national origin;

12 “(2) sections 12 and 15 of the Age Discrimination
13 in Employment Act of 1967 (29 U.S.C. 631, 633a),
14 prohibiting discrimination on the basis of age;

15 “(3) section 501 of the Rehabilitation Act of 1973
16 (29 U.S.C. 791), prohibiting discrimination on the
17 basis of handicapping condition;

18 “(4) the provisions of this title, and rules and
19 regulations thereunder, prohibiting discrimination on
20 the basis of marital status or political affiliation; or

21 “(5) the provisions of any other law, rule, or
22 regulation prohibiting discrimination on any such basis.

23 “§ 2303. Responsibility of the General Accounting Office

24 “‘If requested by either House of the Congress (or any
25 committee thereof), or if considered necessary by the Comp-

1 troller General, the General Accounting Office shall con-
 2 duct audits and reviews to assure compliance with the
 3 laws, rules, and regulations governing employment in the
 4 executive branch and in the competitive service and to
 5 assess the effectiveness and soundness of Federal personnel
 6 management.

7 "§ 2304. Coordination with certain other provisions of law
 8 "No provision of this chapter, or action taken under this
 9 chapter, shall be construed to impair the authorities and
 10 responsibilities set forth in section 102 of the National Se-
 11 curity Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the
 12 Central Intelligence Agency Act of 1949 (63 Stat. 208; 50
 13 U.S.C. 403a and following), Public Law 86-36 (73 Stat.
 14 63; 50 U.S.C. 402 note), and Public Law 88-290 (78
 15 Stat. 168; 50 U.S.C. 831-835)."

16 "(b)(1) The table of chapters for part III of title 5,
 17 United States Code, is amended by adding after the item
 18 relating to chapter 21 the following new item:

"21. Merit system principles..... 2301."

19 (2) Section 7203 of title 5, United States Code (as
 20 redesignated in section 703(1) of this Act) is amended—

21 (A) by striking out "Physical handicap" in the
 22 section heading and inserting in lieu thereof "Handi-
 23 capping condition"; and

24 (B) by striking out "physical handicap" each place

1 it appears in the text and inserting in lieu thereof "handi-
 2 capping condition".

3 **TITLE II—CIVIL SERVICE FUNCTIONS; PER-**
 4 **FORMANCE APPRAISAL; ADVERSE ACTIONS**

5 **OFFICE OF PERSONNEL MANAGEMENT**

6 **SEC. 201.** (a) Chapter 11 of title 5, United States
 7 Code, is amended to read as follows:

8 "Chapter 11.—OFFICE OF PERSONNEL
 9 **MANAGEMENT**

"Sec.
 "1101. Office of Personnel Management.
 "1102. Director; Deputy Director; Associate Directors.
 "1103. Functions of the Director.
 "1104. Delegation of authority for personnel management.
 "1105. Reports to the Congress.
 "1106. Administrative procedure.

10 "§ 1101. Office of Personnel Management

11 "The Office of Personnel Management is an independent
 12 establishment in the executive branch. The Office shall have
 13 an official seal which shall be judicially noticed and shall
 14 have its principal office in the District of Columbia, and
 15 may have field offices in other appropriate locations.

16 "§ 1102. Director; Deputy Director; Associate Directors

17 "(a) There is at the head of the Office of Personnel
 18 Management a Director of the Office of Personnel Manage-
 19 ment appointed by the President, by and with the advice and
 20 consent of the Senate.

21 "(b) There is in the Office a Deputy Director of the

1 *Office of Personnel Management appointed by the President,*
 2 *by and with the advice and consent of the Senate. The*
 3 *Deputy Director shall perform such functions as the Director*
 4 *may from time to time prescribe and shall act as Director*
 5 *during the absence or disability of the Director or when the*
 6 *office of the Director is vacant.*

7 “(o) No person shall, while serving as Director or
 8 Deputy Director, serve in any other office or position in the
 9 Government of the United States except as otherwise pro-
 10 vided by law or by the President.

11 “(d) There may be within the Office of Personnel Man-
 12 agement not more than 5 Associate Directors, as determined
 13 from time to time by the Director. Each Associate Director
 14 shall be appointed by the Director.

15 “§ 1103. Functions of the Director

16 “The following functions are vested in the Director of
 17 the Office of Personnel Management, and shall be performed
 18 by the Director, or by such employees of the Office as the
 19 Director designates:

20 “(1) securing accuracy, uniformity, and justice in
 21 the functions of the Office;

22 “(2) appointing individuals to be employed by the
 23 Office;

24 “(3) directing and supervising employees of the

1 *Office, distributing business among employees and*
 2 *organizational units of the Office, and directing the*
 3 *internal management of the Office;*

4 “(4) directing the preparation of requests for ap-
 5 propriations for the Office and the use and expenditure
 6 of funds by the Office;

7 “(5) executing, administering, and enforcing—

8 “(A) the civil service rules and regulations of
 9 the President and the Office and the statutes gov-
 10 erning the civil service; and

11 “(B) the other activities of the Office including
 12 retirement and classification activities;

13 “(6) reviewing the operations under chapter 87 of
 14 this title; and

15 “(7) the functions prescribed in part I of Reor-
 16 ganization Plan Numbered 2 of 1978.

17 “§ 1104. Delegation of authority for personnel management

18 “(a) Notwithstanding any other provision of this
 19 title—

20 “(1) the President may delegate, in whole or in
 21 part, authority for personnel management functions,
 22 including authority for competitive examinations, to the
 23 Director of the Office of Personnel Management; and

24 “(2) the Director may delegate, in whole or in
 25 part, any function vested in or delegated to the Director,

1 including authority for competitive examinations (except
2 competitive examinations for administrative law judges
3 appointed under section 3105 of this title), to the
4 heads of agencies in the executive branch and other
5 agencies employing persons in the competitive service.

6 "(b)(1) The Office of Personnel Management shall es-
7 tablish standards which shall apply to the activities of the
8 Office or any other agency under authority delegated under
9 subsection (a) of this section.

10 "(2) The Office shall establish and maintain an over-
11 sight program to ensure that activities under any authority
12 delegated under subsection (a) of this section are in accord-
13 ance with the merit system principles and the standards estab-
14 lished under paragraph (1) of this subsection.

15 "(c) If the Office makes a written finding, on the basis
16 of information obtained under the program established under
17 subsection (b)(2) of this section or otherwise, that any action
18 taken by an agency pursuant to authority delegated under
19 subsection (a)(2) of this section is contrary to any law, rule,
20 or regulation, or is contrary to any standard established under
21 subsection (b)(1) of this section, the agency involved shall
22 take any corrective action the Office may require."

23 "§ 1105. Reports to the Congress

24 "Notwithstanding any other provision of law or any rule,
25 regulation, or directive, the Director, or any employee of the

1 Office of Personnel Management designated by the Director,
2 may transmit to the Congress on the request of any committee
3 or subcommittee thereof, by report, testimony, or otherwise,
4 information and views on functions, responsibilities, or other
5 matters relating to the Office, without review, clearance, or
6 approval by any other administrative authority.

7 "§ 1106. Administrative procedure

8 "In the exercise of the functions assigned under this
9 chapter, the Director shall be subject to subsections (b), (c),
10 and (d) of section 553 of this title, notwithstanding subsection
11 (a) of such section 553."

12 (b)(1) Section 5313 of title 5, United States Code, is
13 amended by inserting at the end thereof the following new
14 paragraph:

15 "(24) Director of the Office of Personnel Manage-
16 ment."

17 (2) Section 5314 of such title is amended by inserting
18 at the end thereof the following new paragraph:

19 "(68) Deputy Director of the Office of Personnel
20 Management."

21 (3) Section 5315 of such title is amended by inserting
22 at the end thereof the following new paragraph:

23 "(122) Associate Directors of the Office of Per-
24 sonnel Management (5)."

25 (c)(1) The heading of part II of title 5, United States

1 Code, is amended by striking out "THE UNITED STATES
2 CIVIL SERVICE COMMISSION" and inserting in lieu
3 thereof "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES".

4 (2) The item relating to chapter 11 in the table of
5 chapters for part II of such title is amended by striking out
6 "Organisation" and inserting in lieu thereof "Office of Personnel
7 Management".

8
9 **MERIT SYSTEMS PROTECTION BOARD AND SPECIAL
10 COUNSEL**

11 **SEC. 202.** (a) Title 5, United States Code, is amended
12 by inserting after chapter 11 the following new chapter:

13 **"Chapter 12—MERIT SYSTEMS PROTECTION BOARD
14 AND SPECIAL COUNSEL**

^aSec.

¹1201. Appointment of members of the Merit Systems Protection Board.

²1202. Term of office; filling vacancies; removal; quorum.

³1203. Chairman; Vice Chairman.

⁴1204. Special Counsel; appointment and removal.

⁵1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.

⁶1206. Authority and responsibilities of the Special Counsel.

⁷1207. Hearings and decisions on complaints filed by the Special Counsel.

⁸1208. Reports to Congress.

15 **"§ 1201. Appointment of members of the Merit Systems
16 Protection Board**

17 "The Merit Systems Protection Board is composed of
18 3 members appointed by the President, by and with the
19 advice and consent of the Senate, not more than 2 of whom
20 may be adherents of the same political party. No member

1 of the Board may hold another office or position in the Govern-
2 ment of the United States. The Board shall have an official
3 seal which shall be judicially noticed. The Board shall have
4 its principal office in the District of Columbia and may have
5 field offices in other appropriate locations.

6 **"§ 1202. Term of office; filling vacancies; removal;
7 quorum**

8 "(a) The term of office of each member of the Merit
9 Systems Protection Board is 7 years.

10 "(b) A member appointed to fill a vacancy occurring
11 before the end of a term of office of his predecessor serves for
12 the remainder of that term. Any appointment to fill a vacancy
13 is subject to the requirements of section 1201 of this title.

14 "(c) Any member appointed for a 7-year term may not
15 be reappointed to any following term.

16 "(d) Members may be removed by the President only
17 upon notice and hearing and only for misconduct, inefficiency,
18 neglect of duty, or malfeasance in office.

19 "(e) Except as otherwise provided in this title, the
20 Board shall act upon majority vote of those members present,
21 and any 2 members present shall constitute a quorum for
22 the transaction of business of the Board.

23 **"§ 1203. Chairman; Vice Chairman**

24 "(a) The President shall from time to time designate
25 one of the members of the Merit Systems Protection Board

1 as the Chairman of the Board. The Chairman is the chief
2 executive and administrative officer of the Board.

3 “(b) The President shall from time to time designate
4 one of the members of the Merit Systems Protection Board as
5 Vice Chairman of the Board. During the absence or disability
6 of the Chairman, or when the office of Chairman is vacant,
7 the Vice Chairman shall perform the functions vested in the
8 Chairman.

9 “§ 1204. Special Counsel; appointment and removal

10 “The Special Counsel of the Merit Systems Protection
11 Board shall be appointed by the President, by and with the
12 advice and consent of the Senate, for a term of 7 years. The
13 Special Counsel may be removed by the President only upon
14 notice and hearing and only for misconduct, inefficiency,
15 neglect of duty, or malfeasance in office.

16 “§ 1205. Powers and functions of the Merit Systems Pro-
17 tection Board and Special Counsel

18 “(a) Any member of the Merit Systems Protection
19 Board, the Special Counsel, any administrative law judge
20 appointed by the Board under section 3105 of this title, and
21 any employee of the Board designated by the Board may—

22 “(1) issue subpoenas requiring the attendance and
23 testimony of witnesses and the production of documen-
24 tary or other evidence from any place in the United
25 States or any territory or possession thereof, the Com-

1 monwealth of Puerto Rico, or the District of Columbia,
2 and

3 “(2) administer oaths, take or order the taking
4 of depositions, order responses to written interrogatories,
5 examine witnesses, and receive evidence.

6 “(b) In the case of contumacy or failure to obey a
7 subpoena issued under subsection (a)(1) of this section, the
8 United States district court for the judicial district in which
9 the person to whom the subpoena is addressed resides or is
10 served may issue an order requiring such person to appear
11 at any designated place to testify or to produce documentary
12 or other evidence. Any failure to obey the order of the court
13 may be punished by the court as a contempt thereof.

14 “(c) Witnesses (whether appearing voluntarily or under
15 subpoena) shall be paid the same fee and mileage allowances
16 which are paid subpoenaed witnesses in the courts of the
17 United States.

18 “(d) In addition to functions otherwise provided in
19 this title, the Board shall have the functions prescribed
20 in part II of Reorganization Plan Numbered 2 of 1978.

21 “§ 1206. Authority and responsibilities of the Special
22 Counsel

23 “(a)(1) The Special Counsel shall receive any alle-
24 gation of a prohibited personnel practice and shall investi-

1 *gate the allegation to the extent necessary to determine*
 2 *whether there are reasonable grounds to believe that a pro-*
 3 *hibited personnel practice exists or has occurred.*

4 *“(2) If the Special Counsel terminates any investiga-*
 5 *tion under paragraph (1) of this subsection, the Special*
 6 *Counsel shall prepare and transmit to any person on whose*
 7 *allegation the investigation was initiated a written statement*
 8 *notifying the person of the termination of the investigation*
 9 *and the reasons therefor.*

10 *“(3) In addition to authority granted under paragraph*
 11 *(1) of this subsection, the Special Counsel may, in the ab-*
 12 *sence of an allegation, conduct an investigation for the pur-*
 13 *pose of determining whether there are reasonable grounds to*
 14 *believe that a prohibited personnel practice exists or has*
 15 *occurred.*

16 *“(b)(1) If the Special Counsel determines that there*
 17 *are reasonable grounds to believe—*

18 *“(A) that a personnel action was taken, or is to be*
 19 *taken, as a result of a prohibited personnel practice;*
 20 *and*

21 *“(B) except with regard to a prohibited person-*
 22 *nel practice described in section 2302(b)(8) of this title,*
 23 *that the personnel action would have a substantial and*
 24 *adverse impact on the employee involved;*

1 *the Special Counsel may order a stay of the personnel*
 2 *action for 30 calendar days or any longer period the Board*
 3 *may prescribe under paragraph (2) of this subsection.*

4 *“(2) If the Board—*

5 *“(A) has received a petition of the Special Counsel*
 6 *for an extension of a stay ordered under paragraph (1)*
 7 *of this subsection, and*

8 *“(B) concurs in the determination of the Special*
 9 *Counsel under paragraph (1), after an opportunity is*
 10 *provided for oral or written comment by the Special*
 11 *Counsel and the agency involved,*

12 *the Board may extend the period of such stay for any*
 13 *period it considers appropriate. If the aggregate period*
 14 *of the stay, as proposed to be extended, will not exceed*
 15 *60 days, the function of the Board under this paragraph*
 16 *may be performed by any one member of the Board.*

17 *“(c)(1) In any case involving—*

18 *“(A) any disclosure of information by an employee*
 19 *or applicant for employment which the employee or*
 20 *applicant reasonably believes evidences—*

21 *“(i) a violation of any law, rule, or regula-*
 22 *tion; or*

23 *“(ii) mismanagement, a waste of funds, an*
 24 *abuse of authority, or a substantial and specific*
 25 *danger to public health or safety;*

1 if the disclosure is not specifically prohibited by law
2 and if the information is not specifically required by
3 Executive order to be kept secret in the interest of na-
4 tional defense or the conduct of foreign affairs; or

5 "(B) a disclosure by an employee or applicant for
6 employment to the Special Counsel of the Merit Systems
7 Protection Board, or to the Inspector General of an
8 agency or another employee designated by the head of the
9 agency to receive such disclosures, of information which
10 the employee or applicant reasonably believes evidences—

11 "(i) a violation of any law, rule, or regula-
12 tion; or

13 "(ii) mismanagement, a waste of funds, an
14 abuse of authority, or a substantial and specific
15 danger to public health or safety;

16 the identity of the employee or applicant may not be dis-
17 closed without the consent of the employee or applicant dur-
18 ing any investigation under subsection (a) of this section
19 or under paragraph (2) of this subsection, unless the Special
20 Counsel determines that the disclosure of the identity of the
21 employee or applicant is necessary in order to effectively
22 carry out the investigation.

23 "(2) Within 15 days after receiving any information
24 under paragraph (1)(B) of this subsection, the Special
25 Counsel shall determine whether the information warrants an

1 investigation. If an investigation is determined to be war-
2 ranted, the Special Counsel shall—

3 "(A) transmit the information to the head of the
4 agency involved;

5 "(B) require the head of the agency to—

6 "(i) conduct an investigation of the informa-
7 tion and any related matters transmitted by the Spe-
8 cial Counsel to the head of the agency; and

9 "(ii) submit a written report to the Special
10 Counsel and to the General Accounting Office set-
11 ting forth the findings of the head of the agency
12 within 60 days after the date on which the infor-
13 mation is transmitted to the head of the agency or
14 within any longer period of time agreed to in writing
15 by the Special Counsel; and

16 "(C) transmit a copy of the report to the em-
17 ployee or applicant for employment who disclosed the
18 information.

19 "(3) Any report required under paragraph (2) of this
20 subsection shall be reviewed and signed by the head of the
21 agency and shall include—

22 "(A) a summary of the information with respect
23 to which the investigation was initiated;

24 "(B) a detailed description of the conduct of the
25 investigation;

1 “(C) a summary of any evidence obtained from
2 the investigation;

3 “(D) a listing of any violation or apparent violation
4 of any law, rule, or regulation; and

5 “(E) a description of any corrective action taken
6 or planned as a result of the investigation, such as—

7 “(i) changes in agency rules, regulations, or
8 practices;

9 “(ii) the restoration of any aggrieved employee;

10 “(iii) disciplinary action against any em-
11 ployee; and

12 “(iv) referral to the Attorney General of any
13 evidence of a criminal violation.

14 “(A) In any case in which evidence of a criminal viola-
15 tion obtained by an agency in an investigation under para-
16 graph (2) of this subsection is referred to the Attorney Gen-
17 eral, the agency shall notify the Office of Personnel Manage-
18 ment and the Office of Management and Budget of the
19 referral.

20 “(5) Upon receipt of any report of the head of any
21 agency required under paragraph (2)(B)(ii) of this sub-
22 section, the Special Counsel shall review the report and deter-
23 mine whether—

24 “(A) the findings of the head of the agency are
25 reasonable;

1 “(B) the agency's investigation was complete and
2 unbiased; and

3 “(C) the corrective action taken or planned is
4 sufficient in light of any violations found to have occurred.

5 “(6) Upon receipt of any report of the head of any
6 agency required under paragraph (2)(B)(ii) of this sub-
7 section, the General Accounting Office shall review the report
8 and determine whether the agency investigation involved was
9 adequate and whether the corrective action, if any, taken or
10 planned by the agency is adequate. The General Accounting
11 Office shall report the results of its review to the Congress if it
12 determines that the agency's investigation or any corrective
13 action taken or planned by the agency is inadequate.

14 “(7) Except as specifically authorized under this sub-
15 section, the provisions of this subsection shall not be con-
16 sidered to authorize disclosure of any information by the
17 Congress, any agency, or any person which is—

18 “(A) specifically prohibited from disclosure by any
19 other provision of law; or

20 “(B) specifically required by Executive order to be
21 kept secret in the interest of national defense or the con-
22 duct of foreign affairs.

23 “(8) The Special Counsel may, with the consent of the
24 employee or applicant for employment involved, participate
25 in any proceeding before the Merit Systems Protection Board

1 under section 7701 of this title, to the extent the Special
2 Counsel determines appropriate, if the Special Counsel
3 believes the personnel action which is the subject of the pro-
4 ceeding involves a reprisal for a disclosure of information
5 described in paragraph (1) (A) or (B) of this section."

6 "(d)(1) If, in connection with any investigation under
7 this section, the Special Counsel determines that there are
8 reasonable grounds to believe that a prohibited personnel
9 practice exists or has occurred which requires corrective
10 action, the Special Counsel shall report the determination
11 together with any findings or recommendations to the Merit
12 Systems Protection Board, the agency involved, and to the
13 Office of Personnel Management, and may report the deter-
14 mination, findings, and recommendations to the President.
15 The Special Counsel may include in the report recommenda-
16 tions as to what corrective action should be taken, but the final
17 decision on the corrective action to be taken shall be made
18 by the Merit Systems Protection Board after opportunity
19 for comment by the agency concerned and the Office of
20 Personnel Management.

21 "(2) If, in connection with any investigation under this
22 section, the Special Counsel determines that there is reason-
23 able cause to believe that a criminal violation by an employee
24 has occurred, the Special Counsel shall report the determina-
25 tion to the Attorney General and to the head of the agency

1 involved, and shall submit a copy of the report to the Director
2 of the Office of Personnel Management and the Director of
3 the Office of Management and Budget.

4 "(3) If, in connection with any investigation under this
5 section, the Special Counsel determines that there is reason-
6 able cause to believe that any violation of any law, rule,
7 or regulation has occurred which is not referred to in para-
8 graph (1) or (2) of this subsection, the violation shall be
9 reported to the head of the agency involved. The Special
10 Counsel shall require, within 30 days of the receipt of the
11 report by the agency, a certification by the head of the agency
12 which states—

13 "(A) that the head of the agency has personally
14 reviewed the report; and

15 "(B) what action has been, or is to be, taken, and
16 when the action will be completed.

17 The Special Counsel shall maintain and make available to
18 the public a list of noncriminal matters referred to heads of
19 agencies and their certifications under this paragraph.

20 "(e)(1) In addition to the authority otherwise pro-
21 vided in this section, the Special Counsel shall, except as
22 provided in paragraph (2) of this subsection, conduct an
23 investigation of any allegation concerning—

24 "(A) political activity prohibited under subchapter

1 III of chapter 73 of this title, relating to political
2 activities by Federal employees;

3 "(B) political activity prohibited under chapter 15
4 of this title, relating to political activities by certain State
5 and local officers and employees;

6 "(C) arbitrary or capricious withholding of infor-
7 mation prohibited under section 552 of this title;

8 "(D) activities prohibited by any civil service law,
9 rule, or regulation, including any activity relating to
10 political intrusion in personnel decisionmaking; and

11 "(E) involvement by any employee in any pro-
12 hibited discrimination found by any court or appropriate
13 administrative authority to have occurred in the course
14 of any personnel action.

15 "(2) The Special Counsel shall make no investigation
16 of any allegation of any prohibited activity referred to in
17 paragraph (1)(D) or (1)(E) of this subsection if the
18 Special Counsel determines that the allegation may be
19 resolved more appropriately under an administrative appeals
20 procedure.

21 "(f) During any investigation initiated under subsec-
22 tion (a), (c), or (e) of this section, no disciplinary action
23 shall be taken against any employee for any alleged pro-

1 hibited activity under investigation or for any related
2 activity without the approval of the Special Counsel.

3 "(g)(1) Except as provided in paragraph (2) of this
4 subsection, if the Special Counsel determines that disciplinary
5 action should be taken against any employee—

6 "(A) after any investigation under this section, or

7 "(B) on the basis of any knowing and willful re-
8 fusal or failure by an employee to comply with an order
9 or requirement of the Special Counsel under subsection
10 (b), (c), or (d)(3) of this section or an order of the
11 Merit Systems Protection Board,

12 the Special Counsel shall prepare a written complaint against
13 the employee containing his determination, together with
14 a statement of supporting facts, and present the complaint
15 and statement to the employee and the Merit Systems Protec-
16 tion Board in accordance with section 1207 of this title.

17 "(2) In the case of an individual appointed by the
18 President, by and with the advice and consent of the Senate
19 (other than an individual in the Foreign Service of the
20 United States), the complaint and statement referred to in
21 paragraph (1) of this subsection shall be presented to the
22 President for appropriate action in lieu of being presented
23 under section 1207 of this title.

24 "(h) The Special Counsel may appoint the legal, admin-

1 istrative, and support personnel necessary to perform the
2 functions of the Special Counsel.

3 “(i) The Special Counsel may prescribe regulations
4 relating to the receipt and investigation of matters under the
5 jurisdiction of the Special Counsel. Such regulations shall be
6 published in the Federal Register.

7 “(j) The Special Council shall not issue any advisory
8 opinion concerning any law, rule, or regulation (other than
9 an advisory opinion concerning chapter 15 or subchapter III
10 of chapter 73 of this title).

11 “(k) The Special Counsel shall prepare and submit an
12 annual report to the President and to the Congress on—

13 “(1) the investigation and disposition of each case
14 considered by the Special Counsel during the annual
15 period covered by the report; and

16 “(2) actions by the Special Counsel on each case
17 referred by the Special Counsel to the President during
18 the annual period covered by the report.

19 “§ 1207. Hearings and decisions on complaints filed by the
20 Special Counsel

21 “(a) Any employee against whom a complaint has been
22 presented to the Merit Systems Protection Board under sec-
23 tion 1206(g) of this title shall be entitled to—

24 “(1) a reasonable time to answer orally and in

1 writing and to furnish affidavits and other documentary
2 evidence in support of the answer;

3 “(2) be represented by an attorney or other repre-
4 sentative;

5 “(3) a hearing before the Board, an administrative
6 law judge appointed under section 3105 of this title and
7 designated by the Board, or any other employee of the
8 Board designated by the Board to conduct the hearing;

9 “(4) have a transcript kept of any hearing under
10 paragraph (3); and

11 “(5) a written decision and reasons therefor at
12 the earliest practicable date including a copy of any
13 final order imposing disciplinary action.

14 “(b) A final order of the Board may impose disciplinary
15 action—

16 “(1) in the case of political activity prohibited under
17 subchapter III of chapter 73 of this title, as provided in
18 section 7327 of this title; or

19 “(2) in any other case, consisting of removal,
20 reduction in grade, debarment from Federal employment
21 for a period not to exceed 5 years, suspension, reprimand,
22 or an assessment of a civil penalty not to exceed \$1,000.

23 “(c) There may be no administrative appeal from an
24 order of the Board. An employee subject to a final order
25 imposing disciplinary action under this section may obtain

1 judicial review of the order in the United States district
2 court for the judicial district in which the employee resides.

3 "(d) In the case of any State or local officer or em-
4 ployee under chapter 15 of this title, the Board shall con-
5 sider the case in accordance with the provisions of such
6 chapter.

7 "§ 1208. Reports to the Congress

8 "Notwithstanding any other provision of law or any
9 rule, regulation or directive, any member of the Board, or
10 any employee of the Board designated by the Board, may
11 transmit to the Congress on the request of any committee or
12 subcommittee thereof, by report, testimony, or otherwise, in-
13 formation and views on functions, responsibilities, or other
14 matters relating to the Board, without review, clearance,
15 or approval by any other administrative authority."

16 (b) Any term of office of any member of the Merit
17 Systems Protection Board serving on the effective date of
18 this Act shall continue in effect until the term would expire
19 under section 1102 of title 5, United States Code, as in effect
20 immediately before the effective date of this Act, and upon
21 expiration of the term, appointments to such office shall be
22 made under sections 1201 and 1202 of title 5, United States
23 Code (as added by this section).

24 (c)(1) Section 5314(17) of title 5, United States
25 Code, is amended by striking out "Chairman of the United

1 States Civil Service Commission" and inserting in lieu thereof
2 "Chairman of the Merit Systems Protection Board".

3 (2) Section 5315(66) of such title is amended by
4 striking out "Members, United States Civil Service Com-
5 mission" and inserting in lieu thereof "Members, Merit
6 Systems Protection Board".

7 (3) Section 5315 of such title is further amended by
8 adding at the end thereof the following new paragraph:

9 "(123) Special Counsel of the Merit Systems Pro-
10 tection Board."

11 (4) Paragraph (99) of section 5316 of such title is
12 hereby repealed.

13 (d) The table of chapters for part II of title 5, United
14 States Code, is amended by inserting after the item relating
15 to chapter 11 the following new item:

"12. Merit Systems Protection Board and Special Counsel..... 1201".

15 PERFORMANCE APPRAISAL

16 SEC. 203. (a) Chapter 43 of title 5, United States
17 Code, is amended to read as follows:

18 "Chapter 43.—PERFORMANCE APPRAISAL

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.

"§301. Definitions.

"§302. Establishment of performance appraisal systems.

"§303. Actions based on unacceptable performance.

"§304. Responsibilities of Office of Personnel Management.

"§305. Regulations.

1 **“§ 4301. Definitions**2 **“For the purpose of this subchapter—**3 **“(1) ‘agency’ means—**4 **“(A) an Executive agency;**5 **“(B) the Administrative Office of the United**
6 **States Courts; and**7 **“(C) the Government Printing Office;**8 **but does not include—**9 **“(i) a Government corporation;**10 **“(ii) the Central Intelligence Agency, the De-**
11 **fense Intelligence Agency, the National Security**
12 **Agency, or any Executive agency or unit thereof**
13 **which is designated by the President and which**
14 **conducts foreign intelligence or counterintelligence**
15 **activities; or**16 **“(iii) the General Accounting Office;**17 **“(2) ‘employee’ means an individual employed in**
18 **or under an agency, but does not include—**19 **“(A) an employee outside the United States**
20 **who is paid in accordance with local native pre-**
21 **vailing wage rates for the area in which employed;**22 **“(B) an individual in the Foreign Service of**
23 **the United States;**24 **“(C) a physician, dentist, nurse, or other em-**1 **ployee in the Department of Medicine and Surgery,**
2 **Veterans’ Administration, whose pay is fixed under**
3 **chapter 73 of title 38;**4 **“(D) an administrative law judge appointed**
5 **under section 3105 of this title;**6 **“(E) an individual in the Senior Executive**
7 **Service; or**8 **“(F) an individual appointed by the President;**
9 **and**10 **“(3) ‘unacceptable performance’ means perform-**
11 **ance of an employee which fails to meet established per-**
12 **formance standards in one or more critical elements of**
13 **such employee’s position.**14 **“§ 4302. Establishment of performance appraisal systems**15 **“(a) Each agency shall develop one or more perform-**
16 **ance appraisal systems which—**17 **“(1) provide for periodic appraisals of job perform-**
18 **ance of employees;**19 **“(2) encourage employee participation in estab-**
20 **lishing performance standards;**21 **“(3) use the results of performance appraisals as a**
22 **basis for training, rewarding, reassigning, promoting,**
23 **reducing in grade, retaining, and removing employees;**24 **and**25 **(4) shall be the basis, notwithstanding any other**

1 provision of law, for promotions of one or more grades
2 during any 12-month period in individual cases of ex-
3 ceptionally meritorious performance.

4 "(b) Under regulations which the Office of Personnel
5 Management shall prescribe, each performance appraisal
6 system shall provide for—

7 "(1) establishing performance standards which will
8 permit the accurate evaluation of job performance on
9 the basis of objective criteria related to the job in ques-
10 tion for each employee under such system;

11 "(2) as soon as practicable, but not later than
12 October 1, 1981, with respect to initial appraisal periods,
13 and thereafter at the beginning of each following ap-
14 praisal period, communicating to each employee the
15 performance standards and the critical elements of the
16 employee's position;

17 "(3) evaluating each employee during the appraisal
18 period on such standards;

19 "(4) recognizing and rewarding employees whose
20 performance so warrants;

21 "(5) assisting employees in improving unacceptable
22 performance;

23 "(6) reassigning, reducing in grade, or removing
24 employees who continue to have unacceptable perform-
25 ance; and

1 "(7) promoting employees one or more grades
2 during any 12-month period, notwithstanding any other
3 provision of law, in individual cases of exceptionally
4 meritorious performance, subject to limitations prescribed
5 by the Office of Personnel Management on the number
6 or proportions of such promotions.

7 "§ 4303. Actions based on unacceptable performance

8 "(a) Subject to the provisions of this section, an agency
9 may reduce in grade or remove an employee for un-
10 acceptable performance.

11 "(b)(1) An employee whose reduction in grade or
12 removal is proposed under this section is entitled to—

13 "(A) 30 days' advance written notice of the pro-
14 posed action which identifies—

15 "(i) each instance of unacceptable perform-
16 ance by the employee on which the proposed action is
17 based; and

18 "(ii) the critical elements of the employee's
19 position involved in each instance of unacceptable
20 performance;

21 "(B) be represented by an attorney or other
22 representative;

23 "(C) a reasonable time to answer orally and in
24 writing;

1 “(D) an opportunity during the notice period to
2 demonstrate acceptable performance; and

3 “(E) a written decision which—

4 “(i) in the case of a reduction in grade or
5 removal under this section, specifies the instances
6 of unacceptable performance by the employee on
7 which the reduction in grade or removal is based,
8 and

9 “(ii) unless proposed by the head of the agency,
10 has been concurred in by an employee who is in a
11 higher position than the employee who proposed the
12 action.

13 “(2) An agency may, under regulations prescribed by
14 the head of such agency, extend the notice period under sub-
15 section (b)(1)(A) of this section for not more than 30 days.
16 An agency may extend the notice period for more than
17 30 days only in accordance with regulations issued by the
18 Office of Personnel Management.

19 “(c) The decision to retain, reduce in grade, or remove
20 an employee—

21 “(1) shall be made within 30 days after the date of
22 the expiration of the notice period, and

23 “(2) in the case of a reduction in grade or removal,

1 may be based only upon those instances of unacceptable
2 performance by the employee—

3 “(A) which occurred during the 1-year period
4 ending on the date of the notice under subsection
5 (b)(1)(A) of this section in connection with the
6 decision; and

7 “(B) for which the notice and other require-
8 ments of this section are complied with.

9 “(d) If, because of performance improvement by the
10 employee during the notice period, the employee is not re-
11 duced in grade or removed, and the employee's performance
12 continues to be acceptable for 1 year from the date of the
13 advance written notice provided under subsection (b)(1)(A)
14 of this section, any entry or other notation of the unacceptable
15 performance for which the action was proposed under this
16 section shall be removed from any agency record relating to
17 the employee.

18 “(e) Any employee who is a preference eligible or is
19 in the competitive service and who has been reduced in grade
20 or removed under this section is entitled to appeal the action
21 to the Merit Systems Protection Board under section 7701
22 of this title.

23 “(f) This section does not apply to—

24 “(1) the reduction to the grade previously held of

1 a supervisor who has not completed the probationary
2 period under section 3321(a)(2) of this title,

3 "(2) the reduction in grade or removal of an
4 employes in the competitive service who is serving a
5 probationary or trial period under an initial appoint-
6 ment or who has not completed 1 year of current con-
7 tinuous employment under other than a temporary
8 appointment limited to 1 year or less, or

9 "(3) the reduction in grade or removal of an
10 employee in the excepted service who has not completed
11 1 year of current continuous employment in the same
12 or similar positions.

13 "§ 4304. Responsibilities of the Office of Personnel Man-
14 agement

15 "(a) The Office of Personnel Management shall make
16 technical assistance available to agencies in the development
17 of performance appraisal systems.

18 "(b) If the Office of Personnel Management determines
19 that a performance appraisal system does not meet the
20 requirements of this subchapter (including regulations pre-
21 scribed under section 4305 of this title), the Office of Person-
22 nel Management shall direct the agency to implement an
23 appropriate system or to correct operations under the system,
24 and the agency shall take any action so directed.

1 "§ 4305. Regulations

2 "The Office of Personnel Management may prescribe
3 regulations to carry out the purpose of this subchapter."

4 (b) The item relating to chapter 43 in the table of
5 chapters for part III of title 5, United States Code, is
6 amended by striking out "Performance Rating" and inserting
7 in lieu thereof "Performance Appraisal".

8 ADVERSE ACTIONS

9 SEC. 204. (a) Chapter 75 of title 5, United States
10 Code, is amended by striking out subchapters I, II, and III
11 and inserting in lieu thereof the following:

12 "SUBCHAPTER I—SUSPENSION FOR 14 DAYS
13 OR LESS

14 "§ 7501. Definitions

15 "For the purpose of this subchapter—

16 "(1) 'employee' means an individual in the com-
17 petitive service who is not serving a probationary or
18 trial period under an initial appointment or who has
19 completed 1 year of current continuous employment in
20 the same or similar positions under other than a tem-
21 porary appointment limited to 1 year or less; and

22 "(2) 'suspension' means the placing of an em-
23 ployee, for disciplinary reasons, in a temporary status
24 without duties and pay.

1 "§ 7502. Actions covered

2 "This subchapter applies to a suspension for 14 days
3 or less, but does not apply to a suspension under section
4 7521 or 7532 of this title or any action initiated under
5 section 1206 of this title.

6 "§ 7503. Cause and procedure

7 "(a) Under regulations prescribed by the Office of
8 Personnel Management, an employee may be suspended for
9 14 days or less only for such cause as will promote the
10 efficiency of the service.

11 "(b) An employee against whom a suspension for 14
12 days or less is proposed is entitled to—

13 "(1) an advance written notice stating the specific
14 reasons for the proposed action;

15 "(2) a reasonable time to answer orally and in
16 writing and to furnish affidavits and other documentary
17 evidence in support of the answer;

18 "(3) be represented by an attorney or other repre-
19 sentative; and

20 "(4) a written decision and the specific reasons
21 therefor at the earliest practicable date.

22 "(c) An agency may provide, by regulation, for a hear-
23 ing which may be in lieu of or in addition to the opportunity
24 to answer provided under subsection (b)(2) of this section.

1 "(d) Copies of the notice of proposed action, the answer
2 of the employee if written, a summary thereof if made orally,
3 the notice of decision and reasons therefor, and any order
4 effecting the suspension, together with any supporting ma-
5 terial, shall be maintained by the agency and shall be fur-
6 nished to the Merit Systems Protection Board upon its re-
7 quest and to the employee affected upon the employee's
8 request.

9 "§ 7504. Regulations

10 "The Office of Personnel Management may prescribe
11 regulations to carry out the purpose of this subchapter.

12 "SUBCHAPTER II—REMOVAL, SUSPENSION
13 FOR MORE THAN 14 DAYS, REDUCTION IN
14 GRADE OR PAY, OR FURLOUGH FOR
15 30 DAYS OR LESS

16 "§ 7511. Definitions; application

17 "(a) For the purpose of this subchapter—

18 "(1) 'employee' means—

19 "(A) an individual in the competitive service
20 who is not serving a probationary or trial period
21 under an initial appointment or who has completed
22 1 year of current continuous employment under other
23 than a temporary appointment limited to 1 year or
24 less; and

1 “(B) a preference eligible in an Executive
2 agency in the excepted service, and a preference
3 eligible in the United States Postal Service or
4 the Postal Rate Commission, who has completed 1
5 year of current continuous service in the same or
6 similar positions;

7 “(2) ‘suspension’ has the meaning as set forth in
8 section 7501(2) of this title;

9 “(3) ‘grade’ means a level of classification under
10 a position classification system;

11 “(4) ‘pay’ means the rate of basic pay fixed by
12 law or administrative action for the position held by
13 an employee; and

14 “(5) ‘furlough’ means the placing of an employee
15 in a temporary status without duties and pay because
16 of lack of work or funds or other nondisciplinary reasons.

17 “(b) This subchapter does not apply to an employee—

18 “(1) whose appointment is made by and with the
19 advice and consent of the Senate;

20 “(2) whose position has been determined to be of
21 a confidential, policy-determining, or policy-advocating
22 character by—

23 “(A) the Office of Personnel Management for

1 a position that it has excepted from the competitive
2 service; or

3 “(B) the head of an agency for a position
4 which is excepted from the competitive service by
5 statute.

6 “(c) The Office of Personnel Management may provide
7 for the application of this subchapter to any position or
8 group of positions excepted from the competitive service by
9 regulation of the Office of Personnel Management.

10 “§ 7512. Actions covered

11 “This subchapter applies to—

12 “(1) a removal;

13 “(2) a suspension for more than 14 days;

14 “(3) a reduction in grade;

15 “(4) a reduction in pay; and

16 “(5) a furlough of 30 days or less;

17 but does not apply to—

18 “(A) a suspension or removal under section 7532
19 of this title,

20 “(B) a reduction in force action under section 3502
21 of this title,

22 “(C) the reduction in grade of a supervisor who
23 has not completed the probationary period under section

1 3321(a)(2) of this title if such reduction is to the grade
2 held immediately before becoming such a supervisor,

3 "(D) a reduction in grade or removal under sec-
4 tion 4303 of this title, or

5 "(E) an action initiated under section 1206 or 7521
6 of this title.

7 "§ 7513. Cause and procedure

8 "(a) Under regulations prescribed by the Office of Per-
9 sonnel Management, an agency may take an action covered
10 by this subchapter against an employee only for such cause
11 as will promote the efficiency of the service.

12 "(b) An employee against whom an action is pro-
18 posed is entitled to—

14 "(1) at least 30 days' advance written notice, un-
15 less there is reasonable cause to believe the employee
16 has committed a crime for which a sentence of imprison-
17 ment may be imposed, stating the specific reasons for
18 the proposed action;

19 "(2) a reasonable time, but not less than 7 days,
20 to answer orally and in writing and to furnish affidavits
21 and other documentary evidence in support of the
22 answer;

23 "(3) be represented by an attorney or other repre-
24 sentative; and

1 "(4) a written decision and the specific reasons
2 therefor at the earliest practicable date.

3 "(c) An agency may provide, by regulation, for a hear-
4 ing which may be in lieu of or in addition to the opportunity
5 to answer provided under subsection (b)(2) of this section.

6 "(d) An employee against whom an action is taken
7 under this section is entitled to appeal to the Merit Systems
8 Protection Board under section 7701 of this title.

9 "(e) Copies of the notice of proposed action, the answer
10 of the employee when written, a summary thereof when
11 made orally, the notice of decision and reasons therefor, and
12 any order effecting an action covered by this subchapter, to-
13 gether with any supporting material, shall be maintained by
14 the agency and shall be furnished to the Merit Systems Pro-
15 tection Board upon its request and to the employee affected
16 upon the employee's request.

17 "§ 7514. Regulations

18 "The Office of Personnel Management may prescribe
19 regulations to carry out the purpose of this subchapter.

20 "SUBCHAPTER III—ADMINISTRATIVE LAW

21 JUDGES

22 "§ 7521. Actions against administrative law judges

23 "(a) An action may be taken against an administrative
24 law judge appointed under section 3105 of this title by the

1 agency in which the administrative law judge is employed
 2 only for good cause established and determined by the Merit
 3 Systems Protection Board on the record after opportunity
 4 for hearing before the Board.

5 "(b) The actions covered by this section are—

6 "(1) a removal;

7 "(2) a suspension;

8 "(3) a reduction in grade;

9 "(4) a reduction in pay;

10 "(5) a furlough of 30 days or less; and

11 "(6) a written reprimand or admonition based on
 12 the performance or nonperformance of adjudicatory
 13 duties;

14 but do not include—

15 "(A) a suspension or removal under section 7532
 16 of this title;

17 "(B) a reduction in force action under section
 18 3502 of this title; or

19 "(C) any action initiated under section 1206 of this
 20 title."

21 "(b) So much of the analysis for chapter 75 of title 5,
 22 United States Code, precedes the items relating to subchapter
 23 IV is amended to read as follows:

1 "Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

"Sec.

"7501. Definitions.

"7502. Actions covered.

"7503. Cause and procedure.

"7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE
 THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FUR-
 LOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application.

"7512. Actions covered.

"7513. Cause and procedure.

"7514. Regulations.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"7521. Actions against administrative law judges."

15

APPEALS

16 SEC. 205. Chapter 77 of title 5, United States Code, is
 17 amended to read as follows:

1

"Chapter 77.—APPEALS

"Sec.

"7701. Appellate procedures.

"7702. Judicial review of decisions of the Merit Systems Protection
 Board.

1 "§ 7701. Appellate procedures

2 "(a) An employee, or applicant for employment, may
 3 submit an appeal to the Merit Systems Protection Board
 4 from any action which is appealable to the Board under
 5 any law, rule, or regulation. An appellant shall have the
 6 right—

7 "(1) to a hearing for which a transcript will be
 8 kept; and

9 "(2) to be represented by an attorney or other
 10 representative.

1 Appeals shall be processed in accordance with regulations
2 prescribed by the Board.

3 "(b) The Board may hear any case appealed to it
4 or may refer the case to an administrative law judge ap-
5 pointed under section 3105 of this title or other employee
6 of the Board designated by the Board to hear such cases.
7 The Board, administrative law judge, or other employee
8 (as the case may be) shall make a decision after receipt of
9 the written representations of the parties to the appeal and
10 after opportunity for a hearing under subsection (a)(1)
11 of this section. A copy of the decision shall be furnished to
12 each party to the appeal and to the Office of Personnel
13 Management.

14 "(c)(1) Subject to paragraph (2) of this subsection,
15 the decision of the agency shall be sustained under subsec-
16 tion (b) only if the agency's decision is supported by a pre-
17 ponderance of evidence.

18 "(2) Notwithstanding paragraph (1), the agency's de-
19 cision may not be sustained under subsection (b) of this sec-
20 tion if the employee or applicant for employment—

21 "(A) shows harmful error in the application of
22 the agency's procedures in arriving at such decision;

23 "(B) shows that the decision was based on any pro-
24 hibited personnel practice described in section 2302(b) of
25 this title; or

1 "(C) shows that the decision was not in accordance
2 with law.

3 "(d)(1) Except as provided in subsection (e) of this sec-
4 tion, any decision under subsection (b) of this section shall be
5 final unless—

6 "(A) a party to the appeal or the Director of the
7 Office of Personnel Management petitions the Board for a
8 review within 30 days after the receipt of the decision; or

9 "(B) the Board reopens and reconsiders a case on its
10 own motion.

11 The Board, for good cause shown, may extend the 30-day
12 period referred to in subparagraph (A) of this paragraph.
13 One member of the Board may grant a petition or otherwise
14 direct that a decision be reviewed by the full Board. The
15 preceding sentence shall not apply if, by law, a decision of an
16 administrative law judge is required to be acted upon by the
17 Board.

18 "(2) The Director of the Office of Personnel Manage-
19 ment may petition the Board for a review under paragraph
20 (1) of this subsection only if the Director is of the opinion
21 that the decision is erroneous and will have a substantial
22 impact on civil service laws, rules, or regulations under the
23 jurisdiction of the Office of Personnel Management.

24 "(e) The Equal Employment Opportunity Commission

1 may delegate to the Merit Systems Protection Board the
 2 authority to provide an employee or applicant with a prelimi-
 3 nary determination on the issue of discrimination whenever,
 4 as part of a complaint or appeal before the Merit Systems
 5 Protection Board on other grounds, the employee or applicant
 6 involved alleges a violation of section 717 of the Civil Rights
 7 Act of 1964 (42 U.S.C. 2000e-16), the Age Discrimination
 8 in Employment Act of 1967 (29 U.S.C. 631, 633a), or
 9 section 501 of the Rehabilitation Act of 1973 (29 U.S.C.
 10 791). Nothing in the subsection shall be construed to authorize
 11 the Equal Employment Opportunity Commission to delegate
 12 the function of making a final determination concerning the
 13 issue of discrimination.

14 "(f) The Board, or an administrative law judge or
 15 other employee of the Board designated to hear a case, may—

16 "(1) consolidate appeals filed by two or more
 17 appellants, or

18 "(2) join two or more appeals filed by the same
 19 appellant and hear and decide them concurrently,

20 if the deciding official or officials hearing the cases are of the
 21 opinion that the action could result in the appeals' being pro-
 22 cesses more expeditiously and would not adversely affect any
 23 party.

24 "(g)(1) Except as provided in paragraph (2) of this

1 subsection, the Board, or an administrative law judge or other
 2 employee of the Board designated to hear a case, may require
 3 payment by the agency involved of reasonable attorney fees
 4 incurred by an employee or applicant for employment if the
 5 employee or applicant is the prevailing party and the Board,
 6 administrative law judge, or other employee, as the case may
 7 be, determines that payment by the agency is warranted.

8 "(2) If an employee or applicant for employment is
 9 the prevailing party and the decision is based on a finding
 10 of discrimination prohibited under section 2302(b)(1) of
 11 this title, the payment of attorney fees shall be in accordance
 12 with the standards prescribed under section 706 of the Civil
 13 Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

14 "(h) The Board may, by regulation, provide for one
 15 or more alternative methods for settling matters subject to
 16 the appellate jurisdiction of the Board which shall be appli-
 17 cable at the election of an applicant for employment or of an
 18 employee who is not in a unit for which a labor organization
 19 is accorded exclusive recognition, and shall be in lieu of other
 20 procedures provided for under this section. A decision under
 21 such a method shall be final, unless the Board reopens and
 22 reconsiders a case at the request of the Office of Personnel
 23 Management under subsection (d) of this section.

24 "(i) The Merit Systems Protection Board may pre-
 25 scribe regulations to carry out the purpose of this section.

1 "§ 7702. *Judicial review of decisions of the Merit Systems*
2 *Protection Board*

3 "(a) *Any employee or applicant for employment ad-*
4 *versely affected or aggrieved by a final order or decision of*
5 *the Merit Systems Protection Board may obtain judicial re-*
6 *view of the order or decision.*

7 "(b) *A petition to review a final order or decision of the*
8 *Board shall be filed in the Court of Claims or a United States*
9 *district court as provided in chapters 91 and 85, respectively,*
10 *of title 28. Notwithstanding any other provision of law, any*
11 *petition for review must be filed within 30 days after the date*
12 *the petitioner received notice of the final order or decision of*
13 *the Board.*

14 "(c) *The court shall review the record for the purpose*
15 *of determining whether the findings are in accordance with*
16 *law, and whether the procedures required by statute and reg-*
17 *ulations were followed. The findings of the Board are con-*
18 *clusive if supported by the evidence in the record. If the*
19 *court determines that further evidence is necessary, it shall*
20 *remand the case to the Board. The Board, after such further*
21 *proceedings as may be required, may modify its findings,*
22 *and shall file with the court the record of such proceedings.*
23 *The findings of the Board are conclusive if supported by*
24 *the evidence in the record as supplemented.*

25 "(d) *If the Director of the Office of Personnel Manage-*

1 *ment determines, in his sole discretion, that the Board erred*
2 *in interpreting a civil service law, rule, regulation, or policy*
3 *directive affecting personnel management and that the Board's*
4 *final decision or order will have a substantial impact on any*
5 *civil service law, rule, or regulation, the Director may file a*
6 *petition for judicial review of the order or decision in the*
7 *United States District Court for the District of Columbia.*
8 *In addition to the named respondent, the Board and all other*
9 *parties to the proceedings before the Board shall have the*
10 *right to appear in the proceeding before the court. The*
11 *granting of the petition for judicial review shall be at the*
12 *discretion of the court."*

13 **TITLE III—STAFFING**

14 **VOLUNTEER SERVICES**

15 **SEC. 301.** (a) *Chapter 31 of title 5, United States*
16 *Code, is amended by adding at the end thereof the following*
17 *new section:*

18 "§ 3111. *Acceptance of volunteer service*

19 "(a) *For the purpose of this section, 'student' means*
20 *an individual who is enrolled, not less than half-time, in*
21 *a high school, trade school, technical or vocational institute,*
22 *junior college, college, university, or comparable recognized*
23 *educational institution. An individual who is a student is*
24 *deemed not to have ceased to be a student during an*

1 interim between school years if the interim is not more
 2 than 5 months and if the individual shows to the satisfaction
 3 of the Office of Personnel Management that the individual
 4 has a bona fide intention of continuing to pursue a course
 5 of study or training in the same or different educational
 6 institution during the school semester (or other period into
 7 which the school year is divided) immediately after the
 8 interim.

9 “(b) Notwithstanding section 3679(b) of the Revised
 10 Statutes (31 U.S.C. 665(b)), the head of an agency may
 11 accept, subject to regulations issued by the Office of Personnel
 12 Management, voluntary service for the United States if the
 13 service—

14 “(1) is performed by a student, with the permission
 15 of the institution at which the student is enrolled, as part
 16 of an agency program established for the purpose of
 17 providing educational experiences for students;

18 “(2) is to be uncompensated; and

19 “(3) would not, under the facts and circumstances
 20 involved, be performed by an employee in the absence of
 21 voluntary service under this section.

22 “(c) Any student who provides voluntary service
 23 under subsection (b) of this section shall not be considered
 24 a Federal employee for any purpose other than for purposes

1 of chapter 81 of this title (relating to compensation for in-
 2 jury) and sections 2671 through 2680 of title 28 (relating
 3 to tort claims).”.

4 (b) The analysis for chapter 31 of title 5, United States
 5 Code, is amended by adding at the end thereof the following
 6 new item:

“§111. Acceptance of volunteer service.”.

7 DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

8 SEC. 302. Section 2108 of title 5, United States Code,
 9 is amended—

10 (1) by striking out “and” at the end of para-
 11 graph (2);

12 (2) by inserting in paragraph (3) after “means”
 13 the following: “, except as provided in paragraph (4)
 14 of this section”;

15 (3) by striking out the period at the end of para-
 16 graph (3) and inserting in lieu thereof a semicolon;
 17 and

18 (4) by adding at the end thereof the following new
 19 paragraphs:

20 “(A) except for the purposes of chapters 43 and 75
 21 of this title, ‘preference eligible’ does not include a retired
 22 member of the armed forces unless—

23 “(A) the individual is a disabled veteran; or

1 “(B) the individual retired below the rank of
2 major or its equivalent; and

3 “(5) ‘retired member of the armed forces’ means
4 a member or former member of the armed forces who
5 is entitled, under statute, to retired, retirement, or re-
6 tainer pay on account of service as a member.”.

7 NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED
8 VETERANS

9 SEC. 303. (a) Chapter 31 of title 5, United States Code,
10 is amended by adding at the end thereof the following new
11 section:

12 “§ 3112. Preference eligibles; disabled; noncompetitive
13 appointment

14 “Under regulations prescribed by the Office of Person-
15 nel Management, an agency may make a noncompetitive ap-
16 pointment leading to conversion to career or career-conditional
17 employment of a disabled veteran who—

18 “(1) has a compensable service-connected disability
19 of 30 percent or more, or

20 “(2) is enrolled in or has successfully completed
21 a course of job related training prescribed by the Ad-
22 ministrator of Veterans’ Affairs under chapter 31 of
23 title 38.”.

24 (b) The analysis for chapter 31 of title 5, United States

1 Code, is amended by adding at the end thereof the following
2 new item:

 “§112. Preference eligibles; disabled; noncompetitive appointment.”.

3 EXAMINATION, CERTIFICATION, AND APPOINTMENT OF
4 PREFERENCE ELIGIBLES

5 SEC. 304. (a) Chapter 33 of title 5, United States Code,
6 is amended by adding after section 3303 the following new
7 section:

8 “§ 3303a. Preference eligibles; appointment; time limit

9 “(a) For the purpose of this subchapter—

10 “(1) the status of an individual, who is not a re-
11 tired member of the armed forces, as a preference eligi-
12 ble under section 2108(3) (A) or (B) of this title for
13 purposes of preference in consideration for appointment
14 shall terminate—

15 “(A) at the end of the 15-year period begin-
16 ning on the date of the individual’s separation from
17 active duty in the armed forces, or

18 “(B) upon appointment to a position that is not
19 time limited,

20 whichever occurs first; and

21 “(2) the status of an individual, who is a retired
22 member of the armed forces and who retired below the
23 rank of major or its equivalent, as a preference eligible
24 under section 2108(3) (A) or (B) of this title for pur-

1 poses of preference in consideration for appointment
 2 shall terminate at the end of the 3-year period beginning
 3 on the date of the individual's separation from active
 4 duty in the armed forces."

5 (b) Section 3305 of title 5, United States Code, is
 6 amended to read as follows:

7 "§ 3305. Competitive service; preference eligibles; appli-
 8 cations

9 "On the application of a preference eligible, a competi-
 10 tive examination shall be held for any position for which
 11 there is an appropriate list of eligibles."

12 (a) Section 3309 of title 5, United States Code, is
 18 amended to read as follows:

14 "§ 3309. Preference eligibles; examinations; additional
 15 credit for

16 "(a) Preference eligibles shall be referred for appoint-
 17 ment in accordance with regulations issued under section
 18 3317(a) of this title. A preference eligible who qualifies in an
 19 examination for entrance into the competitive service is
 20 entitled to additional points above the individual's earned
 21 rating, as follows:

22 "(1) subject to section 3303a of this title, a pref-
 23 erence eligible under section 2108(3) (A) or (B) of
 24 this title—5 points; and

1 "(2) a preference eligible under section 2108(3)
 2 (C)—(G) of this title—10 points.

3 "(b) A preference eligible under section 2108(3)(C)
 4 of this title who qualifies in an examination for entrance into
 5 the competitive service and who has a compensable service-
 6 connected disability of 10 percent or more, shall be placed at
 7 the head of the list of eligibles, except that in the case of sci-
 8 entific and professional positions in GS-9 or higher, the
 9 preference eligible shall be placed on the list of eligibles in
 10 the order of the eligible's rating, including points added under
 11 subsection (a) (2) of this section.

12 "(c) If other rating systems are used, preference eli-
 13 gibles are entitled to comparable preference."

14 (d) Section 3314 of title 5, United States Code, is
 15 amended by striking out "Civil Service Commission" and
 16 inserting in lieu thereof "Office of Personnel Management"
 17 and by striking out ", in the order named by section 3313 of
 18 this title".

19 (e) Section 3315 of title 5, United States Code, is
 20 amended—

21 (1) in the first sentence of subsection (a), by striking
 22 out ", in the order named by section 3313 of this title";

23 (2) in the second sentence of subsection (a), by strik-
 24 ing out "Civil Service Commission" and inserting in lieu
 25 thereof "Office of Personnel Management"; and

1 (3) in the first sentence of subsection (b), by striking
2 out "Commission" and inserting in lieu thereof "Office
3 of Personnel Management".

4 (f) Section 3317(a) of title 5, United States Code, is
5 amended to read as follows:

6 "(a) The Office of Personnel Management shall prescribe
7 regulations for the referral of eligibles to a nominating or
8 appointing authority for consideration for appointment to
9 each vacancy in the competitive service."

10 (g) Section 3321 of title 5, United States Code, is
11 amended to read as follows:

12 "§ 3321. Competitive service; probations; period of

13 "(a) The President may take such action, including
14 the issuance of rules, regulations, and directives, as shall
15 provide as nearly as conditions of good administration war-
16 rant, for a period of probation—

17 "(1) before an appointment in the competitive
18 service becomes final; and

19 "(2) before an initial appointment as a supervisor
20 or manager becomes final.

21 "(b) An individual—

22 "(1) who has been transferred, assigned, or pro-
23 moted from a position to a supervisory or managerial
24 position, and

25 "(2) who does not satisfactorily complete the pro-

1 bationary period under subsection (a)(2) of this
2 section,

3 shall be returned to a position of no lower grade and pay
4 than the position occupied by the individual immediately
5 before the transfer, assignment, or promotion of the individual
6 to the supervisory or managerial position. Nothing in this
7 section prohibits the taking of an action against an individual
8 serving a probationary period under subsection (a)(2) of
9 this section for cause unrelated to supervisory or managerial
10 performance."

11 (j) Section 3326 of title 5, United States Code, is
12 amended—

13 (1) in subsection (b)(1), by striking out " and,
14 if the position is in the competitive service, after ap-
15 proval by the Civil Service Commission"; and

16 (2) in subsection (c), by striking out " or the
17 authorization and approval, as the case may be,".

18 (k) The following sections of chapter 33 of title 5,
19 United States Code are repealed:

20 (1) section 3313 (relating to registers of eligibles);
21 and

22 (2) section 3319 (relating to members of family
23 restriction).

24 (l) The analysis for chapter 33 of title 5, United States
25 Code, is amended—

1 (1) by inserting after the item relating to section

2 3303 the following new item:

3 "3303a. Preference eligibles, appointment; time limit.";

4 (2) by amending the item relating to section 3305

5 to read as follows:

6 "3305. Competitive services; preference eligibles; applications.";

7 (3) by amending the item relating to section 3309

8 to read as follows:

9 "3309. Preference eligibles; examinations; additional credit for.";

10 and

11 (4) by striking out the items relating to sections

12 3313 and 3319.

13 RETENTION PREFERENCE

14 SEC. 305. (a) Section 3501(a) of title 5, United
15 States Code, is amended—

16 (1) by striking out "and" at the end of paragraph

17 (2);

18 (2) by striking out the period at the end of para-
19 graph (3) and inserting in lieu thereof "; and"; and

20 (3) by adding at the end thereof the following new
21 paragraph:

22 "(4) 'employee with limited preference' means any
preference eligible (other than a preference eligible un-
der section 2108(3)(C)-(G) of this title or subsection
(a)(3)(A) of this section)."

1 (b) Section 3502(b) of title 5, United States Code, is
2 amended to read as follows:

3 "(b) An employee with limited preference is entitled to
4 military preference in retention under this section only during
5 the 8-year period following the date of the employee's initial
6 appointment in or under an Executive agency, or if later,
7 during the 8-year period following the date of such employee's
8 initial return following a leave of absence during which the
9 employee was performing active service in the armed forces."

10 (c) Section 3502(a)(2) of title 5, United States Code,
11 is amended to read as follows:

12 "(2) military preference, subject to subsection (b) of
13 this section and section 3501(a)(3) of this title;"

14 (d) Section 3502 of title 5, United States Code, is
15 further amended by adding at the end thereof the following
16 new subsection:

17 "(c) An employee who is entitled to retention preference
18 and whose performance meets a standard of adequacy
19 under a performance appraisal system implemented under
20 chapter 43 of this title is entitled to be retained in preference
21 to other competing employees."

22 (e) Section 3503 of title 5, United States Code, is
23 amended—

24 (1) in subsection (a), by striking out "each pref-

1 erence eligible employed" and inserting in lieu thereof
2 "each competing employee"; and

3 (2) in subsection (b) by striking out "each pref-
4 erence eligible employed" and inserting in lieu thereof
5 "each competing employee."

6 TRAINING

7 SEC. 306. Section 4103 of title 5, United States Code,
8 is amended by inserting "(a)" before "In order to increase"
9 and by adding at the end thereof the following new subsec-
10 tion:

11 "(b)(1) Notwithstanding any other provision of this
12 chapter, an agency may train any employee of the agency
13 to prepare the employee for placement in another agency
14 if the head of the agency determines that the employee will
15 otherwise be separated under conditions which would entitle
16 the employee to severance pay under section 5595 of this
17 title.

18 "(2) Before undertaking any training under this sub-
19 section, the head of the agency shall obtain verification from
20 the Office of Personnel Management that there exists a reason-
21 able expectation of placement in another agency.

22 "(3) In selecting an employee for training under this
23 subsection, the head of the agency shall consider—

24 "(A) the extent to which the current skills, knowl-

1 edge, and abilities of the employee may be utilized in the
2 new position;

3 "(B) the employee's capability to learn new skills
4 and acquire knowledge and abilities needed in the new
5 position; and

6 "(C) the benefits to the Government which would
7 result from retaining the employee in the Federal
8 service."

9 TRAVEL, TRANSPORTATION, AND SUBSISTENCE

10 SEC. 307. Section 5723(d) of title 5, United States
11 Code, is amended by striking out "not".

12 RETIREMENT

13 SEC. 308. Section 8336(d)(2) of title 5, United States
14 Code, is amended to read as follows:

15 "(2) voluntarily, during a period when the agency
16 in which the employee is serving is undergoing a major
17 reorganization, a major reduction in force, or a major
18 transfer of function, as determined by the Office of Per-
19 sonnel Management, and the employee is serving in a
20 geographic area designated by the Office."

21 EXTENSION OF VETERANS READJUSTMENT

22 APPOINTMENT AUTHORITY

23 SEC. 309. Section 2014(b) of title 38, United States
24 Code, is amended to read as follows:

25 "(b) To further this policy, veterans of the Vietnam

1 era shall be eligible, in accordance with regulations which
 2 the Office of Personnel Management shall prescribe for vet-
 3 erans readjustment appointments and subsequent career-
 4 conditional appointments, under the terms and conditions of
 5 Executive Order Numbered 11521 (March 26, 1970), ex-
 6 cept that these appointments may be made up to and includ-
 7 ing GS-7 of the General Schedule described in section 5104
 8 of title 5, or its equivalent, and, for disabled veterans, the
 9 fourteen years of education limit shall not apply. Notwith-
 10 standing any limitations with respect to the period of eligibil-
 11 ity as prescribed in Executive Order Numbered 11521, a
 12 veteran of the Vietnam era who was eligible for appoint-
 13 ment under such Executive order on April 9, 1970, or a
 14 veteran of the Vietnam era who was separated on or after
 15 such date, may be appointed at any time. No veterans read-
 16 justment appointment may be made under the authority of
 17 this subsection after September 30, 1980."

18 NOTIFICATION OF VACANCIES IN THE CIVIL SERVICE

19 SEC. 310. Chapter 33 of title 5, United States Code, is
 20 amended by inserting at the end thereof the following new
 21 section:

22 "§ 3327. Notification of vacancies in the civil service

23 "(a) For the purpose of this section—

24 "(1) 'agency' has the meaning set forth in section
 25 5102 of this title; and

1 "(2) 'vacant position' means a position in an
 2 agency which is considered by the agency to be avail-
 3 able for employment.

4 "(b) Each agency shall promptly notify the Office of
 5 Personnel Management of—

6 "(1) each vacant position in the agency together
 7 with the address to which requests for information con-
 8 cerning the position may be sent; and

9 "(2) each position of which the Office was notified
 10 under paragraph (1) of this subsection and which has
 11 since been filled or is otherwise no longer considered by
 12 the agency to be available for employment.

13 "(c) The Office shall transmit to the United States
 14 Employment Service, and make available to each employ-
 15 ment office established by the Service, a comprehensive list-
 16 ing of all vacant positions and addresses of which the Office
 17 has been notified under subsection (b)(1) of this section.
 18 The Office shall revise the listing each month in accordance
 19 with the notifications of filled or otherwise unavailable posi-
 20 tions received by the Office under subsection (b)(2) of this
 21 section and shall promptly transmit to the Service each
 22 revision."

23 (b) The analysis for chapter 33 of title 5, United
 24 States Code, is amended by inserting after the item relating
 25 to section 3326 the following new item:

"3327. Notification of vacancies in the civil service."

1 DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED
2 SERVICES

3 SEC. 311. Section 5532 of title 5, United States Code,
4 relating to retired officers of the uniformed services, is
5 amended by striking out so much of such section as precedes
6 subsection (c) and by inserting in lieu thereof the following:

7 "§ 5532. Employment of retired members of the uniformed
8 services; reduction in pay

9 "(a) If any member or former member of a uniformed
10 service is receiving retired pay and is employed in a position
11 the annual rate of basic pay for which, when combined with
12 the member's annual rate of retired pay, exceeds the rate of
13 basic pay then currently paid for level V of the Executive
14 Schedule, such member's pay for such employment shall be
15 reduced by an amount computed under subsection (b) of this
16 section. The amounts of the reductions shall be deposited to
17 the general fund of the Treasury of the United States.

18 "(b) The amount of each reduction under subsection (a)
19 of this section for any pay period in connection with employ-
20 ment in a position shall be equal to the retired pay allocable
21 to the pay period, except that the amount of the reduction
22 may not result in the amount payable for the pay period,
23 when combined with the retired pay allocable to the pay
24 period, being at a rate less than the rate of basic pay then
25 currently paid for level V of the Executive Schedule."

1 (b) Section 5531 of title 5, United States Code, relating
2 to definitions, is amended—

3 (1) by striking out paragraph (1) and inserting in
4 lieu thereof the following:

5 "(1) 'member' has the meaning given such term by
6 section 101(23) of title 37;"

7 (2) by striking out the period at the end of para-
8 graph (2) and inserting in lieu thereof "; and"; and

9 (3) by adding at the end thereof the following new
10 paragraph:

11 "(3) 'retired pay' means—

12 "(A) retired pay, as defined in section 8311
13 (3) of this title, determined without regard to sub-
14 paragraphs (A) through (D) of such section 8311
15 (3); and

16 "(B) a pension or compensation paid under
17 laws administered by the Veterans' Administration
18 after a waiver of retired pay pursuant to section
19 3105 of title 38."

20 (c) Section 5532(c) of title 5, United States Code, is
21 amended—

22 (1) by striking out "subsection (b) of";

23 (2) by striking out "or retirement" each place it
24 appears;

1 (3) by striking out "a retired officer of a regular
2 component of a uniformed service" and inserting in lieu
3 thereof "a member or former member of a uniformed
4 service who is receiving retired pay"; and

5 (4) in paragraph (1), by striking out "whose re-
6 tirement was" and inserting in lieu thereof "whose
7 retired pay is computed, in whole or in part,".

8 (d) Section 5532(d) of title 5, United States Code,
9 is hereby repealed.

10 (e) The item relating to section 5532 in the analysis
11 for chapter 55 of title 5, United States Code, is amended to
12 read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay."

13 (f)(1) The amendments made by this section shall apply
14 only with respect to pay periods beginning after the effective
15 date of this Act and only with respect to members of the
16 uniformed services who first become eligible for retired pay
17 (as defined in section 5531(3) of title 5, United States Code
18 (as amended by this section)), after the effective date of
19 this Act.

20 (2) The provisions of section 5532 of title 5, United
21 States Code, as in effect immediately before the effective date
22 of this Act, shall apply with respect to any retired officer of
23 a regular component of the uniformed service who is eligible

1 for retired pay on or before such date in the same manner
2 and to the same extent as if the preceding subsections of this
3 section had not been enacted.

4 MINORITY RECRUITMENT PROGRAM

5 SEC. 312. Section 7151 of title 5, United States Code,
6 is amended—

7 (1) by striking out the section heading and inserting
8 in lieu thereof the following:

9 "§ 7151. Antidiscrimination policy; minority recruitment
10 program";

11 (2) by inserting after such section heading the fol-
12 lowing new subsection:

13 "(a) For the purpose of this section—

14 "(1) 'underrepresentation' means a situation in
15 which the number of members of a minority group desig-
16 nation (determined by the Equal Employment Oppor-
17 tunity Commission in consultation with the Office of Per-
18 sonnel Management, on the basis of the policy set forth in
19 subsection (b) of this section) within a category of civil
20 service employment constitutes a lower percentage of the
21 total number of employees within the employment cate-
22 gory than the percentage that the minority constituted
23 within the labor force of the United States, as determined
24 under the most recent decennial or mid-decade census, or
25 current population survey, under title 13, and

1 “(2) ‘category of civil service employment’ means—

2 “(A) each grade of the General Schedule de-
3 scribed in section 5104 of this title;

4 “(B) each position subject to subchapter IV of
5 chapter 53 of this title;

6 “(C) such occupational, professional, or other
7 groupings (including occupational series) within the
8 categories established under subparagraphs (A) and
9 (B) of this paragraph as the Office determines
10 appropriate.”;

11 (3) by inserting “(b)” before “It is the policy”;
12 and

13 (4) by adding at the end thereof the following new
14 subsection:

15 “(c) Not later than 180 days after the date of the
16 enactment of the Civil Service Reform Act of 1978, the
17 Office of Personnel Management shall, by regulation, imple-
18 ment a minority recruitment program which shall provide,
19 to the maximum extent practicable—

20 “(1) that each Executive agency conduct a continu-
21 ing program for the recruitment of members of minor-
22 ities for positions in the agency to carry out the policy
23 set forth in subsection (b) in a manner designed to
24 eliminate underrepresentation of minorities in the various
25 categories of civil service employment within the Fed-

1 eral service, with special efforts directed at recruiting
2 in minority communities, in educational institutions, and
3 from other sources from which minorities can be
4 recruited; and

5 “(2) that the Office conduct a continuing program
6 of—

7 “(A) assistance to agencies in carrying out
8 programs under paragraph (1) of this subsection,
9 and

10 “(B) evaluation and oversight of such recruit-
11 ment programs to determine their effectiveness in
12 eliminating such minority underrepresentation.

13 “(d) Not later than 60 days after the date of the
14 enactment of the Civil Service Reform Act of 1978, the
15 Equal Employment Opportunity Commission shall—

16 “(1) establish the guidelines proposed to be used in
17 carrying out the program required under subsection (c)
18 of this section; and

19 “(2) make determinations of underrepresentation
20 which are proposed to be used initially under such pro-
21 gram; and

22 “(3) transmit to the Executive agencies involved,
23 to the Office of Personnel Management, and to the Con-
24 gress the determinations made under paragraph (2) of
25 this subsection.

26 “(e) Not later than January 31 of each year, the

1 *Office shall prepare and transmit to each House of the Con-*
 2 *gress a report on the activities of the Office and of Executive*
 3 *agencies under subsection (c) of this section, including the*
 4 *affirmative action plans submitted under section 717 of the*
 5 *Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the per-*
 6 *sonnel data file maintained by the Office of Personnel Man-*
 7 *agement, and any other data necessary to evaluate the effec-*
 8 *tiveness of the program for each category of civil service*
 9 *employment and for each minority group designation, for*
 10 *the preceding fiscal year, together with recommendations for*
 11 *administrative or legislative action the Office considers*
 12 *appropriate."*

13 **EFFECTIVE DATE**

14 *SEC. 313. The amendments relating to the following*
 15 *sections of title 5, United States Code, shall take effect on*
 16 *October 1, 1980:*

17 *(1) section 2108 (4) and (5),*

18 *(2) section 3303a,*

19 *(3) section 3305, and*

20 *(4) section 3309.*

21 **TITLE IV—SENIOR EXECUTIVE SERVICE**

22 **GENERAL PROVISIONS**

23 *SEC. 401. (a) Chapter 21 of title 5, United States*
 24 *Code, is amended by inserting after section 2101 the follow-*
 25 *ing new section:*

1 **"§ 2101a. The Senior Executive Service**

2 *"The 'Senior Executive Service' consists of Senior*
 3 *Executive Service positions (as defined in section*
 4 *3132(a)(2) of this title)."*

5 *(b) Section 2102(a)(1) of title 5, United States Code,*
 6 *is amended—*

7 *(1) by striking out "and" at the end of subpara-*
 8 *graph (A);*

9 *(2) by adding "and" at the end of subparagraph*
 10 *(B); and*

11 *(3) by adding at the end thereof the following new*
 12 *subparagraph:*

13 *"(C) positions in the Senior Executive Ser-*
 14 *vice;"*

15 *(c) Section 2103(a) of title 5, United States Code, is*
 16 *amended by inserting before the period at the end thereof the*
 17 *following: "or the Senior Executive Service".*

18 *(d) Section 2108(3) of title 5, United States Code (as*
 19 *amended in section 302 of this Act), is further amended—*

20 *(1) by striking out the period at the end thereof*
 21 *and inserting in lieu thereof a semicolon; and*

22 *(2) by adding at the end thereof the following:*

23 *"but does not include applicants for, or members of the*
 24 *Senior Executive Service."*

25 *(e) The analysis for chapter 21 of title 5, United States*

1 Code, is amended by inserting after the item relating to
2 section 2101 the following new item:

"2101a. *The Senior Executive Service.*".

3 **AUTHORITY FOR EMPLOYMENT**

4 **SEC. 402. (a)** Chapter 31 of title 5, United States Code,
5 is amended by inserting after section 3112 (as added by
6 section 303(a) of this Act), the following new subchapter:

7 **"SUBCHAPTER II—THE SENIOR EXECUTIVE**
8 **SERVICE**

9 **"§ 3131. The Senior Executive Service**

10 **"(a)** It is the purpose of this subchapter to establish a
11 Senior Executive Service to ensure that the management
12 of the Government of the United States is responsive to the
13 needs, policies, and goals of the Nation and otherwise is of the
14 highest quality. The Senior Executive Service shall be admin-
15 istered so as to—

16 **"(1)** provide for a compensation system, including
17 salaries, benefits, and incentives, and for other conditions
18 of employment, designed to attract and retain highly com-
19 petent senior executives;

20 **"(2)** ensure that compensation, retention, and tenure
21 are contingent on managerial success which is meas-
22 ured on the basis of individual and organizational
23 performance (including such factors as improvements in

1 quality of work or service, cost efficiency, and timeliness
2 of performance);

3 **"(3)** recognize exceptional accomplishment;

4 **"(4)** enable the head of an agency to reassign senior
5 executives to best accomplish the agency's mission;

6 **"(5)** provide for severance pay, retirement benefits,
7 and placement assistance for senior executives who are
8 removed from the Senior Executive Service for non-
9 disciplinary reasons;

10 **"(6)** protect senior executives from arbitrary or
11 capricious actions;

12 **"(7)** provide for program continuity and policy
13 advocacy in the management of public programs;

14 **"(8)** maintain a merit personnel system free of im-
15 proper political interference;

16 **"(9)** ensure accountability for honest, economical,
17 and efficient Government;

18 **"(10)** ensure compliance with all applicable civil
19 service laws, rules, and regulations including those relat-
20 ing to equal employment opportunity, political activity,
21 and conflicts of interest; and

22 **"(11)** provide for the initial and continuing sys-
23 tematic development of highly competent senior executives.

24 **"§ 3132. Definitions and exclusions**

25 **"(a)** For the purpose of this subchapter—

1 “(1) ‘agency’ means an Executive agency, the
2 Administrative Office of the United States Courts, and
3 the Government Printing Office, but does not include—

4 “(A) a Government corporation;

5 “(B) the Central Intelligence Agency, the
6 Defense Intelligence Agency, the National Security
7 Agency, or any Executive agency or unit thereof
8 which is designated by the President and which
9 conducts foreign intelligence or counterintelligence
10 activities; or

11 “(C) the General Accounting Office;

12 “(2) ‘Senior Executive Service position’ means
13 any position (other than a position in the Foreign Serv-
14 ice of the United States or an administrative law judge
15 position under section 3105 of this title) in an agency
16 which is in GS-16, 17, or 18 of the General Schedule
17 or in level IV or V of the Executive Schedule, or an
18 equivalent position, which is not required to be filled by
19 an appointment by the President by and with the advice
20 and consent of the Senate, and in which an employee—

21 “(A) directs the work of an organizational
22 unit;

23 “(B) is held accountable for the success of one
24 or more specific programs or projects; or

1 “(C) supervises the work of employees other
2 than personal assistants;

3 “(3) ‘senior executive’ means a member of the
4 Senior Executive Service;

5 “(4) ‘career appointee’ means an individual in a
6 Senior Executive Service position whose appointment to
7 the position or previous appointment to another Senior
8 Executive Service position was based on—

9 “(A) approval by the Office of Personnel Man-
10 agement of the managerial qualifications of such
11 individual; and

12 “(B) selection through a merit staffing process
13 consistent with Office of Personnel Management regu-
14 lations;

15 “(5) ‘limited term appointee’ means an individual
16 appointed under a nonrenewable appointment for a term
17 of 3 years or less to a Senior Executive Service posi-
18 tion the duties of which will expire at the end of such
19 term;

20 “(6) ‘limited emergency appointee’ means an in-
21 dividual appointed under a nonrenewable appointment,
22 not to exceed 18 months, to a Senior Executive Service
23 position established to meet a bona fide, unanticipated,
24 urgent need;

25 “(7) ‘noncareer appointee’ means an individual in

1 a Senior Executive Service position who is not a career
2 appointee, a limited term appointee, or a limited emer-
3 gency appointee;

4 "(8) 'career reserved position' means a position
5 which is required to be filled by a career appointee and
6 which is designated under subsection (b) of this section;
7 and

8 "(9) 'general position' means any position, other
9 than a career reserved position, which may be filled
10 by either a career appointee, noncareer appointee, lim-
11 ited emergency appointee, or limited term appointee.

12 "(b)(1) For the purpose of paragraph (8) of subsec-
13 tion (a) of this section, the Office of Personnel Management
14 shall prescribe the criteria and regulations governing the
15 designation of career reserved positions. The criteria and
16 regulations shall provide that a position shall be designated
17 as a career reserved position only if the filling of the position
18 by a career appointee is necessary to ensure impartiality, or
19 the public's confidence in the impartiality, of the Govern-
20 ment. The head of each agency shall be responsible for
21 designating career reserved positions in such agency in
22 accordance with such criteria and regulations.

23 "(2) A position for which a designation is in effect
24 under this subsection may be held only by a career appointee.

25 "(3) The Office of Personnel Management shall period-

1 ically review general positions to determine whether the posi-
2 tions should be designated as career reserved. If the Office
3 determines that any such position should be so designated, it
4 shall order the agency to make the designation.

5 "(4) Not later than March 1 of each year, the head of
6 each agency shall publish in the Federal Register a list of
7 positions in the agency which were career reserved positions
8 during the preceding calendar year.

9 "(c) An agency may file an application with the Office
10 of Personnel Management, setting forth reasons why it, or a
11 unit thereof, should be excluded from any provision or re-
12 quirement of this subchapter. The Office of Personnel Man-
13 agement shall—

14 "(1) review the application and stated reasons,

15 "(2) undertake an investigation to determine
16 whether the agency or unit should be excluded from
17 any provision or requirement of this subchapter, and

18 "(3) upon completion of its review and investiga-
19 tion, recommend to the President whether the agency or
20 unit should be excluded from any provision or require-
21 ment of this subchapter.

22 If the Office recommends that an agency or unit thereof be
23 excluded from any provision or requirement of this sub-
24 chapter, the President may, on written determination, make

1 the exclusion to the extent and for the period determined by
2 President to be appropriate.

3 “(d) The Office of Personnel Management may at any
4 time recommend to the President that any exclusion pre-
5 viously granted to an agency or unit under subsection (c)
6 of this section be revoked. Upon recommendation of the Office,
7 the President may revoke, by written determination, any ex-
8 clusion made under subsection (a) of this section.

9 “(e) If—
10 “(1) any agency is excluded under subsection (c)
11 of this section, or

12 “(2) any exclusion is revoked under subsection (d)
13 of this section,
14 the Office of Personnel Management shall, within 30 days
15 after the action, transmit to the Congress a report concern-
16 ing the exclusion or revocation.

17 “§ 3133. Authorization of positions; authority for appoint-
18 ment

19 “(a) During each odd-numbered calendar year, each
20 agency shall—

21 “(1) examine its needs for Senior Executive Serv-
22 ice positions for each of the 2 fiscal years beginning
23 after such calendar year; and

24 “(2) submit to the Office of Personnel Management

1 a written request for a specific number of Senior Execu-
2 tive Service positions for each of such fiscal years.

3 “(b) Each agency request submitted under subsection
4 (a) of this section shall be based on—

5 “(1) the anticipated type and extent of program
6 activities of the agency for each of the 2 fiscal years
7 involved; and

8 “(2) such other factors as may be prescribed from
9 time to time by the Office of Personnel Management.

10 “(c) The Office of Personnel Management, in con-
11 sultation with the Office of Management and Budget, shall
12 review the request of each agency and shall authorize, for
13 each of the 2 fiscal years covered by requests required under
14 subsection (b) of this section, a specific number of Senior
15 Executive Service positions for each agency.

16 “(d)(1) The Office may, on a written request of an
17 agency or on its own initiative, make an adjustment in the
18 number of positions authorized for any agency. Each agency
19 request under this paragraph shall be submitted in such form,
20 and shall be based on such factors, as the Office of Personnel
21 Management shall prescribe.

22 “(2) The total number of positions in the Senior Execu-
23 tive Service may not at any time during any fiscal year
24 exceed 105 percent of the total number of positions authorized
25 under subsection (c) of this section for such fiscal year.

1 “(e) *Appointments to the Senior Executive Service may*
 2 *be made by appropriate appointing authorities of agencies*
 3 *subject to the requirements and limitations of this title.*

4 “§ 3134. *Limitations on noncareer appointments*

5 “(a) *During each calendar year, each agency shall—*
 6 “(1) *examine its needs for employment of noncareer*
 7 *appointees for the fiscal year beginning in the following*
 8 *year; and*

9 “(2) *submit to the Office of Personnel Management,*
 10 *in accordance with regulations prescribed by the Office,*
 11 *a written request for authority to employ a specific*
 12 *number of noncareer appointees for such fiscal year.*

13 “(b) *The number of noncareer appointees in each agency*
 14 *will be determined annually by the Office of Personnel Man-*
 15 *agement on the basis of demonstrated need of the agency.*
 16 *The total number of noncareer appointees in all agencies*
 17 *may not exceed 10 percent of the total number of Senior*
 18 *Executive Service positions in all agencies.*

19 “(c) *The number of Senior Executive Service positions*
 20 *in any agency which are filled by noncareer appointees may*
 21 *not at any time exceed the greater of—*

22 “(1) *25 percent of the total number of Senior*
 23 *Executive Service positions in the agency; or*

24 “(2) *the number of positions in the agency which*

1 *were filled on the date of the enactment of the Civil*
 2 *Service Reform Act of 1978 by—*

3 “(A) *noncareer executive assignments under*
 4 *subpart F of part 305 of title 5, Code of Federal*
 5 *Regulations, as in effect on such date, or*

6 “(B) *appointments to level IV or V of the*
 7 *Executive Schedule which were not required to be*
 8 *made by and with the advice and consent of the*
 9 *Senate.*

10 *This subsection shall not apply in the case of any agency*
 11 *having fewer than 4 Senior Executive Service positions.*

12 “§ 3135. *Biennial report*

13 “(a) *The Office of Personnel Management shall submit*
 14 *to each House of the Congress, at the time the budget is*
 15 *submitted by the President to the Congress during each even-*
 16 *numbered calendar year, a report on the Senior Executive*
 17 *Service. The report shall include—*

18 “(1) *the number of Senior Executive Service posi-*
 19 *tions authorized for the then current fiscal year, in the*
 20 *aggregate and by agency, and the projected number of*
 21 *Senior Executive Service positions to be authorized for*
 22 *the next two fiscal years, in the aggregate and by agency;*

23 “(2) *a description of each exclusion in effect dur-*
 24 *ing the preceding calendar year under section 132(c) of*
 25 *this title;*

1 “(3) the authorized number of career appointees
2 and noncareer appointees, in the aggregate and by
3 agency, for such fiscal year;

4 “(4) the number of limited term appointees and
5 limited emergency appointees, in the aggregate and by
6 agency, employed during the preceding calendar year;

7 “(5) the titles of career reserved positions designated
8 for such fiscal year;

9 “(6) the percentage of senior executives at each pay
10 rate, in the aggregate and by agency, employed at the
11 end of the preceding calendar year;

12 “(7) the distribution and amount of performance
13 awards, in the aggregate and by agency, paid during
14 the preceding calendar year; and

15 “(8) such other information regarding the Senior
16 Executive Service as the Office of Personnel Manage-
17 ment considers appropriate.

18 “(b) The Office of Personnel Management shall submit
19 to each House of the Congress, at the time the budget is sub-
20 mitted to the Congress during each odd-numbered calendar
21 year, an interim report showing changes in matters required
22 to be reported under subsection (a) of this section.

23 “§ 3136. Regulations

24 “The Office of Personnel Management shall prescribe
25 regulations to carry out the purpose of this subchapter.”

1 (b) Section 3109 of title 5, United States Code, is
2 amended by inserting at the end thereof the following new
3 subsection:

4 “(c) Positions in the Senior Executive Service may not
5 be filled under the authority of subsection (b) of this
6 section.”

7 (c) The analysis for chapter 31 of title 5, United
8 States Code, is amended—

9 (1) by striking out the heading for chapter 31 and
10 inserting in lieu thereof the following:

11 “CHAPTER 31—AUTHORITY FOR EMPLOYMENT
12 “SUBCHAPTER I—EMPLOYMENT
13 AUTHORITIES”;

14 and

15 (2) by inserting at the end thereof the following:

 “SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE
 “Sec.
 “§131. The Senior Executive Service.
 “§132. Definitions and exclusions.
 “§133. Authorization of positions; authority for appointment.
 “§134. Limitations on noncareer appointments.
 “§135. Biennial report.
 “§136. Regulations.”

16 EXAMINATION, CERTIFICATION, AND APPOINTMENT

17 SEC. 403. (a) Chapter 33 of title 5, United States Code,
18 is amended by adding at the end thereof the following new
19 subchapter:

1 **"SUBCHAPTER VIII—APPOINTMENT, REAS-**
 2 **SIGNMENT, TRANSFER, AND DEVELOP-**
 3 **MENT IN THE SENIOR EXECUTIVE SERV-**
 4 **ICE**

5 **"§ 3391. Definitions**

6 *"For the purpose of this subchapter, 'agency', 'Senior*
 7 *Executive Service position', 'senior executive', 'career*
 8 *appointee', 'limited term appointee', 'limited emergency*
 9 *appointee', 'noncareer appointee', and 'general position' have*
 10 *the meanings set forth in section 3132(a) of this title*

11 **"§ 3392. General appointment provisions**

12 *"(a) Qualification standards shall be established by the*
 13 *head of each agency for each Senior Executive Service posi-*
 14 *tion in the agency and shall be in accordance with require-*
 15 *ments established by the Office of Personnel Management.*

16 *"(b) (1) An individual may be appointed to a Senior*
 17 *Executive Service position only if the appointing authority*
 18 *has determined in writing that the individual meets the*
 19 *qualification requirements of the position.*

20 *"(2) Not more than 30 percent of the individuals serv-*
 21 *ing at any time in Senior Executive Service positions may*
 22 *have served less than an aggregate of 5 years in the civil serv-*
 23 *ice before appointment to such positions, unless the President*

1 *certifies to the Congress that the limitation would hinder the*
 2 *efficiency of the Government.*

3 *"(c) If a career appointee is appointed by the Presi-*
 4 *dent, by and with the advice and consent of the Senate, to*
 5 *a civilian position in the executive branch which is not*
 6 *in the Senior Executive Service, and the rate of basic pay*
 7 *payable for which is equal to or greater than the rate pay-*
 8 *able for level V of the Executive Schedule, the career*
 9 *appointee may elect (at such time and in such manner as the*
 10 *Office of Personnel Management may prescribe) to continue to*
 11 *have the provisions of this title relating to basic pay, perform-*
 12 *ance awards, awarding of ranks, severance pay, leave, and*
 13 *retirement apply as if the career appointee remained in the*
 14 *Senior Executive Service position from which he was ap-*
 15 *pointed. Such provisions shall apply in lieu of the provisions*
 16 *which would otherwise apply—*

17 *"(1) to the extent provided under regulations pre-*
 18 *scribed by the Office, and*

19 *"(2) so long as the appointee continues to serve*
 20 *under such Presidential appointment."*

21 **"§ 3393. Career appointments**

22 *"(a) Each agency shall establish a recruitment program,*
 23 *in accordance with guidelines which shall be issued by the*
 24 *Office of Personnel Management, which provides for recruit-*
 25 *ment of career appointees from—*

1 “(1) all groups of qualified individual applicants
2 within the civil service; or

3 “(2) all groups of qualified individual applicants
4 whether or not within the civil service.

5 “(b) Each agency shall establish one or more executive
6 resources boards, as appropriate, the members of which
7 shall be appointed by the head of the agency from among
8 employees of the agency. The boards shall, in accordance
9 with merit staffing requirements established by the Office of
10 Personnel Management—

11 “(1) review the qualifications of candidates for
12 appointment as career appointees; and

13 “(2) make written recommendations concerning
14 candidates to the appropriate appointing authorities.

15 “(c)(1) The Office of Personnel Management shall
16 establish one or more qualifications review boards, as ap-
17 propriate, the members of which shall be appointed by the
18 Director from within and outside the civil service on the
19 basis of their knowledge of public management and other
20 appropriate occupational fields. It is the function of the
21 boards to certify the managerial qualifications of candidates
22 for entry as career appointees into the Senior Executive Ser-
23 vice in accordance with regulations prescribed by the Office
24 of Personnel Management.

25 “(2) The Office of Personnel Management shall, in

1 consultation with the various qualification review boards,
2 prescribe criteria for establishing managerial qualifications
3 for appointment to the Senior Executive Service. The cri-
4 teria shall provide for—

5 “(A) consideration of demonstrated managerial ex-
6 perience;

7 “(B) consideration of successful participation in a
8 career executive development program which is approved
9 by the Office of Personnel Management; and

10 “(C) sufficient flexibility to allow for the appoint-
11 ment of individuals who have special or unique qualities
12 which indicate a likelihood of managerial success and
13 who would not otherwise be eligible for appointment.

14 “(d) An individual's initial appointment as a career
15 appointee shall become final only after the individual has
16 served a 1-year probationary period as a career appointee.

17 “§ 3394. Noncareer and limited appointments

18 “(a) Each noncareer appointee, limited term appointee,
19 and limited emergency appointee shall meet the qualifications
20 of the position to which appointed, as determined by the ap-
21 pointing authority.

22 “(b) An individual may not be appointed as a limited
23 term appointee or as a limited emergency appointee without
24 the prior approval of the exercise of such appointing author-
25 ity by the Office of Personnel Management.

1 "§ 3395. Reassignment and transfer within the Senior
2 Executive Service

3 "(a) A career appointee in an agency—

4 "(1) may be reassigned to any Senior Executive
5 Service position in the same agency for which the ap-
6 pointee is qualified; and

7 "(2) may transfer to a Senior Executive Service
8 position in another agency for which the appointee is
9 qualified, with the approval of the agency to which the
10 appointee transfers.

11 "(b)(1) A limited emergency appointee may be reas-
12 signed to another Senior Executive Service position in the
13 same agency established to meet a bona fide, unanticipated,
14 urgent need, except that the appointee may not serve in one
15 or more positions in such agency under such appointment in
16 excess of 18 months.

17 "(2) A limited term appointee may be reassigned to an-
18 other Senior Executive Service position in the same agency
19 the duties of which will expire at the end of a term of 3
20 years or less, except that the appointee may not serve in one
21 or more positions in the agency under such appointment in
22 excess of 3 years.

23 "(c) A limited term appointee or a limited emergency
24 appointee may not be appointed to, or continue to hold, a
25 position under such an appointment if, within the preceding

1 48 months, the individual has served more than 36 months,
2 in the aggregate, under any combination of such types of
3 appointment.

4 "(d) A noncareer appointee in an agency—

5 "(1) may be reassigned to any general position in
6 the agency for which the appointee is qualified; and

7 "(2) may transfer to a general position in another
8 agency with the approval of the agency to which the
9 appointee transfers.

10 "(e) A career appointee in an agency may not be in-
11 voluntarily reassigned within 120 days after an appoint-
12 ment of the head of such agency.

13 "§ 3396. Development for and within the Senior Executive
14 Service

15 "(a) The Office of Personnel Management shall estab-
16 lish programs for the systematic development of candidates
17 for the Senior Executive Service and for the continuing
18 development of senior executives, or require agencies to estab-
19 lish such programs which meet criteria prescribed by the
20 Office of Personnel Management.

21 "(b) The Office of Personnel Management shall assist
22 agencies in the establishment of programs required under
23 subsection (a) of this section and shall monitor the imple-
24 mentation of the programs. If the Office of Personnel Man-

1 *agement finds that any agency's program under subsection*
 2 *(a) of this section is not in compliance with the criteria pre-*
 3 *scribed under such subsection, it shall require the agency to*
 4 *take such corrective action as many be necessary to bring*
 5 *the program into compliance with the criteria.*

6 *"(c) (1) The head of an agency may grant a sabbatical*
 7 *leave to any career appointee for not to exceed 11 months in*
 8 *order to permit the appointee to engage in study or uncom-*
 9 *pensated work experience which will contribute to the ap-*
 10 *pointee's development and effectiveness. A sabbatical leave*
 11 *shall not result in loss of, or reduction in, pay, leave to*
 12 *which the career appointee is otherwise entitled, credit for time*
 13 *or service, or performance or efficiency rating. The head of*
 14 *the agency may authorize in accordance with chapter 57 of*
 15 *this title such travel and per diem costs as the head of the*
 16 *agency may determine to be essential for the study or*
 17 *experience.*

18 *"(2) A sabbatical leave under this subsection may not*
 19 *be granted to any career appointee—*

20 *"(A) more than once in any 10-year period;*

21 *"(B) unless the appointee has completed 7 years*
 22 *of service—*

23 *"(i) in one or more positions in the Senior*
 24 *Executive Service;*

1 *"(ii) in one or more other positions in the*
 2 *civil service the level of duties and responsibilities of*
 3 *which are equivalent to the level of duties and re-*
 4 *sponsibilities of positions in the Senior Executive*
 5 *Service; or*

6 *"(iii) in any combination of such positions;*
 7 *except that not less than 2 years of such 7 years of*
 8 *service must be in the Senior Executive Service; and*

9 *"(C) if the appointee is eligible for voluntary*
 10 *retirement with a right to an immediate annuity under*
 11 *section 8336 of this title.*

12 *Any period of assignment under section 3373 of this title,*
 13 *relating to assignments of employees to State and local gov-*
 14 *ernments, shall not be considered a period of service for the*
 15 *purpose of subparagraph (B) of this paragraph.*

16 *"(3)(A) Any career appointee in an agency may be*
 17 *granted a sabbatical leave under this subsection only if the*
 18 *appointee agrees, as a condition of accepting the sabbatical*
 19 *leave, to serve with the agency upon the completion of the*
 20 *leave, for a period of 2 consecutive years.*

21 *"(B) Each agreement required under subparagraph*
 22 *(A) of this paragraph shall provide that in the event the*
 23 *career appointee fails to carry out the agreement (except for*
 24 *good and sufficient reason as determined by the head of the*

1 agency involved) the appointee shall be liable to the United
2 States for payment of all expenses (including salary) of the
3 sabbatical leave. The amount shall be treated as a debt due the
4 United States.

5 "§ 3397. Regulations

6 "The Office of Personnel Management shall prescribe
7 regulations to carry out the purpose of this subchapter."

8 (b) The analysis for chapter 33 of title 5, United States
9 Code, is amended by inserting after the item relating to section
10 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT,
TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"3391. Definitions.

"3392. General appointment provisions.

"3393. Career appointments.

"3394. Noncareer and limited appointments.

"3395. Reassignment and transfer within the Senior Executive Service.

"3396. Development for and within the Senior Executive Service.

"3397. Regulations."

11 RETENTION PREFERENCE

12 SEC. 404. (a) Section 3501(b) of title 5, United
13 States Code, is amended by striking out the period at the
14 end thereof and inserting in lieu thereof: "or to a member of
15 the Senior Executive Service."

16 (b) Chapter 35 of title 5, United States Code, is
17 amended by adding at the end thereof the following new
18 subchapter:

1 "SUBCHAPTER V—REMOVAL, REINSTATE-
2 MENT, AND GUARANTEED PLACEMENT
3 PROVISIONS IN THE SENIOR EXECUTIVE
4 SERVICE

5 "§ 3591. Definitions

6 "For the purpose of this subchapter, 'agency', 'Senior
7 Executive Service position', 'senior executive', 'career ap-
8 pointee', 'limited term appointee', 'limited emergency ap-
9 pointee', 'noncareer appointee', and 'general position' have
10 the meanings set forth in section 3132(a) of this title.

11 "§ 3592. Removal from the Senior Executive Service

12 "(a) A career appointee may be removed from the
13 Senior Executive Service to a civil service position outside
14 of the Senior Executive Service—

15 "(1) during the 1-year period of probation under
16 section 3393(d) of this title; or

17 "(2) at any time for less than fully successful man-
18 agerial performance as determined under subchapter II
19 of chapter 43 of this title.

20 "(b) A limited emergency appointee, limited term ap-
21 pointee, or noncareer appointee may be removed from the
22 service at any time.

23 "§ 3593. Reinstatement in the Senior Executive Service

24 "(a) A former career appointee may be reinstated,
25 without regard to section 3393 (b) and (c) of this title, to

1 any Senior Executive Service position for which the appointee
2 is qualified if—

3 “(1) the appointee has successfully completed the
4 probationary period established under section 3393(d)
5 of this title; and

6 “(2) the appointee left the Senior Executive Service
7 for reasons other than misconduct, neglect of duty, mal-
8 feasant, or less than fully successful managerial per-
9 formance as determined under subchapter II of chapter
10 43 of this title.

11 “(b) A career appointee who is appointed by the
12 President to any civil service position outside the Senior
13 Executive Service and who leaves the position for reasons
14 other than misconduct, neglect of duty, or malfeasance shall
15 be entitled to be placed in the Senior Executive Service if
16 the appointee applies to the Office of Personnel Management
17 within 90 days after separation from the Presidential
18 appointment.

19 “§ 3594. Guaranteed placement in other personnel systems

20 “(a) A career appointee who was appointed from a civil
21 service position held under a career or career-conditional
22 appointment (or an appointment of equivalent tenure, as
23 determined by the Office of Personnel Management) and who,
24 for reasons other than misconduct, neglect of duty, or mal-
25 feasant, is removed from the Senior Executive Service dur-

1 ing the probationary period under section 3393(d) of this
2 title, shall be entitled to be placed in a civil service position
3 (other than a Senior Executive Service position) in any
4 agency.

5 “(b) A career appointee—

6 “(1) who has completed the probationary period un-
7 der section 3393(d) of this title; and

8 “(2) who is removed from the Senior Executive
9 Service for less than fully successful managerial per-
10 formance as determined under subchapter II of chapter
11 43 of this title;

12 shall be entitled to be placed in a civil service position (other
13 than a Senior Executive Service position) in any agency.

14 “(c) (1) For purposes of subsections (a) and (b) of
15 this section—

16 “(A) the position in which any career appointee
17 is placed under such subsections shall be a continuing,
18 full-time position at GS-15 or above of the General
19 Schedule, or an equivalent position, and, in the case of a
20 career appointee referred to in subsection (a) of this sec-
21 tion, the career appointee shall be entitled to an appoint-
22 ment of a tenure equivalent to the tenure of the appoint-
23 ment held in the position from which the career appointee
24 was appointed;

25 “(B) any career appointee placed under subsection

1 (a) or (b) shall be entitled to receive basic pay at the
2 higher of—

3 “(i) the rate of basic pay in effect for the posi-
4 tion in which placed;

5 “(ii) the rate of basic pay in effect at the time
6 of the placement for the position the career appointee
7 held in the civil service immediately before being
8 appointed to the Senior Executive Service; or

9 “(iii) the rate of basic pay in effect for the
10 career appointee immediately before being placed
11 under subsection (a) or (b); and

12 “(C) the placement of any career appointee under
13 subsection (a) or (b) may not be made to a position
14 which would cause the separation or reduction in grade
15 of any other employee.

16 “(2) An employee who is receiving basic pay under
17 paragraph (1)(B) (ii) or (iii) of this subsection is entitled
18 to have the basic pay rate increased by 50 percent of the
19 amount of each increase in the maximum rate of basic pay
20 for the grade of the position in which the employee is placed
21 under subsection (a) or (b) until the rate is equal to the
22 rate in effect under paragraph (1)(B)(i) for the position
23 in which the employee is placed.

24 “§ 3595. Regulations

25 “The Office of Personnel Management shall prescribe

1 regulations to carry out the purpose of this subchapter.”.

2 (b) The chapter analysis for chapter 35 of title 5,
3 United States Code, is amended by inserting the following
4 new item:

“SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUAR-
ANTEED PLACEMENT PROVISIONS IN THE SENIOR EX-
ECUTIVE SERVICE

“Sec.

“3591. Definitions.

“3592. Removal from the Senior Executive Service.

“3593. Reinstatement in the Senior Executive Service.

“3594. Guaranteed placement in other personnel systems.

“3595. Regulations.”.

5 PERFORMANCE RATING

6 SEC. 405. Chapter 43 of title 5, United States Code, is
7 amended by adding at the end thereof the following:

8 “SUBCHAPTER II—PERFORMANCE APPRAISAL
9 IN THE SENIOR EXECUTIVE SERVICE

10 “§ 4311. Definitions

11 “For the purpose of this subchapter, ‘agency’, ‘senior
12 executive’, and ‘career appointee’ have the meanings set forth
13 in section 3132(a) of this title.

14 “§ 4312. Senior Executive Service performance appraisal
15 systems

16 “(a) Each agency shall, in accordance with standards
17 established by the Office of Personnel Management, develop
18 one or more performance appraisal systems designed to—

19 “(1) provide for systematic appraisal of perform-
20 ance of senior executives;

1 “(2) encourage excellence in performance by senior
2 executives; and

3 “(3) provide a basis for making eligibility deter-
4 minations for retention in the Senior Executive Service
5 and for Senior Executive Service performance awards.

6 “(b) Each performance appraisal system established by
7 an agency under subsection (a) of this section shall provide—

8 “(1) that, on or before the beginning of each rating
9 period, performance requirements for each senior execu-
10 tive in the agency are established in consultation with
11 the executive and communicated to the executive;

12 “(2) that written appraisals of performance are
13 based on the individual and organizational performance
14 requirements established for the rating period involved;
15 and

16 “(3) that each senior executive in the agency is
17 provided a copy of the appraisal and rating under sec-
18 tion 4314 of this title and is given an opportunity to
19 respond in writing to the appraisal and rating and
20 have the appraisal and rating reviewed by an employee
21 in a higher managerial level in the agency before the
22 appraisal and rating become final.

23 “(c) If the Office of Personnel Management determines
24 that an agency performance appraisal system does not comply
25 with the requirements of this subchapter or regulations under

1 this subchapter, the Office of Personnel Management shall
2 order the agency to take any corrective action necessary to
3 bring such system into compliance.

4 “§ 4313. Criteria for performance appraisals

5 “Appraisals of performance in the Senior Executive
6 Service shall be based on both individual and organizational
7 performance, taking into account such factors as—

8 “(1) improvements in quality of work or service;

9 “(2) cost efficiency;

10 “(3) timeliness of performance; and

11 “(4) meeting affirmative action goals and achieve-
12 ment of equal employment opportunity requirements.

13 “§ 4314. Ratings for performance appraisals

14 “(a) Each performance appraisal system shall provide
15 for annual summary ratings of levels of performance as
16 follows:

17 “(1) one or more fully successful levels,

18 “(2) a minimally satisfactory level, and

19 “(3) an unsatisfactory level.

20 “(b) Each performance appraisal system shall pro-
21 vide that—

22 “(1) any appraisal and any rating under such
23 system—

24 “(A) are made only after review and evaluation

1 by a performance review board established under
2 subsection (c) of this section;

3 "(B) are conducted at least annually, subject
4 to the limitation of paragraph (3) of this sub-
5 section;

6 "(C) in the case of a career appointee, may
7 not be made within 120 days after the beginning of
8 a new Presidential administration; and

9 "(D) are based on performance during a per-
10 formance appraisal period the duration of which
11 shall be determined under guidelines established by
12 the Office of Personnel Management, but which may
13 be terminated in any case in which the agency
14 making an appraisal determines that an adequate
15 basis exists on which to appraise and rate the senior
16 executive's performance;

17 "(2) any career appointee receiving a rating
18 at any of the fully successful levels under subsection
19 (a)(1) of this section may be given a performance
20 award as prescribed in section 5384 of this title;

21 "(3) any senior executive receiving an unsatis-
22 factory rating under subsection (a)(3) of this sec-
23 tion shall be reassigned or transferred within the Senior
24 Executive Service, or removed from the Senior Execu-

1 tive Service, but any senior executive who receives 2 un-
2 satisfactory ratings in any period of 5 consecutive years
3 shall be removed from the Senior Executive Service, and

4 "(4) any senior executive who twice in any period
5 of 3 consecutive years receives less than fully successful
6 ratings shall be removed from the Senior Executive
7 Service.

8 "(c) Each agency shall establish, in accordance with
9 regulations prescribed by the Office of Personnel Manage-
10 ment, one or more performance review boards, as appropri-
11 ate. It is the function of the boards to make recommenda-
12 tions to the appropriate appointing authority of the agency
13 relating to the performance of senior executives in the agency.
14 The members of each board shall be appointed by the head of
15 the agency from among employees of the agency other than
16 senior executives with respect to which recommendations are
17 being made the board. In making the recommendation
18 with respect to a career appointee, each board shall include at
19 least 1 career appointee.

20 "§ 4315. Regulations

21 "The Office of Personnel Management shall prescribe
22 regulations to carry out the purposes of this subchapter."

1 (b) The analysis for chapter 45 of title 5, United States
2 Code, is amended by inserting at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE
SENIOR EXECUTIVE SERVICE

"Sec.

"4511. Definitions.

"4512. Senior Executive Service performance appraisal systems.

"4513. Criteria for performance appraisals.

"4514. Ratings for performance appraisals.

"4515. Regulations."

3 AWARDING OF RANKS

4 SEC. 406. (a) Chapter 45 of title 5, United States Code
5 is amended by adding at the end thereof the following new
6 section:

7 "§ 4507. Awarding of ranks in the Senior Executive Service
8 "(a) For the purpose of this section, 'agency', 'senior
9 executive', and 'career appointee' have the meanings set forth
10 in section 5132(a) of this title.

11 "(b) Each agency shall forward annually to the Office
12 of Personnel Management recommendations of career appoint-
13 ees in the agency to be awarded the rank of Meritorious
14 Executive or Distinguished Executive. The recommendations
15 may take into account the individual's performance
16 over a period of years. The Office of Personnel Manage-
17 ment shall review such recommendations and provide to the
18 President recommendations as to which of the agency recom-
19 mended appointees should receive such rank.

1 "(c) During any fiscal year, the President may, sub-
2 ject to subsection (d), award to any career appointee recom-
3 mended by the Office of Personnel Management the rank of—

4 "(1) Meritorious Executive, for sustained accom-
5 plishment, or

6 "(2) Distinguished Executive, for sustained ex-
7 traordinary accomplishment.

8 "(d) During any fiscal year—

9 "(1) the number of career appointees awarded the
10 rank of Meritorious Executive may not exceed 5 percent
11 of the Senior Executive Service; and

12 "(2) the number of career appointees awarded the
13 rank of Distinguished Executive may not exceed 1 per-
14 cent of the Senior Executive Service.

15 "(e) (1) Receipt by a career appointee of the rank of
16 Meritorious Executive entitles such individual to a lump-
17 sum payment of \$2,500, which shall be in addition to the
18 basic pay paid under section 5382 of this title or any award
19 paid under section 5384 of this title.

20 "(2) Receipt by a career appointee of the rank of Dis-
21 tinguished Executive entitles the individual to a lump-sum
22 payment of \$5,000, which shall be in addition to the basic
23 pay paid under section 5382 of this title or any award paid
24 under section 5384 of this title."

1 (b) *The analysis for chapter 45 of title 5, United*
 2 *States Code, is amended by adding at the end thereof the*
 3 *following new item:*

"4607. *Awarding of Ranks in the Senior Executive Service.*"

4 **PAY RATES AND SYSTEMS**

5 *SEC. 407. (a) Chapter 53 of title 5, United States*
 6 *Code, is amended by adding at the end thereof the following*
 7 *new subchapter:*

8 **"SUBCHAPTER VIII—PAY FOR THE SENIOR**
 9 **EXECUTIVE SERVICE**

10 **"§ 5381. Definitions**

11 *"For the purpose of this subchapter, 'agency', 'Senior*
 12 *Executive Service position', and 'senior executive' have the*
 13 *meanings set forth in section 3132(a) of this title.*

14 **"§ 5382. Establishment and adjustment of rates of pay for**
 15 **the Senior Executive Service; comparability**

16 *"(a) There shall be 5 or more rates of basic pay for*
 17 *the Senior Executive Service, and each senior executive*
 18 *shall be paid at one of the rates. The rates of basic pay*
 19 *shall be initially established and thereafter adjusted by the*
 20 *President subject to subsection (b) of this section.*

21 *"(b) In setting rates of basic pay, the lowest rate for*
 22 *the Senior Executive Service shall not be less than the*
 23 *minimum rate of basic pay payable for GS-16 of the*

1 *General Schedule and the highest rate shall not exceed the*
 2 *rate for level IV of the Executive Schedule. The payment*
 3 *of the rates shall not be subject to the pay limitation of sec-*
 4 *tion 5308 or 5363 of this title.*

5 *"(c) Subject to subsection (b) of this section, effective*
 6 *at the beginning of the first applicable pay period commenc-*
 7 *ing on or after the first day of the month in which an*
 8 *adjustment takes effect under section 5305 of this title in the*
 9 *rates of pay under the General Schedule, each rate of basic*
 10 *pay for the Senior Executive Service shall be adjusted by*
 11 *an amount, rounded to the nearest multiple of \$100 (or*
 12 *if midway between multiples of \$100, to the next higher*
 13 *multiple of \$100), equal to the percentage of such rate of*
 14 *basic pay which corresponds to the overall average per-*
 15 *centage (as set forth in the report transmitted to the Con-*
 16 *gress under such section 5305) of the adjustment in the rates*
 17 *of pay under the General Schedule. The adjusted rates of*
 18 *basic pay for the Senior Executive Service shall be included*
 19 *in the report transmitted to the Congress by the President*
 20 *under section 5305(a)(3) or (c)(1) of this title.*

21 *"(d) The rates of basic pay that are established and*
 22 *adjusted under this section shall be printed in the Federal*
 23 *Register and shall supersede any prior rates of basic pay for*
 24 *the Senior Executive Service.*

1 "§ 5383. *Setting individual senior executive pay*

2 " (a) *Each appointing authority shall determine, in*
 3 *accordance with criteria established by the Office of Personnel*
 4 *Management, which of the rates established under section*
 5 *5382 of this title shall be paid to each senior executive under*
 6 *such appointing authority.*

7 " (b) *In no event may the aggregate amount paid to a*
 8 *senior executive during any fiscal year under sections 4507,*
 9 *5382, and 5384 of this title exceed 95 percent of the annual*
 10 *rate payable for positions at level II of the Executive Sched-*
 11 *ule in effect at the end of such fiscal year.*

12 " (c) *Except for any pay adjustment under section 5382*
 13 *of this title, the rate of basic pay for any senior executive*
 14 *may not be adjusted more than once during any 12-month*
 15 *period.*

16 "§ 5384. *Performance awards in the Senior Executive*
 17 *Service*

18 " (a) (1) *To encourage excellence in performance by*
 19 *career appointees, performance awards shall be paid to ca-*
 20 *reer appointees in accordance with the provisions of this*
 21 *section.*

22 " (2) *Such awards shall be paid in a lump sum and*
 23 *shall be in addition to the basic pay paid under section 5382*

1 *of this title or any award paid under section 4507 of this*
 2 *title.*

3 " (b) (1) *No performance award under this section shall*
 4 *be paid to any career appointee whose performance was deter-*
 5 *mined to be less than fully successful at the time of the*
 6 *appointee's most recent performance appraisal and rating*
 7 *under subchapter II of chapter 43 of this title.*

8 " (2) *The amount of a performance award under this*
 9 *section shall be determined by the agency head but may not ex-*
 10 *ceed 20 percent of the career appointee's rate of basic pay.*

11 " (3) *The number of career appointees in any agency*
 12 *paid performance awards under this section during any fiscal*
 13 *year may not exceed 50 percent of the number of Senior*
 14 *Executive Service positions in such agency. This paragraph*
 15 *shall not apply in the case of any agency which has less than*
 16 *4 Senior Executive Service positions.*

17 " (c) *Performance awards paid by any agency under*
 18 *this section shall be based on recommendations by performance*
 19 *review boards established by such agency under section 4314*
 20 *of this title.*

21 "§ 5385. *Regulations*

22 " *The Office of Personnel Management shall prescribe*
 23 *regulations to carry out the purpose of this subchapter, and*
 24 *may provide guidance to agencies concerning the proportion*

1 of funds available for Senior Executive Service salary ex-
2 penses which may be used for performance awards.”.

3 (c) The analysis of chapter 53 of title 5, United States
4 Code, is amended by adding at the end thereof the following
5 new items:

“SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE
SERVICE

“Sec.

“5381. Definitions.

“5382. Establishment and adjustment of rates of pay for the Senior Execu-
tive Service; comparability.

“5383. Setting individual senior executive pay.

“5384. Performance awards in the Senior Executive Service.

“5385. Regulations.”.

PAY ADMINISTRATION

6
7 SEC. 408. Chapter 55 of title 5, United States Code, is
8 amended—

9 (1) by inserting “other than an employee or in-
10 dividual excluded by section 5541(2) (xvi) of this sec-
11 tion” immediately before the period at the end of section
12 5504(a) (B);

13 (2) by amending section 5541(2) by striking out
14 “or” after paragraph (xiv), by striking out the period
15 after paragraph (xv) and inserting “; or” in lieu
16 thereof, and by adding the following paragraph at the
17 end thereof:

18 “(xvi) member of the Senior Executive Serp-
19 vice.”;

20 and

1 (3) by inserting “other than a member of the
2 Senior Executive Service” after “employee” in section
3 5595(a) (2) (i).

4 TRAVEL, TRANSPORTATION, AND SUBSISTENCE

5 SEC. 409. (a) Section 5723(a) (1) of title 5, United
6 States Code, is amended by striking out “; and” and insert-
7 ing in lieu thereof “or of a new appointee to the Senior Ex-
8 ecutive Service; and”.

9 (b) Subchapter IV of chapter 57 of title 5, United
10 States Code, is amended by adding at the end thereof the
11 following new section:

12 “§ 5752. Travel expenses of Senior Executive Service can-
13 didates

14 “Employing agencies may pay candidates for Senior
15 Executive Service positions travel expenses incurred incident
16 to preemployment interviews requested by the employing
17 agency.”.

18 (c) The analysis for chapter 57 of title 5, United States
19 Code, is amended by inserting after the item relating to sec-
20 tion 5751 the following new item:

“5752. Travel expenses of Senior Executive Service candidates.”.

LEAVE

21
22 SEC. 410. Section 6304 of title 5, United States Code, is
23 amended—

1 (1) in subsection (a), by striking out "and (e)"
 2 and inserting in lieu thereof "(e), and (f)"; and
 3 (2) by adding at the end thereof the following new
 4 section:

5 "(f) Annual leave accrued by an individual while
 6 serving in a position in the Senior Executive Service shall
 7 not be subject to the limitation on accumulation otherwise im-
 8 posed by this section."

9 DISCIPLINARY ACTIONS

10 SEC. 411. Chapter 75 of title 5, United States Code.
 11 is amended—

12 (1) by inserting the following in the chapter analy-
 13 sis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE
 "Sec.
 "7541. Definitions.
 "7542. Actions covered.
 "7543. Cause and procedure.";

14 and

15 (2) by adding the following after subchapter IV:

16 "SUBCHAPTER V—SENIOR EXECUTIVE
 17 SERVICE

18 "§ 7541. Definitions

19 "For the purpose of this subchapter—

20 "(1) 'employee' means an individual in the Senior
 21 Executive Service who—

1 "(A) has completed the probationary period
 2 prescribed under section 3393(d) of this title; or

3 "(B) was covered by the provisions of sub-
 4 chapter II of this chapter immediately before
 5 appointment to the Senior Executive Service; and
 6 "(2) 'suspension' has the meaning set forth in
 7 section 7501(2) of this title.

8 "§ 7542. Actions covered

9 "This subchapter applies to a removal from the civil ser-
 10 vice or suspension for more than 14 days, but does not apply
 11 to an action initiated under section 1206 of this title, to a
 12 suspension or removal under section 7532 of this title, or to
 13 a removal under section 3592 of this title.

14 "§ 7543. Cause and procedure

15 "(a) Under regulations prescribed by the Office of Per-
 16 sonnel Management, an agency may take an action covered
 17 by this subchapter against an employee only for such cause
 18 as will promote the efficiency of the service.

19 "(b) An employee against whom an action covered by
 20 this subchapter is proposed is entitled to—

21 "(1) at least 30 days advance written notice, unless
 22 there is reasonable cause to believe that the employee has
 23 committed a crime for which a sentence of imprisonment
 24 can be imposed, stating specific reasons for the proposed
 25 action;

1 “(2) a reasonable time, but not less than 7 days,
 2 to answer orally and in writing and to furnish affidavits
 3 and other documentary evidence in support of the
 4 answer;

5 “(3) be represented by an attorney or other repre-
 6 sentative; and

7 “(4) a written decision and specific reasons there-
 8 for at the earliest practicable date.

9 “(c) An agency may provide, by regulation, for a hear-
 10 ing which may be in lieu of or in addition to the opportunity

11 to answer provided under subsection (b)(2) of this section.

12 “(d) An employee against whom an action is taken un-
 13 der this section is entitled to appeal to the Merit Systems
 14 Protection Board under section 7701 of this title.

15 “(e) Copies of the notice of proposed action, the answer
 16 of the employee when written, and a summary thereof when
 17 made orally, the notice of decision and reasons therefor, and
 18 any order effecting an action covered by this subchapter, to-
 19 gether with any supporting material, shall be maintained by
 20 the agency and shall be furnished to the Merit Systems Pro-
 21 tection Board upon its request and to the employee affected
 22 upon the employee's request.”

23 **RETIREMENT**

24 **SEC. 412.** (a) Section 8336 of title 5, United States
 25 Code, is amended by redesignating subsection (h) as sub-

1 section (i) and inserting immediately after subsection (g)
 2 the following new subsection:

3 “(h) A member of the Senior Executive Service who
 4 is removed from the Senior Executive Service for less than
 5 fully successful managerial performance (as determined
 6 under subchapter II of chapter 43 of this title) after com-
 7 pleting 25 years of service or after becoming 50 years of age
 8 and completing 20 years of service is entitled to an annuity.”.

9 (b) Section 8339(h) of title 5, United States Code, is
 10 amended by striking out “section 8336(d)” and inserting in
 11 lieu thereof “section 8336 (d) or (h)”.

12 **CONVERSION TO THE SENIOR EXECUTIVE SERVICE**

13 **SEC. 413.** (a) For the purpose of this section, “agency”,
 14 “Senior Executive Service position”, “career appointee”,
 15 “career reserved position”, “limited term appointee”, “non-
 16 career appointee”, and “general position” have the meanings
 17 set forth in section 3132(a) of title 5, United States Code
 18 (as added by this title), and “Senior Executive Service” has
 19 the meaning set forth in section 2101a of such title 5 (as
 20 added by this title).

21 (b)(1) Under the guidance of the Office of Personnel
 22 Management, each agency shall—

23 (A) designate those positions which it considers
 24 should be Senior Executive Service positions and des-

1 *ignates which of those positions it considers should be*
 2 *career reserved positions; and*

3 *(B) submit to the Office of Personnel Management a*
 4 *written request for—*

5 *(i) a specific number of Senior Executive Serv-*
 6 *ice positions; and*

7 *(ii) authority to employ a specific number of*
 8 *noncareer appointees.*

9 *(2) The Office of Personnel Management shall review the*
 10 *designations and requests of each agency under paragraph*
 11 *(1) of this subsection and shall establish interim authoriza-*
 12 *tions in accordance with sections 3133 and 3134 of title 5,*
 13 *United States Code (as added by this Act).*

14 *(c) (1) Each employee serving in a position at the time*
 15 *it is designated as a Senior Executive Service position under*
 16 *subsection (b) of this section shall elect to—*

17 *(A) decline conversion and be appointed to a posi-*
 18 *tion under such employee's current type of appointment*
 19 *and pay system, retaining the grade, seniority, and other*
 20 *rights and benefits associated with such type of appoint-*
 21 *ment and pay system; or*

22 *(B) accept conversion and be appointed to a Senior*
 23 *Executive Service position in accordance with the pro-*

1 *visions of subsections (d), (e), (f), (g), and (h) of*
 2 *this section.*

3 *The appointment of an employee in an agency because of an*
 4 *election under subparagraph (A) of this paragraph shall not*
 5 *result in the separation or reduction in grade of any other*
 6 *employee in such agency.*

7 *(2) Any employee in a position which has been desig-*
 8 *nated a Senior Executive Service position under this section*
 9 *shall be notified of such designation, the election required*
 10 *under paragraph (1) of this subsection, and the provisions*
 11 *of subsections (d), (e), (f), (g), and (h) of this section.*
 12 *The employee shall be given 90 days from the date of such*
 13 *notification to make the election under paragraph (1) of*
 14 *this subsection.*

15 *(d) Each employee who has elected to accept conversion*
 16 *to a Senior Executive Service position under subsection*
 17 *(c) (1) (B) of this section and is serving under—*

18 *(1) a career or career-conditional appointment; or*
 19 *(2) a similar type of appointment in an excepted*
 20 *service position, as determined by the Office of Per-*
 21 *sonnel Management;*

22 *shall be appointed as a career appointee to such Senior*
 23 *Executive Service position without regard to section 3393*
 24 *(c) and (d) of title 5, United States Code (as added by this*
 25 *title).*

1 (e) Each employee who has elected conversion to a
 2 Senior Executive Service position under subsection (c)(1)
 3 (B) of this section and is serving under an excepted appoint-
 4 ment in a position which is not designated a career reserved
 5 position in the Senior Executive Service, but is—

6 (1) a position in Schedule C of subpart C of part
 7 213 of title 5, Code of Federal Regulations;

8 (2) a position filled by noncareer executive assign-
 9 ment under subpart F of part 305 of title 5, Code of
 10 Federal Regulations; or

11 (3) a position in the Executive Schedule under sub-
 12 chapter II of chapter 53 of title 5, United States Code,
 13 other than a career Executive Schedule position;

14 shall be appointed as a noncareer appointee to a Senior
 15 Executive Service position.

16 (f) Each employee who has elected conversion to a
 17 Senior Executive Service position under subsection (c)(1)
 18 (B) of this section, who is serving in a position described in
 19 paragraph (1), (2), or (3) of subsection (e) of this section,
 20 and whose position is designated as a career reserved position
 21 under subsection (b) of this section shall be appointed to an
 22 appropriate general position in the Senior Executive Service
 23 or shall be separated.

24 (g) Each employee who has elected conversion to a
 25 Senior Executive Service position under subsection (c)(1)

1 (B) of this section, who is serving in a position described in
 2 paragraph (1), (2), or (3) of subsection (e) of this section,
 3 and whose position is designated as a Senior Executive
 4 Service position and who has reinstatement eligibility to a
 5 position in the competitive service, may, on request to the
 6 Office of Personnel Management, be appointed as a career
 7 appointee to a Senior Executive Service position. The name
 8 of, and basis for reinstatement eligibility for, each employee
 9 appointed as a career appointee under this subsection shall
 10 be published in the Federal Register.

11 (h) Each employee who has elected conversion to a
 12 Senior Executive Service position under subsection (c)(1)
 13 (B) of this section and is serving under a limited executive
 14 assignment under subpart F of part 305 of title 5, Code of
 15 Federal Regulations, shall—

16 (1) be appointed as a limited term appointee to a
 17 Senior Executive Service position if the position then
 18 held by such employee will terminate within 3 years of
 19 the date of such appointment;

20 (2) be appointed as a noncareer appointee to a
 21 Senior Executive Service position if the position then
 22 held by such employee is designated as a general position;

23 or

24 (3) be appointed as a noncareer appointee to a gen-

1 eral position if the position then held by such employee is
2 designated as a career reserved position.

3 (i) The rate of basic pay for any employee appointed
4 to a Senior Executive Service position under this section
5 shall be greater than or equal to the rate of basic pay payable
6 for the position held by such employee at the time of such
7 appointment.

8 (j) The Office of Personnel Management shall prescribe
9 regulations to carry out the purpose of this section. Any
10 employee who is aggrieved by any action by any agency
11 under this section is entitled to appeal to the Merit Systems
12 Protection Board under section 7701 of title 5, United States
13 Code (as added by this title). An agency shall take any cor-
14 rective action which the Merit Systems Protection Board
15 orders in its decision on an appeal under this subsection.

16 LIMITATIONS ON EXECUTIVE POSITIONS

17 SEC. 414. (a)(1)(A) Subsections (b) through (g) of
18 section 5108 of title 5, United States Code, relating to special
19 authority to place positions at GS-16, 17, and 18 of the
20 General Schedule, are hereby repealed.

21 (B) Notwithstanding any other provision of law (other
22 than section 5108 of such title 5), the authority granted to
23 an agency (as defined in section 5102(a)(1) of such title 5)
24 under any such provision to place one or more positions in

1 GS-16, 17, or 18 of the General Schedule, is hereby
2 terminated.

3 (C) Subsection (a) of section 5108 of title 5, United
4 States Code, is amended to read as follows: "The Director
5 of the Office of Personnel Management may establish, and
6 from time to time revise, the maximum numbers of positions
7 (not to exceed an aggregate of 10,920) which may at any
8 one time be placed in—

9 "(i) GS-16, 17, and 18; and

10 "(ii) the Senior Executive Service, in accordance
11 with section 3133 of this title.

12 A position may be placed in GS-16, 17, or 18, only by action
13 of the Director of the Office of Personnel Management."

14 (2)(A) Notwithstanding any other provision of law
15 (other than section 3104 of title 5, United States Code), the
16 authority granted to an agency (as defined in section 5102
17 (a)(1) of such title 5) to establish scientific or professional
18 positions outside of the General Schedule is hereby terminated.

19 (B) Section 3104 of title 5, United States Code, is
20 amended by striking out subsections (a) and (b) and in-
21 serting in lieu thereof the following:

22 "(a)(1) The Director of the Office of Personnel Man-
23 agement may establish, and from time to time revise, the
24 maximum number of scientific or professional positions (not
25 to exceed 525) for carrying out research and develop-

1 ment functions which require the services of specially quali-
 2 fied personnel which may be established outside of the Gen-
 3 eral Schedule. Any such position may be established only by
 4 action of the Director of the Office of Personnel Manage-
 5 ment.

6 “(2) The provisions of paragraph (1) of this subsection
 7 shall not apply to any Senior Executive Service position (as
 8 defined in section 3132(a) of this title).”

9 (C) Subsection (c) of such section 3104 is amended—

10 (i) by striking out “(c)” and inserting in lieu
 11 thereof “(b)”; and

12 (ii) by striking out “to establish and fix the pay
 13 of positions under this section and section 5361 of this
 14 title” and inserting in lieu thereof “to fix under section
 15 5361 of this title the pay for positions established under
 16 this section”.

17 (3)(A) The provisions of paragraphs (1) and (2) of
 18 this subsection shall not apply with respect to any position so
 19 long as the individual occupying such position on the day
 20 before the date of the enactment of this Act continues to occupy
 21 such position.

22 (B) The Director of the Office of Personnel Manage-
 23 ment—

24 (i) in establishing under section 5108 of title 5,
 25 United States Code, the maximum number of positions

1 which may be placed in GS-16, 17, and 18 of the Gen-
 2 eral Schedule, and

3 (ii) in establishing under section 3104 of such title
 4 the maximum number of scientific or professional posi-
 5 tions which may be established,
 6 shall take into account positions to which subparagraph (A)
 7 of this paragraph applies.

8 (b)(1) Section 5311 of title 5, United States Code, is
 9 amended by inserting “(a)” before “The Executive Sched-
 10 ule,” and by adding at the end thereof the following new
 11 subsection:

12 “(b)(1) Not later than 180 days after the date of the
 13 enactment of the Civil Service Reform Act of 1978, the
 14 Director of the Office of Personnel Management shall deter-
 15 mine the number and classification of executive level posi-
 16 tions in existence in the executive branch on that date of
 17 enactment, and shall publish the determination in the Fed-
 18 eral Register. Effective beginning on the date of the publi-
 19 cation, the number of executive level positions within the
 20 executive branch may not exceed the number published under
 21 this subsection.

22 “(2) For the purpose of this subsection, ‘executive level
 23 position’ means—

24 “(A) any office or position in the civil service the
 25 rate of pay for which is equal to or greater than the

1 rate of basic pay payable for positions under section
2 5316 of this title, or

3 "(B) any such office or position the rate of pay
4 for which may be fixed by administrative action at a
5 rate equal to or greater than the rate of basic pay
6 payable for positions under section 5316 of this title;
7 but does not include any Senior Executive Service position, as
8 defined in section 5132(a) of this title."

9 (2) The President shall transmit to Congress by Janu-
10 ary 1, 1980, a plan for authorizing executive level positions
11 in the executive branch which shall include the maximum
12 number of executive level positions necessary by level and
13 a justification for the positions.

14 EFFECTIVE DATE; EXPERIMENTAL APPLICATION

15 SEC. 415. (a) (1) Except as provided in subsection
16 (b) of this section, the provisions of this title, other than
17 section 414(a), shall take effect on the date of the enactment
18 of this Act.

19 (2) The provisions of section 414(a) of this title shall
20 take effect 180 days after the date of the enactment of this
21 Act.

22 (b) (1) Not later than 60 days after the date of the en-
23 actment of this title, the Director of the Office of Personnel
24 Management shall prescribe regulations providing for an initial
25 experimental application of the amendments made by

1 sections 401 through 412 of this title and the provisions of
2 section 413 of this title. Such regulations shall provide that
3 Senior Executive Service positions will be designated, au-
4 thorized, and filled only in 3 Executive departments desig-
5 nated by the Director.

6 (2) Within 30 days after the end of each of the first
7 two full fiscal years to which such amendments apply, the
8 Director shall prepare and transmit to each House of the
9 Congress a report on the Senior Executive Service, includ-
10 ing an evaluation of its effectiveness and the manner in
11 which such Service is administered. The second such report
12 shall include proposed regulations which would provide for
13 conversions and other adjustments which would be appro-
14 priate in the event the Senior Executive Service does not
15 continue by reason of paragraph (3).

16 (3) The provisions of the regulations under paragraph
17 (1) providing for an initial, limited experimental applica-
18 tion shall cease to have effect and the amendments made by
19 sections 401 through 412 of this title and the provisions of
20 section 413 of this title shall have full effect (without regard
21 to the limitations under paragraph (1)) beginning on the
22 90th day of continuous session of Congress following the
23 date on which the second annual report is transmitted to
24 Congress under paragraph (2) of this section, unless the
25 Congress before such day adopts a concurrent resolution

1 which states that the Congress does not favor the continuance
2 of the Senior Executive Service. If such a resolution is
3 adopted before such date, then the provisions of such regula-
4 tions, and such amendments (and the provisions of section
5 413), shall cease to have effect on such 90th day (or, if later,
6 30 days after the date of the adoption of such resolution).

7 (4) For purposes of paragraph (3), the continuity of
8 a session of Congress shall be considered to be broken only
9 by an adjournment of the Congress sine die, and the days on
10 which either House of the Congress is not in session because
11 of an adjournment of more than 3 days to a day certain
12 shall be excluded in the computation of the 90-day period
13 under such paragraph.

14 TITLE V—MERIT PAY

15 PAY FOR PERFORMANCE

16 SEC. 501. Part III of title 5, United States Code, is
17 amended by inserting after chapter 53 the following new
18 chapter:

19 "Chapter 54.—MERIT PAY AND CASH AWARDS

"Sec.

"5401. Purpose.

"5402. Merit pay system.

"5403. Cash award program.

"5404. Reports.

"5405. Regulations.

20 "§ 5401. Purpose

21 "It is the purpose of this chapter to provide for—

22 "(1) a merit pay system which shall—

1 "(A) within available funds, recognize and re-
2 ward quality performance by varying merit pay
3 adjustments;

4 "(B) use performance appraisals as the basis
5 for determining merit pay adjustments; and

6 "(C) regulate the costs of merit pay by estab-
7 lishing appropriate control techniques; and

8 "(2) a cash award program which shall provide cash
9 awards for superior accomplishment and special service.

10 "§ 5402. Merit pay system

11 "(a) In accordance with the purpose set forth in section
12 5401(1) of this title, the Office of Personnel Management
13 shall establish a merit pay system which shall apply to any
14 supervisor or management official (as defined in paragraphs
15 (10) and (11) of section 7103 of this title, respectively) who
16 is in a position which is in GS-13, 14, or 15 of the General
17 Schedule described in section 5104 of this title.

18 "(b) The merit pay system established under subsection
19 (a) of this section shall provide for a range of basic pay for
20 each grade to which it applies, which range shall be limited
21 by the minimum and maximum rates of basic pay payable
22 for each such grade under chapter 53 of this title.

23 "(c) (1) Under regulations prescribed by the Office of
24 Personnel Management, the head of each agency may pro-

1 *vide for increases within the range of basic pay for any*
 2 *employee covered by the merit pay system.*

3 "*(2) Determinations to provide pay increases under this*
 4 *subsection—*

5 "*(A) may take into account individual performance*
 6 *and organizational accomplishment, and*

7 "*(B) shall be based on factors such as—*

8 "*(i) any improvement in efficiency, productivity,*
 9 *and quality of work or service;*

10 "*(ii) cost efficiency; and*

11 "*(iii) timeliness of performance;*

12 "*(C) shall be subject to review only in accordance*
 13 *with and to the extent provided by procedures estab-*
 14 *lished by the head of the agency; and*

15 "*(D) shall be made in accordance with regulations*
 16 *issued by the Office of Personnel Management which*
 17 *relate to the distribution of increases authorized under*
 18 *this subsection.*

19 "*(3) For any fiscal year, the head of any agency may*
 20 *exercise authority under paragraph (1) of this subsection*
 21 *only to the extent of the funds available for the purpose of*
 22 *this subsection.*

23 "*(4) The funds available for the purpose of this sub-*
 24 *section to the head of any agency for any fiscal year shall be*
 25 *determined before the beginning of each such fiscal year by*

1 *the Office of Personnel Management, after consultation with*
 2 *the Office of Management and Budget. The funds available*
 3 *to any agency shall be determined by the Office of Personnel*
 4 *Management on the basis of the amount estimated by the Office*
 5 *to be necessary to reflect within-grade step increases and*
 6 *quality step increases, which would have been paid under*
 7 *subchapter III of chapter 53 of this title during such fiscal*
 8 *year to the employees of the agency covered by the merit pay*
 9 *system if the employees were not so covered.*

10 "*(d)(1) Effective at the beginning of the first applicable*
 11 *pay period commencing on or after the first day of the month*
 12 *in which an adjustment takes effect under section 5305 of this*
 13 *title, the rate of basic pay for any position under this chapter*
 14 *shall be adjusted by an amount equal to the percentage of*
 15 *the annual rate of pay which corresponds to the percentage*
 16 *generally applicable to positions in the same grade as the*
 17 *position.*

18 "*(2) Any employee whose position is brought under the*
 19 *merit pay system shall, so long as the employee continues to*
 20 *occupy the position, be entitled to receive basic pay at a rate*
 21 *of basic pay not less than the rate the employee was receiving*
 22 *when the position was brought under the merit pay system,*
 23 *plus any subsequent adjustment under paragraph (1) of*
 24 *this subsection.*

25 "*(3) No employee to whom this chapter applies may be*

1 paid less than the minimum rate of basic pay of the grade of
2 the employee's position.

3 " (e) Under regulations prescribed by the Office of Per-
4 sonnel Management, the benefit of advancement through the
5 range of basic pay for a grade shall be preserved for any
6 employee covered by the merit pay system whose continuous
7 service is interrupted in the public interest by service with the
8 armed forces, or by service in essential non-Government
9 civilian employment during a period of war or national
10 emergency.

11 " (f) For the purpose of section 5941 of this title, rates
12 of basic pay of employees covered by the merit pay system
13 shall be considered rates of basic pay fixed by statute.

14 "§ 5403. Cash award program

15 " (a) The head of any agency may pay a cash award
16 to, and incur necessary expenses for the honorary recogni-
17 tion of, any employee covered by the merit pay system who—

18 " (1) by the employee's suggestion, invention,
19 superior accomplishment, or other personal effort, con-
20 tributes to the efficiency, economy, or other improvement
21 of Government operations; or

22 " (2) performs a special act or service in the pub-
23 lic interest in connection with or related to the employee's
24 Federal employment.

25 " (b) The President may pay a cash award to, and

1 incur necessary expenses for the honorary recognition of, any
2 employee covered by the merit pay system who—

3 " (1) by the employee's suggestion, invention,
4 superior accomplishment, or other personal effort, con-
5 tributes to the efficiency, economy, or other improvement
6 of Government operations; or

7 " (2) performs an exceptionally meritorious special
8 act or service in the public interest in connection with or
9 related to the employee's Federal employment.

10 A Presidential cash award may be in addition to an agency
11 cash award under subsection (a) of this section.

12 " (c) A cash award to any employee under this section is
13 in addition to the basic pay of the employee under section
14 5402 of this title. Acceptance of a cash award under this
15 section constitutes an agreement that the use by the Govern-
16 ment of any idea, method, or device for which the award is
17 made does not form the basis of any claim of any nature
18 against the Government by the employee accepting the award,
19 his heirs, or assigns.

20 " (d) A cash award to, and expenses for the honorary
21 recognition of, any employee covered by the merit pay system
22 may be paid from the fund or appropriation available to the
23 activity primarily benefiting, or the various activities bene-
24 fitting, from the suggestion, invention, superior accomplish-
25 ment, or other meritorious effort of the employee. The head of

1 the agency concerned shall determine the amount to be con-
 2 tributed by each activity to an agency cash award under sub-
 3 section (a) of this section. The President shall determine the
 4 amount to be contributed by each activity to a Presidential
 5 award under subsection (b) of this section.

6 "(e)(1) Except as provided in paragraph (2) of this
 7 subsection, a cash award under this section may not exceed
 8 \$10,000.

9 "(2) If the head of an agency certifies to the Office of
 10 Personnel Management that the suggestion, invention, supe-
 11 rior accomplishment, or other meritorious effort of an employee
 12 for which a cash award is proposed is highly exceptional and
 13 unusually outstanding, a cash award in excess of \$10,000 but
 14 not in excess of \$25,000 may be awarded to the employee on
 15 the approval of the Office.

16 "(f) The President or the head of an agency may pay a
 17 cash award under this section notwithstanding the death or
 18 separation from the service of an employee, if the suggestion,
 19 invention, superior accomplishment, or other meritorious
 20 effort of the employee for which the award is proposed was
 21 made or performed while the employee was covered by the
 22 merit pay system.

23 "§ 5404. Reports

24 "The Office of Personnel Management shall submit to the
 25 appropriate committees of each House of the Congress on or

1 before January 1, 1982, a report on the operation of the
 2 merit pay system and the cash award program established
 3 under this chapter. The report shall include—

4 "(1) a statement, together with supporting facts, as
 5 to whether the purpose of this chapter has been met dur-
 6 ing the period covered by the report, including, to the
 7 extent practicable, quantitative measures of costs and
 8 accomplishments of the merit pay system and the cash
 9 award program; and

10 "(2) any recommendations for legislation to amend
 11 the provisions of this chapter relating to the merit pay
 12 system or the cash award program considered necessary
 13 by the Office.

14 "§ 5405. Regulations

15 "The Office of Personnel Management shall prescribe
 16 regulations to carry out the purpose of this chapter."

17 TECHNICAL AND CONFORMING AMENDMENTS

18 SEC. 502. (a) Section 4501(2)(A) of title 5, United
 19 States Code, is amended by striking out "title; and" and
 20 inserting in lieu thereof "title, but does not include an em-
 21 ployee covered by the merit pay system established under
 22 section 5402 of this title; and".

23 (b) Section 4502(a) of title 5, United States Code,
 24 is amended by striking out "\$5,000" and inserting in lieu
 25 thereof "\$10,000".

1 (c) Section 4502(b) of title 5, United States Code, is
2 amended—

3 (1) by striking out "Civil Service Commission"
4 and inserting in lieu thereof "Office of Personnel
5 Management";

6 (2) by striking out "\$5,000" and inserting in lieu
7 thereof "\$10,000"; and

8 (3) by striking out "the Commission" and inserting
9 in lieu thereof "the Office".

10 (d) Section 4506 of title 5, United States Code, is
11 amended by striking out "Civil Service Commission may"
12 and inserting in lieu thereof "Office of Personnel Manage-
13 ment shall".

14 (e) The second sentence of section 5332(a) of title 5,
15 United States Code, is amended by inserting after "applies"
16 the following: ", except an employee covered by the merit pay
17 system established under section 5402 of this title,".

18 (f) Section 5334 of title 5, United States Code (as
19 amended in section 801(a)(3)(G) of this Act), is
20 amended—

21 (1) in paragraph (2) of subsection (c), by insert-
22 ing ", or for an employee appointed to a position covered
23 by the merit pay system established under section 5402 of
24 this title, any dollar amount," after "step"; and

1 (2) by adding at the end thereof the following
2 new subsection:

3 "(f) In the case of an employee covered by the merit
4 pay system established under section 5402 of this title, all
5 references in this section to 'two steps' or 'two step-increases'
6 shall be deemed to mean 6 percent."

7 (g) Section 5335(e) of title 5, United States Code, is
8 amended by inserting after "individual" the following: "cov-
9 ered by the merit pay system established under section 5402
10 of this title, or,".

11 (h) Section 5336(c) of title 5, United States Code, is
12 amended by inserting after "individual" the following: "cov-
13 ered by the merit pay system established under section 5402
14 of this title, or,".

15 (i) The table of chapters for part III of title 5, United
16 States Code, is amended by inserting after the item relating
17 to chapter 53 the following new chapter:

"54. Merit Pay and Cash Awards..... 5401".

18 EFFECTIVE DATE

19 SEC. 503. The provisions of this title shall take effect on
20 the first day of the first applicable pay period which begins
21 on or after October 1, 1981, except that such provisions may
22 take effect with respect to any category or categories of posi-
23 tions before such day to the extent prescribed by the Director
24 of the Office of Personnel Management.

1 **TITLE VI—RESEARCH, DEMONSTRATION, AND**
 2 **OTHER PROGRAMS**

3 **RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS**

4 **SEC. 601. (a) Part III of title 5, United States Code, is**
 5 **amended by adding at the end of subpart C thereof the**
 6 **following new chapter:**

7 **"Chapter 47.—PERSONNEL RESEARCH PROGRAMS**
 8 **AND DEMONSTRATION PROJECTS**

^{"Sec.}

^{"4701. Definitions.}

^{"4702. Research programs.}

^{"4703. Demonstration projects.}

^{"4704. Allocation of funds.}

^{"4705. Reports.}

^{"4706. Regulations.}

9 **"§ 4701. Definitions**

10 **"For the purpose of this chapter—**

11 **"(1) 'agency' means an Executive agency, the Ad-**
 12 **ministrative Office of the United States Courts, and the**
 13 **Government Printing Office, but does not include—**

14 **"(A) a Government corporation;**

15 **"(B) the Central Intelligence Agency, the**
 16 **Defense Intelligence Agency, the National Security**
 17 **Agency, or any Executive agency or unit thereof**
 18 **which is designated by the President and which**
 19 **conducts foreign intelligence or counterintelligence**
 20 **activities; or**

21 **"(C) the General Accounting Office.**

1 **"(2) 'employee' means an individual employed in**
 2 **or under an agency;**

3 **"(3) 'eligible' means an individual who has qualified**
 4 **for appointment in an agency and whose name has been**
 5 **entered on the appropriate register or list of eligibles;**

6 **"(4) 'demonstration project' means a project con-**
 7 **ducted by the Office of Personnel Management, or under**
 8 **its supervision, to determine whether a specified change**
 9 **in personnel management policies or procedures would**
 10 **result in improved Federal personnel management; and**

11 **"(5) 'research program' means a planned study of**
 12 **the manner in which public management policies and**
 13 **systems are operating, the effects of those policies and**
 14 **systems, the possibilities for change, and comparisons**
 15 **among policies and systems.**

16 **"§ 4702. Research programs**

17 **"The Office of Personnel Management shall—**

18 **"(1) establish and maintain (and assist in the es-**
 19 **tablishment and maintenance of) research programs**
 20 **to study improved methods and technologies in Federal**
 21 **personnel management;**

22 **"(2) evaluate the research programs established**
 23 **under paragraph (1) of this section;**

24 **"(3) establish and maintain a program for the**
 25 **collection and public dissemination of information relat-**

1 *ing to personnel management research and for encour-*
 2 *aging and facilitating the exchange of information among*
 3 *interested persons and entities; and*

4 *"(4) carry out the preceding functions directly or*
 5 *through agreement or contract.*

6 *"§ 4703. Demonstration projects*

7 *"(a) Except as provided in this section, the Office of*
 8 *Personnel Management may, directly or through agreement*
 9 *or contract with one or more agencies and other public and*
 10 *private organizations, conduct and evaluate demonstration*
 11 *projects. Subject to the provisions of this section, the conduct-*
 12 *ing of demonstration projects shall not be limited by any lack*
 13 *of specific authority to take the action contemplated, or by*
 14 *any provision of law then in effect which is inconsistent with*
 15 *the action, including any law or regulation relating to—*

16 *"(1) the methods of establishing qualification re-*
 17 *quirements for, recruitment for, and appointment to*
 18 *positions;*

19 *"(2) the methods of classifying positions and com-*
 20 *pensating employees;*

21 *"(3) the methods of assigning, reassigning, or pro-*
 22 *moting employees;*

23 *"(4) the methods of disciplining employees;*

24 *"(5) the methods of providing incentives to em-*

1 *ployees, including the provision of group or individual*
 2 *incentive bonuses or pay;*

3 *"(6) hours of work per day or per week;*

4 *"(7) the methods of involving employees, labor orga-*
 5 *nizations, and employee organizations in personnel deci-*
 6 *sions; and*

7 *"(8) the methods of reducing overall agency staff*
 8 *and grade levels.*

9 *"(b) Before conducting or entering into any agreement*
 10 *or contract to conduct a demonstration project, the Office of*
 11 *Personnel Management shall—*

12 *"(1) develop a plan for such project which identi-*
 13 *fies—*

14 *"(A) the purposes of the project;*

15 *"(B) the types of employees or eligibles, cate-*
 16 *gorized by occupational series, grade, or organiza-*
 17 *tional unit;*

18 *"(C) the number of employees or eligibles to be*
 19 *included, in the aggregate and by category;*

20 *"(D) the methodology;*

21 *"(E) the duration;*

22 *"(F) the training to be provided;*

23 *"(G) the anticipated costs;*

1 “(H) the methodology and criteria for evaluation;
2

3 “(I) a specific description of any lack of specific
4 authority for any aspect of the project; and

5 “(J) a specific citation to any provision of law,
6 rule, or regulation which, if not waived under this
7 section, would prohibit the conducting of the project
8 as proposed;

9 “(2) publish the plan in the Federal Register;

10 “(3) submit the plan so published to public hearing; and
11

12 “(4) transmit a copy of the plan, taking into account
13 any revision resulting from the hearing, to each
14 House of the Congress.

15 “(c) (1) Any demonstration project under this section
16 may not be undertaken, or any agreement or contract with respect
17 to such project may not be entered into, unless—

18 “(A) the plan under subsection (b) of this section
19 for the project is approved by each agency involved;

20 “(B) a copy of the plan, as so approved, is transmitted
21 to each House of the Congress; and

22 “(C) the plan is not disapproved by either House
23 of the Congress during the first period of 60 calendar
24 days of continuous session of the Congress after the
25 date on which the plan is transmitted to such House.

1 “(2) For the purpose of paragraph (1) (C) of this sub-
2 section—

3 “(A) the continuity of a session is broken only by
4 an adjournment of the Congress sine die; and

5 “(B) the days on which either House of the Congress
6 is not in session because of an adjournment of more than
7 3 calendar days to a day certain are excluded in the
8 computation of the 60-day period.

9 “(d) No demonstration project under this section may
10 provide for a waiver of—

11 “(1) any provision of chapter 63 (relating to
12 leave) or subpart G (relating to insurance and annuities)
13 of this title;

14 “(2) any provision of law—

15 “(A) referred to in section 2302(b) (1) of this
16 title;

17 “(B) providing for equal employment opportunity
18 through affirmative action under any such
19 provision of law;

20 “(C) providing any right or remedy available
21 to any employee or applicant for employment in the
22 civil service under any such provision of law;

23 “(3) any provision of chapter 15 or subchapter III
24 of chapter 73 of this title (relating to political activity);
25 or

1 “(A) any rule or regulation issued under the pro-
2 visions of law referred to in paragraph (1), (2), or
3 (3) of this subsection.

4 “(e) (1) Each demonstration project shall—

5 “(A) involve not more than 5,000 individuals other
6 than individuals in any control groups necessary to
7 validate the results of the project; and

8 “(B) terminate before the end of the 5-year period
9 beginning on the date of the transmittal to each House of
10 the Congress by the Office of Personnel Management of a
11 copy of the plan for the project under subsection (b)
12 (A) of this section, except that research may continue
13 beyond the date to the extent necessary to validate the
14 results of the project.

15 “(2) Not more than 10 demonstration projects may be
16 contracted for or conducted at any time.

17 “(f) Subject to the terms of any written agreement or
18 contract between the Office of Personnel Management and an
19 agency, a demonstration project involving the agency may be
20 terminated by the Office of Personnel Management, or the
21 agency, if either determines that the project creates a sub-
22 stantial hardship on, or is not in the best interests of, the
23 public, the Federal Government, employees, or eligibles.

24 “(g) Employees within a unit with respect to which
25 a labor organization is accorded exclusive recognition

1 under section 7111 of this title shall not be included within
2 any project under subsection (b) of this section—

3 “(1) if the project would violate a collective bar-
4 gaining agreement (as defined in section 7103(8) of
5 this title) between the agency and the labor organization,
6 unless there is another written agreement with respect to
7 the project between the agency and the organization per-
8 mitting the inclusion; or

9 “(2) if the project is not covered by such a collective
10 bargaining agreement, until there has been consultation
11 or negotiation, as appropriate, by the agency with the
12 labor organization.

13 “(h) Employees within any unit with respect to which
14 a labor organization has not been accorded exclusive recog-
15 nition under section 7111 of this title shall not be included
16 within any project under subsection (b) of this section unless
17 there has been agency consultation regarding the project with
18 the employees in the unit.

19 “(i) The Office of Personnel Management shall evaluate
20 the results of each demonstration project and its impact on
21 improving public management.

22 “(j) Upon the request of the Director of the Office of
23 Personnel Management, agencies shall cooperate with and
24 assist the Office, to the extent practicable, in any evaluation
25 undertaken under subsection (i) of this section and provide

1 the Office with requested information and reports relating to
 2 the conducting of demonstration projects in their respective
 3 agencies.

4 "§ 4704. Allocation of funds

5 "Funds appropriated to the Office of Personnel Manage-
 6 ment for the purpose of this chapter may be allocated by
 7 the Office of Personnel Management to any agency conduct-
 8 ing demonstration projects or assisting the Office of Personnel
 9 Management in conducting such projects. Funds so allocated
 10 shall remain available for such period as may be specified in
 11 appropriation Acts. No contract shall be entered into under
 12 this chapter unless the contract has been provided for in ad-
 13 vance in appropriation Acts.

14 "§ 4705. Reports

15 "The Office of Personnel Management shall include in
 16 the annual report required by section 1308 of this title a
 17 summary of research programs and demonstration projects
 18 conducted during the year covered by the report, the effect of
 19 the programs and projects on improving public management
 20 and increasing Government efficiency, and recommendations
 21 of policies and procedures which will improve such manage-
 22 ment and efficiency.

23 "§ 4706. Regulations

24 "The Office of Personnel Management shall prescribe
 25 regulations to carry out the purpose of this chapter."

1 (b) The table of chapters for part III of title 5, United
 2 States Code, is amended by inserting after the item relating
 3 to chapter 45 the following new item:

"47. Personnel Research Programs and Demonstration Projects-- 4701".

4 INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

5 SEC. 602. (a) Section 208 of the Intergovernmental
 6 Personnel Act of 1979 (42 U.S.C. 4728) is amended—

7 (1) by striking out the section heading and insert-
 8 ing in lieu thereof the following:

9 "TRANSFER OF FUNCTIONS AND ADMINISTRATION OF
 10 MERIT POLICIES";

11 (2) by redesignating subsections (b), (c), (d),
 12 (e), (f), and (g) as subsections (c), (d), (e), (f),
 13 (g), and (i), respectively, and by inserting after sub-
 14 section (a) the following new subsection:

15 "(b) In accordance with regulations of the Office of
 16 Personnel Management, Federal agencies may require as a
 17 condition of participation in assistance programs, systems of
 18 personnel administration consistent with personnel standards
 19 prescribed by the Office of Personnel Management for posi-
 20 tions engaged in carrying out such programs. The standards
 21 shall include the merit principles in section 2 of this Act";
 22 and

23 (3) by inserting after subsection (g), as re-
 24 designated by this section, the following new subsection:

1 “(h) Effective one year after the date of the enactment
 2 of this subsection, all statutory personnel requirements estab-
 3 lished as a condition of the receipt of Federal grants-in-aid
 4 by State and local governments are hereby abolished, except—
 5 “(1) those requirements listed in subsection (a)
 6 of this section;
 7 “(2) those that generally prohibit discrimination
 8 in employment or require equal employment opportunity;
 9 “(3) the Davis-Bacon Act (40 U.S.C. 276 et
 10 seq.); and
 11 “(4) chapter 15 of title 5, United States Code, re-
 12 lating to political activities of certain State and local
 13 employees.”
 14 “(b) Section 401 of such Act (84 Stat. 1920) is amended
 15 by striking out “governments and institutions of higher educa-
 16 tion” and inserting in lieu thereof “governments, institutions
 17 of higher education, and other organizations”
 18 “(c) Section 403 of such Act (84 Stat. 1925) is amended
 19 by striking out “(less applicability to commissioner officers of
 20 the Public Health Service)”
 21 “(d) Section 502 of such Act (42 U.S.C. 4762) is
 22 amended in paragraph (3) by inserting “the Trust Territory
 23 of the Pacific Islands,” before “and a territory or possession
 24 of the United States,”

1 “(e) Section 506 of such Act (42 U.S.C. 4766) is
 2 amended—
 3 “(1) in subsection (b) (2), by striking out “District
 4 of Columbia” and inserting in lieu thereof “District of
 5 Columbia, the Commonwealth of Puerto Rico, Guam,
 6 American Samoa, and the Virgin Islands”; and
 7 “(2) in subsection (b) (5), by striking out “and the
 8 District of Columbia” and inserting in lieu thereof “, the
 9 District of Columbia, the Commonwealth of Puerto Rico,
 10 Guam, American Samoa, and the Virgin Islands”.
 11 AMENDMENTS TO THE MOBILITY PROGRAM
 12 SEC. 603. (a) Section 3371 of title 5, United States
 13 Code, is amended—
 14 “(1) by inserting “the Trust Territory of the Pacific
 15 Islands,” after “Puerto Rico,” in paragraph (1)(A);
 16 and
 17 “(2) by striking out “and” at the end of paragraph
 18 (1), by striking out the period at the end of paragraph
 19 (2) and inserting a semicolon in lieu thereof, and by
 20 adding at the end thereof the following:
 21 “(3) ‘Federal agency’ means an Executive agency,
 22 a court of the United States, the Administrative Office
 23 of the United States Courts, the Library of Congress,
 24 the Botanic Garden, the Government Printing Office,
 25 the Congressional Budget Office, the United States

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1 *Postal Service, the Postal Rate Commission, the Office*
 2 *of the Architect of the Capitol, the Office of Technology*
 3 *Assessment, and such other appropriate agencies of the*
 4 *legislative and judicial branches as determined by the*
 5 *Office of Personnel Management; and*

6 “(4) ‘other organization’ means—

7 “(A) a national, regional, State-wide, or met-
 8 ropolitan organization representing member State
 9 or local governments;

10 “(B) an association of State or local public
 11 officials; or

12 “(C) a nonprofit organization, one of whose
 13 principal functions is to offer professional advisory,
 14 research, or development services, or related services,
 15 to governments or universities concerned with public
 16 management.”

17 (b) Sections 3372 through 3375 of title 5, United
 18 States Code, are amended by striking out “executive agency”
 19 and “an executive agency” each place they appear and in-
 20 serting in lieu thereof “Federal agency” and “a Federal
 21 agency”, respectively.

22 (c) Section 3372 of title 5, United States Code, is
 23 further amended—

24 (1) in subsection (a) (1), by inserting after “agen-
 25 cy” the following: “, other than a noncareer appointee,

1 *limited term appointee, or limited emergency appointee*
 2 *(as such terms are defined in section 3132(a) of this*
 3 *title) in the Senior Executive Service and an employee*
 4 *in a position which has been excepted from the compet-*
 5 *itive service by reason of its confidential, policy deter-*
 6 *mining, or policy-advocating character.”;*

7 (2) in subsection (b) (1), by striking out “and”;

8 (3) in subsection (b) (2), by striking out the period
 9 after “agency” and inserting in lieu thereof a semicolon;

10 (4) by adding at the end of subsection (b) the
 11 following:

12 “(3) an employee of a Federal agency to any other
 13 organization; and

14 “(4) an employee of an other organization to a
 15 Federal agency.”; and

16 (5) by adding at the end thereof (as amended in
 17 paragraph (4) of this subsection) the following new
 18 subsection:

19 “(c) (1) An employee of a Federal agency may be
 20 assigned under this subchapter only if the employee agrees,
 21 as a condition of accepting an assignment under this sub-
 22 chapter, to serve with the agency upon the completion of
 23 the assignment for a period equal to the length of the
 24 assignment.

25 “(2) Each agreement required under paragraph (1) of

1 this subsection shall provide that in the event the employee
 2 fails to carry out the agreement (except for good and suffi-
 3 cient reason as determined by the head of the Federal agency
 4 involved) the employee shall be liable to the United States
 5 for payment of all expenses (excluding salary) of the
 6 assignment. The amount shall be treated as a debt due the
 7 United States."

8 (d) Section 3374 of title 5, United States Code, is fur-
 9 ther amended—

10 (1) by adding the following new sentence at the
 11 end of subsection (b):

12 "The above exceptions shall not apply to non-Federal em-
 13 ployees who are covered by chapters 83, 87, and 89 of this
 14 title by virtue of their non-Federal employment immediately
 15 before assignment and appointment under this section.";

16 (2) in subsection (c) (1), by striking out the semi-
 17 colon at the end thereof and by inserting in lieu thereof
 18 the following: ', except to the extent that the pay
 19 received from the State or local government is less
 20 than the appropriate rate of pay which the duties
 21 would warrant under the applicable pay provisions of
 22 this title or other applicable authority,"; and

23 (3) by striking out the period at the end of sub-
 24 section (c) and adding the following: ', or for the

1 contribution of the State or local government, or a part
 2 thereof, to employee benefit systems."

3 (e) Section 3375(a) of title 5, United States Code, is
 4 further amended by striking out "and" at the end of para-
 5 graph (4), by redesignating paragraph (5) as paragraph
 6 (6), and by inserting after paragraph (4) thereof the
 7 following:

8 "(5) section 5724a(b) of this title, to be used by the
 9 employee for miscellaneous expenses related to change of
 10 station where movement or storage of household goods is
 11 involved; and".

12 **TITLE VII—FEDERAL SERVICE LABOR-**
 13 **MANAGEMENT RELATIONS**

14 **FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS**

15 **SEC. 701.** So much of subpart F of part III of title 5,
 16 United States Code, as precedes subchapter II of chapter 71
 17 thereof is amended to read as follows:

18 **"Subpart F—Labor-Management and Employee**
 19 **Relations**

20 **"Chapter 71—LABOR-MANAGEMENT RELATIONS**

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.

"7101. Findings and purpose.

"7102. Employees' rights.

"7103. Definitions; application.

"7104. Federal Labor Relations Authority.

"7105. Powers and duties of the Authority.

"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES
AND LABOR ORGANIZATIONS

"Sec.

- "7111. Exclusive recognition of labor organizations.
- "7112. Determination of appropriate units for labor organization representation.
- "7113. National consultation rights.
- "7114. Representation rights and duties.
- "7115. Allowments to representatives.
- "7116. Unfair labor practices.
- "7117. Duty to bargain in good faith; compelling need.
- "7118. Prevention of unfair labor practices.
- "7119. Negotiation impasses; Federal Service Impasses Panel.
- "7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND
REVIEW

"Sec.

- "7121. Grievance procedures.
- "7122. Exceptions to arbitral awards.
- "7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
PROVISIONS

"Sec.

- "7131. Reporting requirements for standards of conduct.
- "7132. Official time.
- "7133. Subpoenas.
- "7134. Compilation and publication of data.
- "7135. Regulations.
- "7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

- 2 "§ 7101. Findings and purpose
- 3 "(a) The Congress finds that experience in both pri-
- 4 vate and public employment indicates that the statutory
- 5 protection of the right of employees to organize, bargain
- 6 collectively, and participate through labor organizations of
- 7 their own choosing in decisions which affect them safeguards
- 8 the public interest and contributes to the effective conduct
- 9 of public business. Such protection facilitates and encourages
- 10 the amicable settlement of disputes between employees and

1 their employers involving conditions of employment. There-

2 fore, labor organizations and collective bargaining in the

3 civil service are in the public interest.

4 "(b) It is the purpose of this chapter to prescribe

5 certain rights and obligations of the employees of the Fed-

6 eral Government and to establish procedures which are de-

7 signed to meet the special requirements and needs of the

8 Federal Government.

9 "§ 7102. Employees' rights

10 "Each employee shall have the right to form, join, or

11 assist any labor organization, or to refrain from any such

12 activity, freely and without fear of penalty or reprisal, and

13 each employee shall be protected in the exercise of such right.

14 Except as otherwise provided under this chapter, such right

15 includes the right—

16 "(1) to act for a labor organization in the capacity

17 of a representative and the right, in such capacity, to

18 present the views of the labor organization to heads of

19 agencies and other officials of the executive branch of

20 the Government, the Congress, or other appropriate

21 authorities,

22 "(2) to engage in collective bargaining with respect

23 to conditions of employment through representatives

24 chosen by employees under this chapter, and

25 "(3) to engage in other lawful activities for the

1 purpose of establishing, maintaining, and improving
2 conditions of employment.

3 "§ 7103. Definitions; application

4 "(a) For the purpose of this chapter—

5 "(1) 'person' means an individual, labor organiza-
6 tion, or agency;

7 "(2) 'employee' means an individual—

8 "(A) employed in an agency; or

9 "(B) whose work as such an employee (deter-
10 mined under the preceding provisions of this para-
11 graph) has ceased because of any unfair labor
12 practice under section 7116 of this title and who
13 has not obtained any other regular and substantially
14 equivalent employment, as determined under regu-
15 lations prescribed by the Federal Labor Relations
16 Authority;

17 but does not include—

18 "(i) an alien or noncitizen of the United States
19 who occupies a position outside the United States;

20 "(ii) a member of the uniformed services;

21 "(iii) a supervisor or a management official; or

22 "(iv) an officer or employee in the Foreign
23 Service of the United States employed in the Depart-
24 ment of State, the Agency for International Devel-

1 opment, or the International Communication
2 Agency;

3 "(3) 'agency' means an Executive agency (includ-
4 ing a nonappropriated fund instrumentality described in
5 section 2105(c) of this title and the Veterans' Canteen
6 Service, Veterans' Administration), the Library of Con-
7 gress, and the Government Printing Office, but does not
8 include—

9 "(A) the General Accounting Office;

10 "(B) the Federal Bureau of Investigation;

11 "(C) the Central Intelligence Agency;

12 "(D) the National Security Agency;

13 "(E) the Tennessee Valley Authority;

14 "(F) the Federal Labor Relations Authority;

15 or

16 "(G) the Federal Service Impasses Panel;

17 "(4) 'labor organization' means an organization
18 composed in whole or in part of employees, in which em-
19 ployees participate and pay dues, and which has as a
20 purpose the dealing with an agency concerning grievances
21 and conditions of employment, but does not include—

22 "(A) an organization whose basic purpose is
23 entirely social, fraternal, or limited to special interest
24 objectives which are only incidentally related to
25 conditions of employment;

1 “(B) an organization which, by its constitution,
2 bylaws, tacit agreement among its members, or
3 otherwise, denies membership because of race, color,
4 creed, national origin, sex, age, preferential or non-
5 preferential civil service status, political affiliation,
6 marital status, or handicapping condition; or

7 “(C) an organization sponsored by an agency;

8 “(5) ‘dues’ means dues, fees, and assessments;

9 “(6) ‘Authority’ means the Federal Labor Rela-
10 tions Authority described in section 7104(a) of this
11 title;

12 “(7) ‘Panel’ means the Federal Service Impasses
13 Panel described in section 7119(c) of this title;

14 “(8) ‘collective bargaining agreement’ means an
15 agreement entered into as a result of collective bargain-
16 ing pursuant to the provisions of this chapter;

17 “(9) ‘grievance’ means any complaint—

18 “(A) by any employee concerning any matter
19 relating to the employment of the employee;

20 “(B) by any labor organization concerning any
21 matter relating to the employment of any employee;

22 or

23 “(C) by any employee, labor organization,
24 or agency concerning—

25 “(i) the effect or interpretation, or a claim

1 of breach, of a collective bargaining agreement;
2 or

3 “(ii) any claimed violation, misinterpreta-
4 tion, or misapplication of any law, rule, or regu-
5 lation affecting conditions of employment;

6 “(10) ‘supervisor’ means an individual employed
7 by an agency having authority in the interest of the
8 agency to hire, direct, assign, promote, reward, transfer,
9 furlough, layoff, recall, suspend, discipline, or remove
10 employees, to adjust their grievances, or to effectively
11 recommend such action, if the exercise of the authority
12 is not merely routine or clerical in nature but requires
13 the consistent exercise of independent judgment, except
14 that, with respect to any unit which includes firefighters
15 or nurses, the term ‘supervisor’ includes only those
16 individuals who devote a preponderance of their employ-
17 ment time to exercising such authority;

18 “(11) ‘management official’ means an individual
19 employed by an agency in a position the duties and
20 responsibilities of which require or authorize the in-
21 dividual to formulate, determine, or influence the policies
22 of the agency;

23 “(12) ‘collective bargaining’ means the performance
24 of the mutual obligation of the representative of an
25 agency and the exclusive representative of employees

1 in an appropriate unit in the agency to meet at reason-
 2 able times and to confer, consult, and bargain in a
 3 good-faith effort to reach agreement with respect to
 4 the conditions of employment affecting such employees
 5 and to execute, if requested by either party, a written
 6 document incorporating any collective bargaining
 7 agreement reached, but the obligation referred to in
 8 this paragraph does not compel either party to agree
 9 to a proposal or to make a concession;

10 "(13) 'confidential employee' means an employee
 11 who acts in a confidential capacity with respect to an
 12 individual who formulates or effectuates management
 13 policies in the field of labor-management relations;

14 "(14) 'conditions of employment' means personnel
 15 policies, practices, and matters, whether established by
 16 rule, regulation, or otherwise, affecting working condi-
 17 tions, except that such term does not include policies,
 18 practices, and matters—

19 "(A) relating to discrimination in employment
 20 on the basis of race, color, religion, sex, age, na-
 21 tional origin, or handicapping condition;

22 "(B) relating to political activities prohibited
 23 under subchapter III of chapter 73 of this title; or

24 "(C) to the extent such matters are specifically
 25 provided for by Federal statute;

1 "(15) 'professional employee' means—

2 "(A) an employee engaged in the performance
 3 of work—

4 "(i) requiring knowledge of an advanced
 5 type in a field of science or learning customarily
 6 acquired by a prolonged course of specialized
 7 intellectual instruction and study in an institu-
 8 tion of higher learning or a hospital (as distin-
 9 guished from knowledge acquired by a general
 10 academic education, or from an apprenticeship,
 11 or from training in the performance of routine
 12 mental, manual, mechanical, or physical activi-
 13 ties);

14 "(ii) requiring the consistent exercise of
 15 discretion and judgment in its performance;

16 "(iii) which is predominantly intellectual
 17 and varied in character (as distinguished from
 18 routine mental, manual, mechanical, or physi-
 19 cal work); and

20 "(iv) which is of such character that the
 21 output produced or the result accomplished by
 22 such work cannot be standardized in relation
 23 to a given period of time; or

24 "(B) an employee who has completed the
 25 courses of specialized intellectual instruction and

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 1 study described in subparagraph (A) (i) of this
 2 paragraph and is performing related work under
 3 appropriate direction or guidance to qualify the
 4 employee as a professional employee described in
 5 subparagraph (A) of this paragraph;

6 “(16) ‘exclusive representative’ means any labor
 7 organization which—

8 “(A) is certified as the exclusive representative
 9 of employees in an appropriate unit pursuant to
 10 section 7111 of this title; or

11 “(B) was recognized by an agency immediately
 12 before the effective date of this chapter as the ex-
 13 clusive representative of employees in an appropriate
 14 unit—

15 “(i) on the basis of an election, or

16 “(ii) on any basis other than an election,
 17 and continues to be so recognized in accordance with
 18 the provisions of this chapter.

19 “(17) ‘firefighter’ means any employee engaged
 20 in the performance of work directly connected with the
 21 control and extinguishment of fires or the maintenance
 22 and use of firefighting apparatus and equipment; and

23 “(18) ‘United States’ means the 50 States, the
 24 District of Columbia, the Commonwealth of Puerto Rico,
 25 Guam, the Virgin Islands, the Trust Territory of the

1 Pacific Islands, and any territory or possession of the
 2 United States.

3 “(b) An agency may file an application with the Au-
 4 thority requesting that it, or any unit thereof, be excluded
 5 from any provision or requirement of this chapter. The
 6 Authority shall—

7 “(1) review the application, and

8 “(2) undertake any other investigation it considers
 9 appropriate.

10 If, upon completion of its review and investigation, the Au-
 11 thority determines that the agency, or any unit thereof, has as
 12 a primary function intelligence, counterintelligence, investi-
 13 gative, or security work, and that any requirement or pro-
 14 vision of this chapter cannot be applied to the agency, or
 15 unit thereof, with respect to which such a determination has
 16 been made in a manner consistent with national security
 17 requirements and considerations, the Authority may issue an
 18 order excluding the agency, or unit thereof, with respect to
 19 which such a determination has been made from such require-
 20 ment or provision.

21 “§ 7104. Federal Labor Relations Authority

22 “(a) The Federal Labor Relations Authority is com-
 23 posed of three members, not more than 2 of whom may
 24 be adherents of the same political party. No member shall
 25 engage in any other business or employment or hold another

1 office or position in the Government of the United States
2 except as otherwise provided by law.

3 “(b) Members of the Authority shall be appointed by
4 the President by and with the advice and consent of the
5 Senate, and may be removed by the President only upon
6 notice and hearing and only for misconduct, inefficiency,
7 neglect of duty, or malfeasance in office. The President shall
8 designate one member to serve as Chairman of the Authority.

9 “(c)(1) One of the original members of the Authority
10 shall be appointed for a term of 1 year, one for a term of 3
11 years, and the Chairman for a term of 5 years. Thereafter,
12 each member shall be appointed for a term of 5 years.

13 “(2) Notwithstanding paragraph (1) of this subsection,
14 the term of any member shall not expire before the earlier of—

15 “(A) the date on which the member’s successor takes
16 office, or

17 “(B) the last day of the Congress beginning after
18 the date on which the member’s term of office would (but
19 for this subparagraph) expire.

20 An individual chosen to fill a vacancy shall be appointed
21 for the unexpired term of the member replaced.

22 “(d) A vacancy in the Authority shall not impair the
23 right of the remaining members to exercise all of the powers
24 of the Authority.

25 “(e) The Authority shall make an annual report to the

1 President for transmittal to the Congress which shall include
2 information as to the cases it has heard and the decisions it
3 has rendered.

4 “(f)(1) The General Counsel of the Authority shall
5 be appointed by the President, by and with the advice and
6 consent of the Senate, for a term of 5 years. The General
7 Counsel may be removed by the President.

8 “(2) The General Counsel may—

9 “(A) investigate alleged violations of this chapter,

10 “(B) file and prosecute complaints under this
11 chapter,

12 “(C) intervene before the Authority in proceedings
13 brought under section 7118 of this title, and

14 “(D) exercise such other powers of the Authority
15 as the Authority may prescribe.

16 “(3) The General Counsel shall have direct authority
17 over, and responsibility for, all employees in the office of
18 General Counsel, including employees of the General Coun-
19 sel in the regional offices of the Authority.

20 “(4) If a vacancy occurs in the office of General Coun-
21 sel, the President shall promptly designate an Acting Gen-
22 eral Counsel and shall submit a nomination for General
23 Counsel to the Senate within 40 days after the vacancy
24 occurs, unless the Congress adjourns sine die before the ex-
25 piration of the 40-day period, in which case the President

1 shall submit the nomination to the Senate not later than 10
2 days after the Congress reconvenes.

3 "§ 7105. Powers and duties of the Authority

4 "(a) The Authority shall provide leadership in estab-
5 lishing policies and guidance relating to matters under this
6 chapter, and, except as otherwise provided, shall be respon-
7 sible for carrying out the purpose of this chapter.

8 "(b) The Authority shall adopt an official seal which
9 shall be judicially noticed.

10 "(c) The principal office of the Authority shall be in or
11 about the District of Columbia, but the Authority may meet
12 and exercise any or all of its powers at any time or place.
13 Except as otherwise expressly provided by law, the Authority
14 may, by one or more of its members or by such agents as it
15 may designate, make any appropriate inquiry necessary to
16 carry out its duties wherever persons subject to this chapter
17 are located. Any member who participates in the inquiry
18 shall not be disqualified from later participating in a decision
19 of the Authority in any case relating to the inquiry.

20 "(d) The Authority shall appoint an Executive Director
21 and such regional directors, administrative law judges under
22 section 3105 of this title, and other individuals as it may
23 from time to time find necessary for the proper performance
24 of its functions.

25 "(e)(1) The Authority may delegate to any regional
26 director its authority under this chapter—

1 "(A) to determine whether a group of employees
2 is an appropriate unit;

3 "(B) to conduct investigations and to provide for
4 hearings;

5 "(C) to determine whether a question of represen-
6 tation exists and to direct an election; and

7 "(D) to conduct secret ballot elections and certify
8 the results thereof.

9 "(2) The Authority may delegate to any administrative
10 law judge appointed under subsection (d) of this section its
11 authority under section 7118 of this title to determine whether
12 any person has engaged in or is engaging in an unfair labor
13 practice.

14 "(f) If the Authority delegates any authority to any
15 regional director or administrative law judge to take any
16 action pursuant to subsection (e) of this section, the Authority
17 may, upon application by any interested person filed within
18 60 days after the date of the action, review such action, but
19 the review shall not, unless specifically ordered by the Au-
20 thority, operate as a stay of the action. The Authority
21 may affirm, modify, or reverse any action reviewed under this
22 subsection. If the Authority does not undertake to grant
23 review of the action under this subsection within 60 days after
24 the later of—

25 "(1) the date of the action; or

1 “(2) the date of the filing of any application under
2 this subsection for review of the action;
3 the action shall become the action of the Authority at the end
4 of such 60-day period.

5 “(g) In order to carry out its functions under this chap-
6 ter, the Authority may—

7 “(1) hold hearings; and
8 “(2) administer oaths, take the testimony or depo-
9 sition of any person under oath, and issue subpoenas as
10 provided in section 7133 of this title.

11 “§ 7106. Management rights

12 “(a) Subject to subsection (b) of this section, nothing
13 in this chapter shall affect the authority of any management
14 official of any agency—

15 “(1) to determine the mission, budget, organiza-
16 tion, number of employees, and internal security prac-
17 tices of the agency; and

18 “(2) in accordance with applicable laws—

19 “(A) to direct employees;

20 “(B) to assign work, to make determinations
21 with respect to contracting out, and to determine
22 the personnel by which agency operations shall be
23 conducted; and

24 “(C) to take whatever actions may be necessary

1 to carry out the agency mission during national
2 emergencies.

3 “(b) Nothing in this section shall preclude any agency
4 and any labor organization from negotiating—

5 “(1) procedures which management officials of the
6 agency will observe in exercising their authority to deter-
7 mine the mission, budget, organization, number of em-
8 ployees, and internal security of the agency, or

9 “(2) appropriate arrangements for employees ad-
10 versely affected by the exercise of the authority described
11 in subsection (a) of this section by such management
12 officials.

13 “SUBCHAPTER II—RIGHTS AND DUTIES OF
14 AGENCIES AND LABOR ORGANIZATIONS

15 “§ 7111. Exclusive recognition of labor organizations

16 “(a) Exclusive recognition shall be accorded to a labor
17 organization which has been selected by a majority of em-
18 ployees in an appropriate unit who participate in an elec-
19 tion in conformity with the requirements of this chapter.

20 “(b) (1) If a petition is filed with the Authority—

21 “(A) by any person alleging—

22 “(i) in the case of an appropriate unit for
23 which there is no exclusive representative that 30
24 percent of the employees in the appropriate unit wish

1 to be represented for the purpose of collective bar-
2 gaining by an exclusive representative, or

3 "(ii) in the case of an appropriate unit for
4 which there is an exclusive representative that 50
5 percent of the employees in the unit allege that the
6 exclusive representative is no longer the representa-
7 tive of the majority of the employees in the unit; or

8 "(B) by any person seeking clarification of, or
9 an amendment to, a certification then in effect or a matter
10 relating to representation;

11 the Authority shall investigate the petition, and if it has
12 reasonable cause to believe that a question of representation
13 exists, it shall provide an opportunity for a hearing (for
14 which a transcript shall be kept) after reasonable notice. Ex-
15 cept as provided under subsection (e) of this section, if the
16 Authority finds on the record of the hearing that a
17 question of representation exists, the Authority shall, subject
18 to paragraph (2) of this subsection, conduct an election on
19 the question by secret ballot and shall certify the results
20 thereof. An election under this subsection shall not be con-
21 ducted in any appropriate unit or in any subdivision thereof
22 within which, in the preceding 12 calendar months, a valid
23 election under this subsection has been held.

24 "(2)(A) If, after the 45-day period beginning on the

1 date on which the petition is filed pursuant to paragraph (1)
2 of this subsection, unresolved issues exist concerning—

3 "(i) the appropriateness of the unit in accordance
4 with section 7112 of this title;

5 "(ii) the eligibility of one or more employees to
6 vote in the proposed election; or

7 "(iii) other matters determined by the Authority
8 to be relevant to the election;

9 the Authority shall direct an election by secret ballot in
10 the unit specified in the petition and announce the results
11 thereof.

12 "(B) After conducting an election under subparagraph
13 (A) of this paragraph, the Authority shall expedite the
14 resolution of any disputed issues described in subparagraph
15 (A) of this paragraph. If the Authority determines that
16 matters raised by the disputed issues did not affect the outcome
17 of the election, the Authority shall certify the results of the
18 election. If the Authority determines that the matters affected
19 the outcome of the election, it shall conduct a new election
20 by secret ballot in accordance with such requirements as are
21 appropriate on the basis of its determination, and shall certify
22 the results thereof.

23 "(c) A labor organization which—

24 "(1) has been designated by at least 10 percent

1 of the employees in the unit specified in any petition
2 filed pursuant to subsection (b) of this section;

3 "(2) has submitted a valid copy of a current or
4 recently expired collective bargaining agreement for
5 the unit; or

6 "(3) has submitted other evidence that it is the
7 exclusive representative of the employees involved;
8 may intervene with respect to a petition filed pursuant
9 to subsection (b) of this section and shall be placed on the
10 ballot of any election under such subsection (b) with respect
11 to the petition.

12 "(d) The Authority shall determine who is eligible to
13 vote in any election under this section and shall establish
14 rules governing any such election, which shall include rules
15 allowing employees eligible to vote the opportunity to choose—

16 "(1) from labor organizations on the ballot, that
17 labor organization which the employees wish to have rep-
18 resent them; or

19 "(2) not to be represented by a labor organization.
20 In any election in which no choice on the ballot receives
21 a majority of the votes cast, a runoff election shall be con-
22 ducted between the two choices receiving the highest number
23 of votes. A labor organization which receives the majority

1 of the votes cast in an election shall be certified by the
2 Authority as the exclusive representative.

3 "(e) The Authority may, on the petition of a labor or-
4 ganization, certify the labor organization as an exclusive
5 representative—

6 "(1) if, after investigation, the Authority determines
7 that the conditions for a free and untrammelled election
8 under this section cannot be established because the agency
9 involved has engaged in or is engaging in an unfair labor
10 practice described in section 7116(a) of this title; or

11 "(2) if, after investigation, the Authority deter-
12 mines that—

13 "(A) the labor organization represents a ma-
14 jority of employees in an appropriate unit;

15 "(B) the majority status was achieved with-
16 out the benefit of any unfair labor practice described
17 in section 7116 of this title;

18 "(C) no other person has filed a petition for
19 recognition under subsection (b) of this section or
20 a request for intervention under subsection (c) of
21 this section; and

22 "(D) no other question of representation exists
23 in the appropriate unit.

24 "(f) Any labor organization described in section 7103
25 (a)(16)(B)(ii) of this title may petition for an election for

1 the determination of that labor organization as the exclusive
2 representative of an appropriate unit.

3 "(g) A labor organization seeking exclusive recognition
4 shall submit to the Authority and the agency involved a
5 roster of its officers and representatives, a copy of its con-
6 stitution and bylaws, and a statement of its objectives.

7 "(h) Exclusive recognition shall not be accorded to a
8 labor organization—

9 "(1) if the Authority determines that the labor orga-
10 nization is subject to corrupt influences or influences
11 opposed to democratic principles;

12 "(2) in the case of a petition filed pursuant to
13 subsection (b)(1)(A) of this section, if there is not cred-
14 ible evidence that at least 30 percent of the employees in
15 the unit specified in the petition wish to be represented
16 for the purpose of collective bargaining by the labor
17 organization seeking exclusive recognition;

18 "(3) if there is then in effect a lawful written
19 collective bargaining agreement between the agency in-
20 volved and an exclusive representative (other than the
21 labor organization seeking exclusive recognition) covering
22 any employees included in the unit specified in the petition,
23 unless—

24 "(A) the collective bargaining agreement has
25 been in effect for more than 3 years, or

1 "(B) the petition for exclusive recognition is
2 filed during the 4-month period which begins on the
3 180th day before the expiration date of the collective
4 bargaining agreement; or

5 "(4) if the Authority has, within the previous 12
6 calendar months, conducted a secret ballot election in-
7 volving any of the employees in the unit described in
8 any petition under this section and in such election a
9 majority of the employees voting chose a labor organiza-
10 tion for certification as the unit's exclusive representative
11 or chose not to be represented by any labor organization.

12 "(i) Nothing in this section shall be construed to prohibit
13 the waiving of hearings by stipulation for the purpose of a
14 consent election in conformity with regulations and rules or
15 decisions of the Authority.

16 "§ 7112. Determination of appropriate units for labor
17 organization representation

18 "(a)(1) The Authority shall determine the appropriate-
19 ness of any unit. The Authority shall determine in each case
20 whether, in order to ensure employees the fullest freedom in
21 exercising the rights guaranteed under this chapter, the ap-
22 propriate unit should be established on an agency, plant, in-
23 stallation, functional, or other basis and shall determine any
24 unit to be an appropriate unit only if the determination
25 will ensure a clear and identifiable community of interest

1 among the employees in the unit and will promote effective
2 dealings with, and efficiency of the operations of, the agency
3 involved.

4 “(b) A unit shall not be determined to be appropriate
5 under this section solely on the basis of the extent to which
6 employees in the proposed unit have organized, nor shall a
7 unit be determined to be appropriate if it includes—

8 “(1) except as provided under section 7136(a)(2)
9 of this title, any management official or supervisor, ex-
10 cept that, with respect to a unit a majority of which is
11 composed of firefighters or nurses, a unit which includes
12 both supervisors and employees may be considered
13 appropriate;

14 “(2) a confidential employee;

15 “(3) an employee engaged in personnel work in
16 other than a purely clerical capacity;

17 “(4) an employee engaged in administering the
18 provisions of this chapter;

19 “(5) both professional employees and other em-
20 ployees, unless a majority of the professional employees
21 vote for inclusion in the unit;

22 “(6) any employee engaged in intelligence, counter-
23 intelligence, investigative, or security work which directly
24 affects national security; or

25 “(7) any employee primarily engaged in investiga-

1 tion or audit functions relating to the work of individuals
2 employed by an agency whose duties directly affect the in-
3 ternal security of the agency but only if the functions
4 are undertaken to insure that the duties are discharged
5 honestly and with integrity.

6 “(c) Two or more units which are in an agency and for
7 which a labor organization is the exclusive representative by
8 reason of elections within each of the units shall be consoli-
9 dated into a single larger unit if the Authority considers the
10 larger unit to be appropriate. The Authority shall certify the
11 labor organization as the exclusive representative of the new
12 larger unit.

13 “(d) In the case of the reorganization of one or more
14 units for which, before the reorganization, a labor organiza-
15 tion was the exclusive representative of any such unit, the
16 labor organization shall continue to be the exclusive rep-
17 resentative for each such unit until new elections are held or a
18 period of 45 days has elapsed, whichever first occurs.

19 “§ 7113. National consultation rights

20 “(a)(1) If, in connection with any agency, no labor
21 organization has been accorded exclusive recognition on an
22 agency basis, a labor organization which is the exclusive rep-
23 resentative of a substantial number of the employees of the
24 agency, as determined in accordance with criteria prescribed

1 by the Authority, shall be granted national consultation rights
 2 by the agency. National consultation rights shall terminate
 3 when the labor organization no longer meets the criteria pre-
 4 scribed by the Authority. Any issue relating to any labor
 5 organization's eligibility for, or continuation of, national
 6 consultation rights shall be subject to determination by the
 7 Authority.

8 "(b) (1) Any labor organization having national con-
 9 sultation rights in connection with any agency under subsec-
 10 tion (a) of this section shall—

11 "(A) be informed of any change in conditions of
 12 employment proposed by the agency, and

13 "(B) shall be permitted reasonable time to present
 14 its views and recommendations regarding the changes.

15 "(2) If any views or recommendations are presented
 16 under paragraph (1) of this subsection to an agency by any
 17 labor organization—

18 "(A) the agency shall consider the views or recom-
 19 mendations before taking final action on any matter with
 20 respect to which the views or recommendations are
 21 presented; and

22 "(B) the agency shall provide the labor organization
 23 a written statement of the reasons for taking the final
 24 action.

1 "(c) Nothing in this section shall be construed to limit
 2 the right of any agency or exclusive representative to engage
 3 in collective bargaining.

4 "§ 7114. Representation rights and duties

5 "(a) A labor organization which has been accorded exclu-
 6 sive recognition is the exclusive representative of the employees
 7 in the unit it represents and is entitled to act for, and negotiate
 8 collective bargaining agreements covering, all employees in
 9 the unit. An exclusive representative is responsible for rep-
 10 resenting the interests of all employees in the unit it repre-
 11 sents without discrimination and without regard to labor
 12 organization membership. An exclusive representative of
 13 an appropriate unit in an agency shall be given the oppor-
 14 tunity to be represented at—

15 "(1) any discussion between one or more represent-
 16 atives of the agency and one or more employees in the
 17 unit or their representatives concerning any grievance,
 18 personnel policy or practice, or other conditions of em-
 19 ployment; or

20 "(2) any discussion between an employee in the unit
 21 and a representative of the agency if the employee rea-
 22 sonably believes that the employee may be the subject of
 23 disciplinary action.

24 Any agency and any exclusive representative of any appropri-
 25 ate unit in the agency, through appropriate representatives,

1 shall meet and negotiate in good faith for the purpose of ar-
 2 riving at a collective bargaining agreement. The rights of an
 3 exclusive representative under the preceding provisions of this
 4 subsection shall not be construed to preclude an employee from
 5 being represented by an attorney or other representative, other
 6 than the exclusive representative, of the employee's own choos-
 7 ing in any appeal action under procedures other than pro-
 8 cedures negotiated pursuant to this chapter.

9 “(b) The duty of an agency and an exclusive repre-
 10 sentative to negotiate in good faith under subsection (a)
 11 of this section shall include the obligation—

12 “(1) to approach the negotiations with a sincere
 13 resolve to reach a collective bargaining agreement;

14 “(2) to be represented at the negotiations by duly
 15 authorized representatives prepared to discuss and nego-
 16 tiate on any conditions of employment;

17 “(3) to meet at reasonable times and convenient
 18 places as frequently as may be necessary, and to avoid
 19 unnecessary delays;

20 “(4) in the case of an agency, to furnish to the
 21 exclusive representative involved, or its authorized repre-
 22 sentative, upon request and, to the extent not prohibited
 23 by law, data which is normally maintained by the agency
 24 in the regular course of business, and which is reason-
 25 ably available and necessary for full and proper dis-

1 cussion, understanding, and negotiation of subjects within
 2 the scope of collective bargaining; and

3 “(5) if agreement is reached, to execute on the
 4 request of any party to the negotiation a written docu-
 5 ment embodying the agreed terms, and to take such
 6 steps as are necessary to implement such agreement.

7 “§ 7115. Allotments to representatives

8 “(a) If an agency has received from an employee in
 9 an appropriate unit a written assignment which authorizes
 10 the agency to deduct from the pay of the employee amounts
 11 for the payment of regular and periodic dues of the exclusive
 12 representative of the unit, the agency shall honor the assign-
 13 ment and make an appropriate allotment pursuant to the
 14 assignment. Any such allotment shall be made at no cost to
 15 the exclusive representative or the employee. Except as pro-
 16 vided under subsection (b) of this section, any such assign-
 17 ment may not be revoked for a period of 1 year.

18 “(b) An allotment under subsection (a) of this section
 19 for the deduction of dues with respect to any employee shall
 20 terminate when—

21 “(1) the agreement between the agency and the
 22 exclusive representative involved ceases to be applicable
 23 to the employee; or

24 “(2) the employee is suspended or expelled from
 25 membership in the exclusive representative.

1 “(c)(1) Subject to paragraph (2) of this subsection,
2 if a petition has been filed with the Authority by a labor
3 organization alleging that 10 percent of the employees in an
4 appropriate unit in an agency have membership in the labor
5 organization, the Authority shall investigate the petition to
6 determine its validity. Upon certification by the Authority
7 of the validity of the petition, the agency shall have a duty to
8 negotiate with the labor organization solely concerning the
9 deduction of dues of the labor organization from the pay of
10 the members of the labor organization who are employees in the
11 unit and who make a voluntary allotment for such purpose.

12 “(2)(A) The provisions of paragraph (1) of this sub-
13 section shall not apply in the case of any appropriate unit for
14 which there is an exclusive representative.

15 “(B) Any agreement under paragraph (1) of this
16 subsection between a labor organization and an agency with
17 respect to an appropriate unit shall be null and void upon
18 the certification of an exclusive representative of the unit.
19 “§ 7116. Unfair labor practices

20 “(a) For the purpose of this chapter, it shall be an un-
21 fair labor practice for an agency—

22 “(1) to interfere with, restrain, or coerce any em-
23 ployee in the exercise by the employee of any right
24 under this chapter;

25 “(2) to encourage or discourage membership in any

1 labor organization by discrimination in connection with
2 hiring, tenure, promotion, or other conditions of
3 employment;

4 “(3) to sponsor, control, or otherwise assist any
5 labor organization, other than to furnish, upon request,
6 customary and routine services and facilities if the serv-
7 ices and facilities are also furnished on an impartial
8 basis to other labor organizations having equivalent
9 status;

10 “(4) to discipline or discriminate against an em-
11 ployee because the employee has filed a complaint, affi-
12 davit, or petition, or has given any information or testi-
13 mony under this chapter;

14 “(5) to refuse to consult, confer, or negotiate in
15 good faith with a labor organization as required by this
16 chapter;

17 “(6) to fail or refuse to cooperate in impasse pro-
18 cedures and impasse decisions as required by this
19 chapter;

20 “(7) to prescribe any rule or regulation which re-
21 stricts the scope of collective bargaining permitted by this
22 chapter or which is in conflict with any applicable col-
23 lective bargaining agreement; or

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

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

3 “(1) to interfere with, restrain, or coerce any em-
4 ployee in the exercise by the employee of any right
5 under this chapter;

6 “(2) to cause or attempt to cause an agency to
7 discriminate against any employee in the exercise by
8 the employee of any right under this chapter;

9 “(3) to coerce, discipline, fine, or attempt to coerce
10 a member of the labor organization as punishment, re-
11 prisal, or for the purpose of hindering or impeding the
12 member's work performance or productivity as an
13 employee or the discharge of the member's duties as an
14 employee;

15 “(4) to discriminate against an employee with re-
16 gard to the terms or conditions of membership in the labor
17 organization on the basis of race, color, creed, national
18 origin, sex, age, preferential or nonpreferential civil
19 service status, political affiliation, marital status, or
20 handicapping condition;

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

23 “(6) to fail or refuse to cooperate in impasse pro-
24 cedures and impasse decisions as required by this
25 chapter;

1 “(7) to call or engage in a strike, work stoppage,
2 or slowdown, or to condone any such activity by failing
3 to take action to prevent or stop such activity; or

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

6 “(c) For the purpose of this chapter it shall be an
7 unfair labor practice for an exclusive representative to deny
8 membership to any employee in the appropriate unit repre-
9 sented by such exclusive representative except for failure—

10 (1) to meet reasonable occupational standards uni-
11 formly required for admission, or

12 (2) to tender dues uniformly required as a condi-
13 tion of acquiring and retaining membership.

14 This subsection does not preclude any labor organization from
15 enforcing discipline in accordance with procedures under its
16 constitution or bylaws to the extent consistent with the provi-
17 sions of this chapter.

18 “(d) Issues which may properly be raised under—

19 “(1) an appeals procedure prescribed by or pur-
20 suant to law; or

21 “(2) any grievance procedure negotiated pursuant
22 to section 7121 of this title;

23 may, at the election of the aggrieved party, be raised either—
24 (A) under such appeals procedure or such grievance
25 procedure, as appropriate; or

1 (B) if applicable, under the procedure for resolving
2 complaints of unfair labor practices under section 7118
3 of this title.

4 An election under the preceding sentence shall be made at
5 such time and in such manner as the Authority shall pre-
6 scribe. Any decision under subparagraph (B) of this sub-
7 section on any such issue shall not be construed to be a deter-
8 mination of an unfair labor practice under this chapter or
9 a precedent for any such determination.

10 "§ 7117. Duty to bargain in good faith; compelling need

11 "(a)(1) Subject to paragraph (2) of this subsection,
12 the duty to bargain in good faith shall, to the extent not
13 inconsistent with Federal law, extend to matters which are
14 the subject of any rule or regulation which is not a Govern-
15 ment-wide rule or regulation.

16 "(2) The duty to bargain in good faith shall, to the
17 extent not inconsistent with Federal law, extend to matters
18 which are the subject of any Government-wide rule or regu-
19 lation for which the Authority has determined under sub-
20 section (b) of this section that no compelling need (as
21 determined under regulations prescribed by the Authority)
22 exists.

23 "(b)(1) In any case of collective bargaining in which
24 an exclusive representative alleges that no compelling need
25 exists for any Government-wide rule or regulation which is

1 then in effect and which governs any matter at issue in such
2 collective bargaining, the Authority shall determine under
3 paragraph (2) of this subsection, in accordance with regula-
4 tions prescribed by the Authority, whether such a compelling
5 need exists.

6 "(2) For the purpose of this section, a compelling need
7 shall be determined not to exist for any rule or regulation
8 only if—

9 "(A) the agency which issued the rule or regula-
10 tion informs the Authority in writing that a compelling
11 need for the rule or regulation does not exist; or

12 "(B) the Authority determines, after a hearing
13 under this section, that compelling need for the rule or
14 regulation does not exist.

15 "(3) Any hearing under this subsection shall be expe-
16 dited to the extent practicable and shall not include the Gen-
17 eral Counsel as a party.

18 "(4) The agency which issued the rule or regulation
19 shall be a necessary party at any hearing under this
20 subsection.

21 "§ 7118. Prevention of unfair labor practices

22 "(a)(1) If an agency or labor organization is charged
23 by any person with having engaged in or engaging in an
24 unfair labor practice, the General Counsel shall investigate
25 the charge and may issue and cause to be served upon the

1 agency or labor organization a complaint. In any case in
 2 which the General Counsel does not issue a complaint be-
 3 cause the charge fails to state an unfair labor practice, the
 4 General Counsel shall provide the person making the charge
 5 a written statement of the reasons for not issuing a complaint.

6 “(2) Any complaint under paragraph (1) of this sub-
 7 section shall contain a notice—

8 “(A) of the charge;

9 “(B) that a hearing will be held before the Authority
 10 (or any member thereof or before an individual em-
 11 ployed by the Authority and designated for such pur-
 12 pose); and

13 “(C) of the time and place fixed for the hearing.

14 “(3) The labor organization or agency involved shall
 15 have the right to file an answer to the original and any
 16 amended complaint and to appear in person or otherwise and
 17 give testimony at the time and place fixed in the complaint
 18 for the hearing.

19 “(4)(A) Except as provided in subparagraph (B) of
 20 this paragraph, no complaint shall be issued based on any
 21 alleged unfair labor practice which occurred more than 6
 22 months before the filing of the charge with the Authority.

23 “(B) If the General Counsel determines that the person
 24 filing any charge was prevented from filing the charge

1 during the 6-month period referred to in subparagraph
 2 (A) of this paragraph by reason of—

3 “(i) any failure of the agency or labor organization
 4 against which the charge is made to perform a duty
 5 owed to the person, or

6 “(ii) any concealment which prevented discovery of
 7 the alleged unfair labor practice during the 6-month
 8 period,

9 the General Counsel may issue a complaint based on the
 10 charge if the charge was filed during the 6-month period
 11 beginning on the day of the discovery by the person of the
 12 alleged unfair labor practice.

13 “(5) The Authority (or any member thereof or any
 14 individual employed by the Authority and designated for
 15 such purpose) shall conduct a hearing on the complaint not
 16 earlier than 5 days after the date on which the complaint is
 17 served. In the discretion of the individual or individuals con-
 18 ducting the hearing, any person involved may be allowed to
 19 intervene in the hearing and to present testimony. Any such
 20 hearing shall, to the extent practicable, be conducted in ac-
 21 cordance with the provisions of subchapter II of chapter 5
 22 of this title, except that the parties shall not be bound by
 23 rules of evidence, whether statutory, common law, or adopted
 24 by a court. A transcript shall be kept of the hearing. After

1 such a hearing the Authority, in its discretion, may upon no-
2 tice receive further evidence or hear argument.

3 “(6) If the Authority (or any member thereof or any
4 individual employed by the Authority and designated for
5 such purpose) determines after any hearing on a complaint
6 under paragraph (5) of this subsection that the preponder-
7 ance of the evidence received demonstrates that the agency
8 or labor organization named in the complaint has engaged
9 in or is engaging in an unfair labor practice, then the in-
10 dividual or individuals conducting the hearing shall state
11 in writing their findings of fact and shall issue and cause to
12 be served on the agency or labor organization an order—

13 “(A) to cease and desist from any such unfair labor
14 practice in which the agency or labor organization is
15 engaged;

16 “(B) directing that a collective bargaining agree-
17 ment be amended and that the amendments be given
18 retroactive effect;

19 “(C) requiring an award of reasonable attorney
20 fees;

21 “(D) requiring reinstatement of an employee with
22 backpay, together with interest thereon; or

23 “(E) including any combination of the actions
24 described in subparagraphs (A) through (D) of this

1 paragraph or such other action as will carry out the pur-
2 pose of this chapter.

3 If any such order requires reinstatement of an employee with
4 backpay, backpay may be required of the agency (as pro-
5 vided in section 5596 of this title) or of the labor organiza-
6 tion, as the case may be, which is found to have engaged in
7 the unfair labor practice involved.

8 “(7) If the individual or individuals conducting the
9 hearing determine that the preponderance of the evidence
10 received fails to demonstrate that the agency or labor organi-
11 zation named in the complaint has engaged in or is engaging
12 in an unfair labor practice, the individual or individuals
13 shall state in writing their findings of fact and shall issue an
14 order dismissing the complaint.

15 “(b) In connection with any matter before the Author-
16 ity in any proceeding under this section, the Authority may
17 request from the Director of the Office of Personnel Man-
18 agement an opinion concerning the proper interpretation of
19 rules, regulations, or other policy directives issued by the
20 Office of Personnel Management. Any interpretation under
21 the preceding sentence shall be advisory in nature and shall
22 not be binding on the Authority.

23 “§ 7119. Negotiation imposes; Federal Service Imposes

24 Panel

25 “(a) The Federal Mediation and Conciliation Service

1 shall provide services and assistance to agencies and exclusive
 2 representatives in the resolution of negotiation impasses. The
 3 Service shall determine under what circumstances and in
 4 what manner it shall provide services and assistance.

5 “(b) If voluntary arrangements, including the services
 6 of the Federal Mediation and Conciliation Service or any
 7 other third-party mediation, fail to resolve a negotiation
 8 impasse—

9 “(1) either party may request the Federal Service
 10 Impasses Panel to consider the matter, or

11 “(2) the parties may agree to adopt a procedure
 12 for binding arbitration of the negotiation impasse.

13 “(c)(1) The Federal Service Impasses Panel is an
 14 entity within the Authority, the function of which is to pro-
 15 vide assistance in resolving negotiation impasses between
 16 agencies and exclusive representatives.

17 “(2) The Panel shall be composed of a Chairman and at
 18 least six other members, who shall be appointed by the Presi-
 19 dent, solely on the basis of fitness to perform the duties and
 20 functions involved, from among individuals who are fa-
 21 miliar with Government operations and knowledgeable in
 22 labor-management relations.

23 “(3) Of the original members of the Panel, 2 members
 24 shall be appointed for a term of 1 year, 2 members shall be
 25 appointed for a term of 3 years, and the Chairman and the

1 remaining members shall be appointed for a term of 5 years.
 2 Thereafter each member shall be appointed for a term of 5
 3 years, except that an individual chosen to fill a vacancy shall
 4 be appointed for the unexpired term of the member replaced.
 5 Any member of the Panel may be removed by the President.

6 “(4) The Panel may appoint an Executive Director
 7 and any other individuals it may from time to time find
 8 necessary for the proper performance of its duties. Each
 9 member of the Panel who is not an employee (as defined in
 10 section 2105 of this title) is entitled to pay at a rate equal
 11 to the daily equivalent of the maximum annual rate of basic
 12 pay then currently paid under the General Schedule for each
 13 day he is engaged in the performance of official business of
 14 the Panel, including travel time, and is entitled to travel
 15 expenses as provided under section 5703 of this title.

16 “(5)(A) The Panel or its designee shall promptly
 17 investigate any impasse presented to it under subsection (b)
 18 of this section. The Panel shall consider the impasse and shall
 19 either—

20 “(i) recommend to the parties procedures for the
 21 resolution of the impasse; or

22 “(ii) assist the parties in resolving through what-
 23 ever methods and procedures, including factfinding and
 24 recommendations, it may consider appropriate to accom-
 25 plish the purpose of this section.

1 “(B) If the parties do not arrive at a settlement after
2 assistance by the Panel under subparagraph (A) of this
3 paragraph, the Panel may—

4 “(i) hold hearings;
5 “(ii) administer oaths, take the testimony or deposi-
6 tion of any person under oath, and issue subpoenas as
7 provided in section 7133 of this title; and

8 “(iii) take whatever action is necessary and not
9 inconsistent with this chapter to resolve the impasse.

10 “(C) Notices of any final action of the Panel under this
11 section shall be promptly served upon the parties, and the
12 action shall be binding on such parties during the term of the
13 agreement, unless the parties agree otherwise.

14 “§ 7120. Standards of conduct for labor organizations

15 “(a) A labor organization representing or seeking to
16 represent employees pursuant to this chapter shall adopt,
17 maintain, and enforce governing requirements containing
18 explicit and detailed provisions to which it shall subscribe,
19 which include provisions for—

20 “(1) the maintenance of democratic procedures
21 and practices, including—

22 “(A) provisions for periodic elections to be
23 conducted subject to recognized safeguards, and

24 “(B) provisions defining and securing the right
25 of individual members to—

1 “(i) participate in the affairs of the labor
2 organization,

3 “(ii) fair and equal treatment under the
4 governing rules of the organization, and

5 “(iii) fair process in disciplinary proceed-
6 ings;

7 “(2) the prohibition of business or financial inter-
8 ests on the part of labor organization officers and agents
9 which conflict with their duty to the organization and its
10 members; and

11 “(3) the maintenance of fiscal integrity in the
12 conduct of the affairs of the labor organization, includ-
13 ing provisions for accounting and financial controls and
14 regular financial reports or summaries to be made avail-
15 able to its members.

16 “(b) This chapter does not authorize participation in
17 the management of a labor organization or acting as a rep-
18 resentative of a labor organization by a management official
19 or a supervisor, except as specifically provided in this chap-
20 ter, or by an employee if the participation or activity
21 would result in a conflict or apparent conflict of interest or
22 would otherwise be incompatible with law or with the official
23 duties of the employee.

1 "SUBCHAPTER III—GRIEVANCES

2 "§ 7121. Grievance procedures

3 "(a) Any collective bargaining agreement shall provide
4 procedures for the settlement of grievances, including ques-
5 tions of arbitrability. Any employee who has a grievance and
6 who is covered by a collective bargaining agreement applies
7 may elect to have the grievance processed under a procedure
8 negotiated in accordance with this chapter.

9 "(b) Any negotiated grievance procedure referred to in
10 subsection (a) of this section shall—

11 "(1) be fair and simple,

12 "(2) provide for expeditious processing, and

13 "(3) include procedures that—

14 "(A) assure an exclusive representative the
15 right, in its own behalf or on behalf of any employee
16 in the unit represented by the exclusive representa-
17 tive, to present and process grievances;

18 "(B) assure such an employee the right to pre-
19 sent a grievance on the employee's own behalf, and
20 assure the exclusive representative the right to be
21 present during the grievance proceeding; and

22 "(C) provide that any grievance not satisfac-
23 torily settled under the negotiated grievance pro-

1 cedure shall be subject to binding arbitration which
2 may be invoked by either the exclusive representative
3 or the agency.

4 "(c) Any party to a collective bargaining agreement
5 aggrieved by the failure, neglect, or refusal of the other
6 party to proceed to arbitration pursuant to the negotiated
7 grievance procedure provided in the agreement may file a
8 petition in the appropriate United States district court
9 requesting an order directing that arbitration proceed pur-
10 suant to the procedures provided therefor in the agreement.
11 The court shall hear the matter without jury, expedite the
12 hearing to the maximum extent practicable, and issue any
13 order it determines appropriate.

14 "(d) The preceding subsections of this section shall not
15 apply with respect to any grievance concerning—

16 "(1) any claimed violation of subchapter III of
17 chapter 73 of this title (relating to prohibited political
18 activities);

19 "(2) retirement, life insurance, or health insurance;
20 or

21 "(3) a suspension or removal under section 7532
22 of this title.

23 "(e) The processing of a grievance under a procedure
24 negotiated under this chapter shall not limit the right of
25 an aggrieved employee to request the Equal Employment

1 *Opportunity Commission to review a final decision under*
2 *the procedure—*

3 “(1) pursuant to section 3 of Reorganization Plan
4 *Numbered 1 of 1978; or*

5 “(2) where applicable, in such manner as shall
6 *otherwise be prescribed by regulation by the Equal*
7 *Employment Opportunity Commission.*

8 “§ 7122. *Exceptions to arbitral awards*

9 “(a) *Either party to arbitration under this chapter may*
10 *file with the Authority an exception to any arbitrator's award*
11 *pursuant to the arbitration. If upon review the Authority*
12 *finds that the award is deficient because—*

13 “(1) *it is contrary to any law, rule, or regulation;*

14 “(2) *it was obtained by corruption, fraud, or other*
15 *misconduct;*

16 “(3) *the arbitrator exercised partiality in making*
17 *the award; or*

18 “(4) *the arbitrator exceeded powers granted to the*
19 *arbitrator;*

20 *the Authority may take such action and make such recom-*
21 *mendations concerning the award as it considers necessary,*
22 *consistent with applicable laws, rules, or regulations.*

23 “(b) *If no exception to an arbitrator's award is filed*
24 *under subsection (a) of this section during the 60-day period*
25 *beginning on the date of such award, the award shall be final*

1 *and binding. An agency shall take the actions required by*
2 *an arbitrator's final award. The award may include the pay-*
3 *ment of backpay (as provided in section 5596 of this title)*
4 *together with interest thereon.*

5 “§ 7123. *Judicial review; enforcement*

6 “(a) *Any person aggrieved by a final order of the*
7 *Authority under—*

8 “(1) *section 7118 of this title (involving an unfair*
9 *labor practice);*

10 “(2) *section 7122 of this title (involving an award*
11 *by an arbitrator); or*

12 “(3) *section 7112 of this title (involving an appro-*
13 *prate unit determination),*

14 *may, during the 60-day period beginning on the date on which*
15 *the order was issued, institute an action for judicial review of*
16 *the Authority's order in the United States court of appeals in*
17 *the circuit in which the person resides or transacts business*
18 *or in the United States Court of Appeals for the District*
19 *of Columbia.*

20 “(b) *The Authority may petition any appropriate*
21 *United States court of appeals for the enforcement of any*
22 *order of the Authority and for appropriate temporary relief*
23 *or restraining order.*

24 “(c) *Upon the filing of a petition under subsection (a)*
25 *of this section for judicial review or under subsection (b) of*

1 this section for enforcement, the Authority shall file in the
 2 court the record in the proceedings, as provided in section
 3 2112 of title 28. Upon the filing of the petition, the court
 4 shall cause notice thereof to be served to the parties involved,
 5 and thereupon shall have jurisdiction of the proceeding and
 6 of the question determined therein and may grant any tem-
 7 porary relief (including a temporary restraining order) it
 8 considers just and proper, and may make and enter a decree
 9 affirming and enforcing, modifying and enforcing as so mod-
 10 ified, or setting aside in whole or in part the order of the
 11 Authority. The filing of a petition under subsection (a) or
 12 (b) of this section shall not operate as a stay of the Author-
 13 ity's order unless the court specifically orders the stay. Review
 14 of the Authority's order shall be on the record in accordance
 15 with section 706 of this title. No objection that has not been
 16 urged before the Authority, or its designee, shall be considered
 17 by the court, unless the failure or neglect to urge the objection
 18 is excused because of extraordinary circumstances. The find-
 19 ings of the Authority with respect to questions of fact, if
 20 supported by substantial evidence on the record considered
 21 as a whole, shall be conclusive. If any person applies to the
 22 court for leave to adduce additional evidence and shows to
 23 the satisfaction of the court that the additional evidence is
 24 material and that there were reasonable grounds for the fail-
 25 ure to adduce the evidence in the hearing before the Author-

1 ity, or its designee, the court may order the additional evidence
 2 to be taken before the Authority, or its designee, and to be
 3 made a part of the record. The Authority may modify its
 4 findings as to the facts, or make new findings by reason of
 5 additional evidence so taken and filed. The Authority shall
 6 file its modified or new findings, which, with respect to ques-
 7 tions of fact, if supported by substantial evidence on the
 8 record considered as a whole, shall be conclusive. The Author-
 9 ity shall file its recommendations, if any, for the modification
 10 or setting aside of its original order. Upon the filing of the
 11 record with the court, the jurisdiction of the court shall be
 12 exclusive and its judgment and decree shall be final, except
 13 that the judgment and decree shall be subject to review by the
 14 Supreme Court of the United States upon writ of certiorari
 15 or certification as provided in section 1254 of title 28.
 16 "(d) The Authority may, upon issuance of a complaint
 17 as provided in section 7118 of this title charging that
 18 any person has engaged in or is engaging in an unfair labor
 19 practice, petition any United States district court within
 20 any district in which the unfair labor practice in question is
 21 alleged to have occurred or in which such person resides or
 22 transacts business for appropriate temporary relief or re-
 23 straining order. Upon the filing of the petition, the court shall
 24 cause notice thereof to be served upon the person, and there-
 25 upon shall have jurisdiction to grant any temporary relief

1 (including a temporary restraining order) it considers just
2 and proper.

3 "SUBCHAPTER IV—ADMINISTRATIVE AND
4 OTHER PROVISIONS

5 "§ 7131. Reporting requirements for standards of conduct

6 "The provisions of subchapter III of chapter 11 of title
7 29 shall be applicable to labor organizations which have been
8 or are seeking to be certified as exclusive representatives un-
9 der this chapter, and to the organizations' officers, agents,
10 shop stewards, other representatives, and members to the ex-
11 tent to which the provisions would be applicable if the
12 agency were an employer under section 402 of title 29. In
13 addition to the authority conferred on him under section 438
14 of title 29, the Secretary of Labor shall prescribe regulations,
15 with the written concurrence of the Authority, providing for
16 simplified reports for any such labor organization. The Sec-
17 retary of Labor may revoke the provision for simplified
18 reports of any such labor organization if the Secretary deter-
19 mines, after any investigation the Secretary considers proper
20 and after reasonable notice and opportunity for a hearing,
21 that the purpose of this chapter and of chapter 11 of title 29
22 would be served thereby.

23 "§ 7132. Official time

24 "(a) Any employee representing an exclusive repre-
25 sentative in the negotiation of a collective bargaining agree-

1 ment under this chapter shall be authorized official time for
2 such purposes, including attendance at impasse proceeding,
3 during the time the employee otherwise would be in a duty
4 status. The number of employees for whom official time is
5 authorized under this subsection shall not exceed the number
6 of individuals designated as representing the agency for such
7 purposes.

8 "(b) Any activities performed by any employee relating
9 to the internal business of a labor organization (including
10 the solicitation of membership, elections of labor organization
11 officials, and collection of dues) shall be performed during
12 the time the employee is in a nonduty status.

13 "(c) Except as provided in subsection (a) of this sec-
14 tion, the Authority shall determine whether any employee
15 participating for, or on behalf of, a labor organization in any
16 phase of proceedings before the Authority shall be authorized
17 official time for such purpose during the time the employee
18 otherwise would be in a duty status.

19 "(d) Except as provided in the preceding subsections of
20 this section—

21 "(1) any employee representing an exclusive repre-
22 sentative, or

23 "(2) in connection with any other matter covered
24 by this chapter, any employee in an appropriate unit
25 represented by an exclusive representative,

1 shall be granted official time in any amount the agency and
 2 the exclusive representative involved agree to be reasonable,
 3 necessary, and in the public interest.

4 "§ 7133. Subpenas

5 "(a) For the purpose of any hearing or investigation
 6 which the Panel or the Authority, or any member of the Au-
 7 thority or any individual employed by the Authority and
 8 designated for such purpose, (hereinafter in this section re-
 9 ferred to as the 'issuer') determines is necessary and proper
 10 for the exercise of its responsibilities under this chapter, the
 11 issuer shall at all reasonable times have access to, for the
 12 purpose of examination and copying any evidence relating
 13 to the subject matter of the hearing or investigation. The
 14 issuer may, on the application of any party or on its own ini-
 15 tiative, issue subpenas requiring the attendance and testimony
 16 of witnesses, the production and examination of any books
 17 or papers (including those of the Federal Government to the
 18 extent otherwise available under law), or any other evidence
 19 relating to the hearing or investigation requested in any
 20 such application or considered by the issuer to be relevant.
 21 Within 5 days after the service of a subpoena on any person
 22 requiring the production of any evidence the person may
 23 petition the issuer to revoke, the subpoena. The issuer shall
 24 revoke the subpoena if in its opinion the evidence sought
 25 under the subpoena does not relate to any matter under con-

1 sideration in the hearing or investigation, or if in its opinion
 2 the subpoena does not describe with sufficient particularity the
 3 evidence.

4 "(b) In the case of contumacy or failure to obey a
 5 subpoena issued under subsection (a) of this section, the
 6 United States district court for the judicial district in which
 7 the person to whom the subpoena is addressed resides or is
 8 served may issue an order requiring the person to appear
 9 at any designated place to testify or to produce documentary
 10 or other evidence. Any failure to obey the order of the
 11 court may be punished by the court as a contempt thereof.

12 "(c) Witnesses appearing pursuant to a subpoena issued
 13 under subsection (a) of this section shall be paid the same fee
 14 and mileage allowances which are paid subpoenaed witnesses
 15 in the courts of the United States.

16 "(d) No person shall be excused from attending and
 17 testifying or from producing books, records, correspondence,
 18 documents, or other evidence in obedience to a subpoena
 19 under this section on the ground that the testimony or
 20 evidence required of the person may tend to incriminate
 21 or subject the person to a penalty or forfeiture, except that no
 22 person shall be prosecuted or subjected to any penalty or
 23 forfeiture for or on account of any transaction or other mat-
 24 ter concerning which the person is compelled, after having
 25 claimed privilege against self-incrimination, to testify or

1 produce evidence, except that the person so testifying shall
2 not be exempt from prosecution and punishment for perjury
3 committed in so testifying.

4 “(e) Any person who shall willfully resist, prevent,
5 impede, or interfere with any member of the Authority or
6 Panel or any individual employed by the Authority or Panel
7 in the performance of duties pursuant to this chapter shall
8 be punished by a fine of not more than \$5,000 or by impris-
9 onment for not more than one year, or both.

10 “§ 7134. *Compilation and publication of data*

11 “(a) The Authority shall maintain a file of its proceed-
12 ings and copies of all available agreements and arbitration
13 decisions, and shall publish the texts of its decisions and the
14 actions taken by the Panel under section 7119 of this title.

15 “(b) All files maintained under subsection (a) of this
16 section shall be open to inspection and reproduction in
17 accordance with the provisions of sections 552 and 552a of
18 this title.

19 “§ 7135. *Regulations*

20 “The Authority, the Federal Mediation and Conciliation
21 Service, and the Panel shall each prescribe rules and regula-
22 tions to carry out the provisions of this chapter applicable to
23 each of them, respectively. The provisions of subchapter II of
24 chapter 5 of this title shall be applicable to the issuance,
25 revision, or repeal of any such rule or regulation.

1 “§ 7136. *Continuation of existing laws, recognitions, agree-*
2 *ments, and procedures*

3 “(a) *Nothing contained in this chapter shall preclude—*

4 “(1) *the renewal or continuation of an exclusive*
5 *recognition, certification of an exclusive representative,*
6 *or a lawful agreement between an agency and an exclu-*
7 *sive representative of its employees, which is entered into*
8 *before the effective date of this chapter; or*

9 “(2) *the renewal, continuation, or initial according*
10 *of recognition for units of management officials or super-*
11 *visors represented by labor organizations which histori-*
12 *cally or traditionally represent management officials*
13 *or supervisors in private industry and which hold exclu-*
14 *sive recognition for units of such officials or supervisors*
15 *in any agency on the effective date of this chapter.*

16 “(b) *Policies, regulations, and procedures established*
17 *under and decisions issued under Executive Orders 11491,*
18 *11616, 11636, 11787, and 11838, or under any other*
19 *Executive order, as in effect on the effective date of this*
20 *chapter, shall remain in full force and effect until revised*
21 *or revoked by the President, or unless superseded by specific*
22 *provisions of this chapter or by regulations or decisions*
23 *issued pursuant to this chapter.”*

1 **BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND**
 2 **GRIEVANCES**

3 *SEC. 702. Section 5596(b) of title 5, United States*
 4 *Code, is amended to read as follows:*

5 *"(b) An employee of an agency who, on the basis of*
 6 *a timely appeal or an administrative determination (includ-*
 7 *ing a decision relating to an unfair labor practice or a griev-*
 8 *ance) is found by appropriate authority under applicable*
 9 *law, rule, regulation, or collective bargaining agreement, to*
 10 *have been affected by an unjustified or unwarranted personnel*
 11 *action which has resulted in the withdrawal or reduction of*
 12 *all or a part of the pay, allowances, or differentials of the*
 13 *employee—*

14 *"(1) is entitled, on correction of the personnel*
 15 *action, to receive for the period for which the personnel*
 16 *action was in effect—*

17 *"(A) an amount equal to all or any part of*
 18 *the pay, allowances, or differentials, as applicable,*
 19 *which the employee normally would have earned or*
 20 *received during the period if the personnel action*
 21 *had not occurred, less any amounts earned by the*
 22 *employee through other employment during that*
 23 *period;*

1 *"(B) interest on the amount payable under*
 2 *subparagraph (A) of this paragraph; and*

3 *"(C) reasonable attorney fees and reason-*
 4 *able costs and expenses of litigation related to the*
 5 *personnel action; and*

6 *"(2) for all purposes, is deemed to have performed*
 7 *service for the agency during that period, except that—*

8 *"(A) annual leave restored under this para-*
 9 *graph which is in excess of the maximum leave*
 10 *accumulation permitted by law shall be credited to*
 11 *a separate leave account for the employee and shall*
 12 *be available for use by the employee within the time*
 13 *limits prescribed by regulations of the Office of*
 14 *Personnel Management, and*

15 *"(B) annual leave credited under subpara-*
 16 *graph (A) of this paragraph but unused and still*
 17 *available to the employee under regulations pre-*
 18 *scribed by the Office shall be included in the lump-*
 19 *sum payment under section 5551 or 5552(1) of*
 20 *this title but may not be retained to the credit of the*
 21 *employee under section 5552(2) of this title.*

22 *For the purpose of this subsection, 'grievance' and 'collective*
 23 *bargaining agreement' have the meanings set forth in section*
 24 *7103 of this title, 'unfair labor practice' means an unfair*
 25 *labor practice described in section 7116 of this title, and 'per-*

1 sonnel action' includes the omission or failure to take an
2 action or confer a benefit."

3 TECHNICAL AND CONFORMING AMENDMENTS

4 SEC. 703. (a) Subchapter II of chapter 71 of title 5,
5 United States Code, is amended—

6 (1) by redesignating sections 7151 (as amended by
7 section 312 of this Act), 7152, 7153, and 7154 as sec-
8 tions 7201, 7202, 7203, and 7204, respectively;

9 (2) by striking out the subchapter heading and
10 inserting in lieu thereof the following:

11 "Chapter 72—ANTIDISCRIMINATION; RIGHT TO

12 PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN
EMPLOYMENT

"Sec.

"7201. Antidiscrimination policy; minority recruitment program.

"7202. Marital status.

"7203. Handicapping condition.

"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION
CONGRESS

"7211. Employees' right to petition Congress."

13 and

14 (3) by adding at the end thereof the following new
15 subchapter:

16 "SUBCHAPTER II—EMPLOYEES' RIGHT TO

17 PETITION CONGRESS

18 "§ 7211. Employees' right to petition Congress

19 "The right of employees, individual or collectively, to
20 petition Congress or a Member of Congress, or to furnish

1 information to either House of Congress, or to a committee
2 or Member thereof, may not be interfered with or denied."

3 (b) The analysis for part III of title 5, United States
4 Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies 710"

5 and inserting in lieu thereof

"Subpart F—Labor-Management and Employee Relations

"71. Labor-Management Relations 7101
"72. Antidiscrimination; Right to Petition Congress 7201".

6 (2) Section 3302(2) of title 5, United States Code, is
7 Code, is amended by striking out "and 7154" and inserting
8 in lieu thereof "and 7204".

9 (c) (1) Section 2105(c)(1) of title 5, United States
10 amended by striking out "7152, 7153" and inserting in lieu
11 thereof "7202, 7203".

12 (3) Sections 4540(c), 7212(a), and 9540(c) of title
13 10, United States Code, are each amended by striking out
14 "7154 of title 5" and inserting in lieu thereof "7204 of title
15 5".

16 (4) Section 410(b)(1) of title 39, United States Code,
17 is amended by striking out "chapters 71 (employee policies)"
18 and inserting in lieu thereof the following: "chapters 72 (an-
19 tidiscrimination; right to petition Congress)".

20 (5) Section 1002(g) of title 39, United States Code, is
21 amended by striking out "section 7102 of title 5" and insert-
22 ing in lieu thereof "section 7211 of title 5".

1 (d) Section 5315 of title 5, United States Code, is
2 amended by adding at the end thereof the following clause:

3 "(124) Chairman, Federal Labor Relations
4 Authority."

5 (e) Section 5316 of such title is amended by adding at
6 the end thereof the following clause:

7 "(145) Members, Federal Labor Relations Author-
8 ity (2), and its General Counsel."

9 MISCELLANEOUS PROVISIONS

10 SEC. 704. (a) Except as provided in subsection (b) of
11 this section, the amendments made by this title shall take effect
12 on the first day of the first calendar month beginning more
13 than 90 days after the date of the enactment of this title.

14 (b) Sections 7104, 7105, and 7136 of title 5, United
15 States Code, as added by section 701 of this title shall take
16 effect on the date of the enactment of this title.

17 (c) (1) The wages, terms, and conditions of employment,
18 and other employment benefits with respect to Government
19 prevailing rate employees to whom section 9(b) of Public Law
20 92-392 applies shall be negotiated in accordance with pre-
21 vailing rates and practices without regard to any provision
22 of—

23 (A) chapter 71 of title 5, United States Code (as
24 amended by this title);

1 (B) chapters 51, 53, and 55 of title 5, United States
2 Code;

3 (C) or any other law, rule, regulation, decision, or
4 order relating to rate of pay or pay practices with respect
5 to Federal employees.

6 (2) No provision of chapter 71 of title 5, United States
7 Code (as amended by this title), shall be considered to limit—

8 (A) any rights or remedies of employees referred to
9 in paragraph (1) of this subsection under any other pro-
10 vision of law or before any court or other tribunal; or

11 (B) any benefits otherwise available to such employ-
12 ees under any other provision of law.

13 TITLE VIII—GRADE AND PAY RETENTION

14 GRADE AND PAY RETENTION

15 SEC. 801. (a) (1) Chapter 53 of title 5, United States
16 Code, relating to pay rates and systems, is amended by insert-
17 ing after subchapter V thereof the following new subchapter:

18 "SUBCHAPTER VI—GRADE AND PAY

19 RETENTION

20 "§ 5361. Definitions

21 "For the purpose of this subchapter—

22 "(1) 'employee' means an employee to whom chapter
23 51 of this title applies, and a prevailing rate employee,
24 as defined by section 5342(a)(2) of this title, whose
25 employment is other than on a temporary or term basis;

1 “(2) ‘agency’ has the meaning given it by section
2 5102 of this title;

3 “(3) ‘retained grade’ means the grade used for
4 determining benefits to which an employee to whom section
5 5362 or 5363 of this title applies is entitled;

6 “(4) ‘rate of basic pay’ means, in the case of a
7 prevailing rate employee, the scheduled rate of pay deter-
8 mined under section 5343 of this title;

9 “(5) ‘covered pay schedule’ means the General
10 Schedule, any prevailing rate schedule established under
11 subchapter IV of this chapter, or the merit pay system
12 under chapter 54 of this title;

13 “(6) ‘position subject to this subchapter’ means
14 any position under a covered pay schedule; and

15 “(7) ‘reduction-in-force procedures’ means pro-
16 cedures applied in carrying out any reduction in force
17 due to a reorganization, due to lack of funds or curtail-
18 ment of work, or due to any other factor.

19 “§ 5362. Grade retention following a change of positions

20 “(a) Any employee—

21 “(1) who is placed as a result of reduction-in-force
22 procedures from a position subject to this subchapter to
23 another position which is subject to this subchapter and
24 which is in a lower grade than the previous position, and

25 “(2) who has served for 52 consecutive weeks or

1 more in one or more positions subject to this subchapter
2 at a grade or grades higher than that of the new
3 position,

4 shall be entitled, to the extent provided in subsection (b)
5 of this section, to have the grade of the position held immedi-
6 ately before such placement be considered to be the retained
7 grade of the employee in any position he holds for the 2-year
8 period beginning on the date of such placement.

9 “(b) For the 2-year period referred to in subsection (a)
10 of this section, the retained grade of an employee under
11 such subsection (a) shall be treated as the grade of his
12 position for all purposes (including pay and pay adminis-
13 tration under this chapter and, chapters 54 and 55 of this
14 title, retirement and life insurance under chapters 83 and 87
15 of this title, and eligibility for training and promotion under
16 this title) except—

17 “(1) for purposes of subsection (a) of this section,

18 “(2) for purposes of applying any reduction-in-
19 force procedures, or

20 “(3) for such other purposes as the Office of
21 Personnel Management may provide by regulation.

22 “(c) The provisions of subsection (a) of this section shall
23 cease to apply to an employee who—

24 “(1) has a break in service of one workday or more;

1 “(2) is demoted (determined without regard to this
2 section) for personal cause;

3 “(3) is placed in, or declines a reasonable offer of,
4 a position the grade of which is equal to or higher than
5 the retained grade; or

6 “(4) elects in writing to have the benefits of this
7 section terminate.

8 “§ 5363. Grade retention following position reclassification

9 “(a) An employee who is in a position subject to this
10 subchapter and whose position has been reduced in grade is
11 entitled to have the grade of such position before reduction
12 be treated for all purposes (other than the application of
13 reduction-in-force procedures) as the retained grade of such
14 employee so long as such employee continues in such position.

15 “(b) The provisions of subsection (a) of this section
16 shall not apply with respect to any reduction in the grade
17 of a position which had not been classified at the higher
18 grade for a continuous period of at least one year immediately
19 before such reduction.

20 “(c) The preceding provisions of this section shall cease
21 to apply to an employee who—

22 “(1) has a break in service of one workday or more;

23 “(2) declines a reasonable offer of a position the

1 grade of which is equal to or higher than the retained
2 grade; or

3 “(3) elects in writing to have the benefits of this
4 section terminate.

5 “§ 5364. Pay retention

6 “(a) Any employee—

7 “(1) who ceases to be entitled to the benefits of
8 section 5362 of this title by reason of the expiration
9 of the 2-year period of coverage provided under such
10 section;

11 “(2) who is in a position subject to this subchapter
12 and who is subject to a reduction or termination of a
13 special rate of pay established under section 5303 of
14 this title; or

15 “(3) who is in a position subject to this subchapter
16 and who (but for this section) would be subject to a
17 reduction in pay under circumstances prescribed by the
18 Office of Personnel Management by regulation to war-
19 rant the application of this section;

20 is entitled to basic pay at a rate equal to (A) the employee's
21 allowable former rate of basic pay, plus (B) 50 percent of
22 the amount of each increase in the maximum rate of basic pay
23 payable for the grade of the employee's position immediately
24 after such reduction in pay if such allowable former rate ex-
25 ceeds such maximum rate for such grade.

1 “(b) For the purpose of subsection (a) of this section,
2 ‘allowable former rate of basic pay’ means the lower of—

3 “(1) the rate of basic pay payable to the employee
4 immediately before the reduction in pay; or

5 “(2) 150 percent of the maximum rate of basic pay
6 payable for the grade of the employee’s position immedi-
7 ately after such reduction in pay.

8 “(c) The preceding provisions of this section shall cease
9 to apply to an employee who—

10 “(1) has a break in service of one workday or more;

11 “(2) is entitled by operation of this subchapter or
12 chapter 51, 53, or 54 of this title to a rate of basic pay
13 which is equal to or higher than, or declines a reasonable
14 offer of a position the rate of basic pay for which is equal
15 to or higher than, the rate to which the employee is en-
16 titled under this section; or

17 “(3) is demoted for personal cause.

18 “§ 5365. Remedial actions

19 “Under regulations prescribed by the Office of Personnel
20 Management, the Office may require any agency—

21 “(1) to report to the Office information with respect
22 to vacancies (including impending vacancies);

23 “(2) to take such steps as may be appropriate to
24 assure employees receiving benefits under section 5362,
25 5363, or 5364 of this title have the opportunity to obtain

1 necessary qualifications for the selection to positions which
2 would minimize the need for the application of such
3 sections;

4 “(3) to establish a program under which em-
5 ployees receiving benefits under section 5362, 5363, or
6 5364 of this title are given priority in the consideration
7 for or placement in positions which are equal to or
8 greater than their retained grade or pay; and

9 “(4) to place certain employees, notwithstanding
10 the fact their previous position was in a different agency,
11 but only in circumstances in which the Office determines
12 the exercise of such authority is necessary to carry out
13 the purpose of this section.

14 “§ 5366. Regulations

15 “(a) The Office of Personnel Management shall pre-
16 scribe regulations to carry out the purpose of this subchapter.

17 “(b) Under such regulations, the Office may provide
18 for the application of all or portions of the provisions of this
19 subchapter—

20 “(1) to any individual reduced to a grade of a cov-
21 ered pay schedule from a position not subject to this
22 subchapter;

23 “(2) to individuals to whom such provisions do
24 not otherwise apply; and

25 “(3) to situations the application to which is justi-

1 *fed for purposes of carrying out the mission of the*
 2 *agency or agencies involved.*

3 “§5367. Appeals

4 “(a)(1) *In the case of the termination of any benefits*
 5 *available to an employee under this subchapter on the grounds*
 6 *such employee declined a reasonable offer of a position the*
 7 *grade or pay of which was equal to or greater than his*
 8 *retained grade or pay, such termination may be appealed*
 9 *to the Office of Personnel Management under procedures*
 10 *prescribed by the Office.*

11 “(2) *Nothing in this subchapter shall be construed to*
 12 *affect the right of any employee to appeal—*

13 “(A) *under section 5112(b) or 5346(c) of this*
 14 *title or otherwise, any reclassification of a position; or*

15 “(B) *under procedures prescribed by the Office of*
 16 *Personnel Management, any reduction-in-force action.*

17 “(b) *For purposes of any appeal procedures (other than*
 18 *those described in subsection (a) of this section)—*

19 “(1) *any action which is the basis of an individual's*
 20 *entitlement to benefits under this subchapter, and*

21 “(2) *any termination of any such benefits under this*
 22 *subchapter,*

23 *shall not be treated as appealable under such appeals*
 24 *procedures.”.*

1 (2) *Sections 5334(d), 5337, and 5345 of title 5, United*
 2 *States Code, are hereby repealed.*

3 (3)(A) *Chapter 53 of title 5, United States Code, is*
 4 *amended—*

5 (i) *by redesignating subchapter VI as subchapter*
 6 *VII, and*

7 (ii) *by redesignating sections 5361 through 5365 as*
 8 *sections 5371 through 5375, respectively.*

9 (B)(i) *The analysis of chapter 53 of title 5, United*
 10 *States Code, is amended by striking out the items relating*
 11 *to subchapter VI thereof and inserting in lieu thereof the*
 12 *following:*

“SUBCHAPTER VI—GRADE AND PAY RETENTION

“5361. Definitions.

“5362. Grade retention following a change of positions.

“5363. Grade retention following position reclassification.

“5364. Pay retention.

“5365. Remedial actions.

“5366. Regulations.

“5367. Appeals.

“SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

“5371. Scientific and professional positions.

“5372. Administrative law judges.

“5373. Limitation on pay fixed by administrative action.

“5374. Miscellaneous positions in the executive branch.

“5375. Police force of National Zoological Park.”.

13 (ii) *The analysis of such chapter is further amended*
 14 *by striking out the items relating to sections 5337 and 5345,*
 15 *respectively.*

16 (iii) *Section 559 of title 5, United States Code, are*
 17 *each amended by striking out “5362,” each place it appears*
 18 *and inserting “5372,” in lieu thereof.*

1 (C) Section 3104(b) of title 5, United States Code,
2 as redesignated by this Act, is amended by striking out "sec-
3 tion 5361" and inserting "section 5371" in lieu thereof.

4 (D) Section 5102(c)(5) of title 5, United States Code,
5 is amended by striking out "section 5365" and inserting
6 "section 5375" in lieu thereof.

7 (E) Sections 5107 and 8704(d)(1) of title 5, United
8 States Code, are each amended by striking out "section
9 5337" and inserting in lieu thereof "subchapter VI of
10 chapter 53".

11 (F) Section 5334(b) of title 5, United States Code, is
12 amended by striking out "section 5337 of this title" each
13 place it appears and inserting in lieu thereof "subchapter VI
14 of this chapter".

15 (G) Section 5334 of title 5, United States Code, is
16 amended by redesignating subsections (e) and (f) as sub-
17 sections (d) and (e), respectively.

18 (H) Section 5349(a) of title 5, United States Code, is
19 amended—

20 (i) by striking out "section 5345, relating to re-
21 tention of pay," and inserting in lieu thereof "subchapter
22 VI of this chapter, relating to grade and pay reten-
23 tion,";

24 (ii) by striking out "section 5345 of this title" and

1 inserting in lieu thereof "subchapter VI of this chapter";
2 and

3 (iii) by striking out "paragraph (2) of section
4 5345(a)" and inserting in lieu thereof "section
5 5361(1)".

6 (I) Sections 4540(c), 7212(a), and 9540(c) of title
7 10, United States Code, are each amended by inserting after
8 "of title 5" the following: "and subchapter VI of chapter 53
9 of such title 5".

10 (J) Section 1416(a) of the Act of August 1, 1968
11 (Public Law 90-448; 15 U.S.C. 1715(a)), and section
12 808(c) of the Act of April 11, 1968 (Public Law 90-284;
13 42 U.S.C. 3608(b)), are each amended by striking out
14 "5362," and inserting in lieu thereof "5372,".

15 (A) The amendments made by this subsection shall
16 take effect on the first day of the first applicable pay period
17 beginning on or after the 90th day after the date of the
18 enactment of this Act.

19 (B) An employee who was receiving pay under the
20 provisions of section 5334(d), 5337, or 5345 of title 5,
21 United States Code, on the day before the effective date
22 prescribed in subparagraph (A) of this paragraph shall
23 not have such pay reduced or terminated by reason of the
24 amendments made by this subsection and, unless section
25 5362 or 5363 of such title 5 (as amended by subsection

1 (a)(1) of this section) applies, such an employee is entitled
 2 to continue to receive pay as authorized by those provisions
 3 (as in effect on such date).

4 (b)(1) Under regulations prescribed by the Office of
 5 Personnel Management, any employee—

6 (A) whose grade was reduced on or after January
 7 1, 1977, and before the effective date of the amendments
 8 made by subsection (a) of this section under circum-
 9 stances which would have entitled the employee to cover-
 10 age under the provisions of section 5362 or 5363 of
 11 title 5, United States Code (as amended by subsection
 12 (a) of this section) if such amendments had been in
 13 effect at the time of the reduction; and

14 (B) who has remained employed by the Federal
 15 Government from the date of the reduction in grade to
 16 the effective date of the amendments made by subsection
 17 (a) of this section without a break in service of one
 18 workday or more;
 19 shall be entitled—

20 (i) to receive the additional pay and benefits which
 21 such employee would have been entitled to receive if the
 22 amendments made by subsection (a) of this section had
 23 been in effect during the period beginning on the effec-
 24 tive date of such reduction in grade and ending on the
 25 day before the effective date of such amendments, and

1 (ii) to have the amendments made by subsection (a)
 2 of this section apply to such employee as if the reduction
 3 in grade had occurred on the effective date of such
 4 amendments.

5 (2) Under such regulations, any employee who—

6 (A) during the period beginning on January 1,
 7 1977, and ending on the effective date of the amend-
 8 ments made by subsection (a) of this section was holding
 9 any position under a covered pay schedule when such
 10 position was reduced in grade; and

11 (B) after the date of such reduction in grade and
 12 before such effective date, changed to any other position
 13 under such a schedule (other than by reason of a demo-
 14 tion for personal cause) and is holding such position on
 15 such effective date;

16 is entitled to the benefits of section 5363 of title 5, United
 17 States Code (as amended by subsection (a) of this section)
 18 as if such employee had not changed positions.

19 (3) No employee covered by this subsection whose
 20 reduction in grade resulted in an increase in pay shall have
 21 such pay reduced by reason of the amendments made by sub-
 22 section (a) of this section.

23 (4)(A) For purposes of this subsection, the require-

1 ments under paragraph (1)(B) of this subsection, relating
 2 to continuous employment following reduction in grade, shall
 3 be considered to be met in the case of any employee—

4 (i) who separated from service with a right to an
 5 immediate annuity under chapter 83 of title 5, United
 6 States Code, or under another retirement system for
 7 Federal employees; or

8 (ii) who died.

9 (B) Amounts payable by reason of subparagraph (A)
 10 of this paragraph in the case of the death of an employee
 11 shall be paid in accordance with the provisions of sub-
 12 chapter VIII of chapter 55 of title 5, United States Code,
 13 relating to settlement of accounts in the case of deceased
 14 employees.

15 (5) The Office of Personnel Management shall have the
 16 same authority to prescribe regulations under this subsection
 17 as it has under section 5366 of title 5, United States Code,
 18 with respect to subchapter VI of chapter 53 of such title, as
 19 added by subsection (a) of this section.

20 TITLE IX—POLITICAL ACTIVITIES

21 FEDERAL EMPLOYEES' POLITICAL ACTIVITIES

22 SEC. 901. (a) Subchapter III of chapter 73 of title 5,
 23 United States Code, is amended to read as follows:

1 "SUBCHAPTER III—POLITICAL ACTIVITIES

2 "§ 7321. Political participation

3 "It is the policy of the Congress that employees should
 4 be encouraged to fully exercise, freely and without fear of
 5 penalty or reprisal, and to the extent not expressly prohibited
 6 by law—

7 "(1) their rights to participate or to refrain from
 8 participating in the political processes of our Nation, and

9 "(2) their rights to form, join, or assist, or to refrain
 10 from forming, joining, or assisting, any organization,
 11 political party, committee, association, or other group
 12 which advocates or encourages political activities,
 13 and that employees should be protected in the exercise of
 14 these rights.

15 "§ 7322. Definitions

16 "For the purpose of this subchapter—

17 "(1) 'employee' means any individual, other than
 18 the President and the Vice President, employed or
 19 holding office in—

20 "(A) an Executive agency;

21 "(B) the government of the District of Co-
 22 lumbia;

23 "(C) the United States Postal Service or the
 24 Postal Rate Commission; or

25 "(D) a position within the competitive serv-

1 ice, or within the Senior Executive Service as a
2 career appointee (as defined in section 3132(a)(4)
3 of this title), which is not in an entity referred to in
4 subparagraphs (A) through (C);

5 but does not include a member of the uniformed serv-
6 ices;

7 "(2) 'candidate' means any individual who seeks
8 nomination for election, or election, to any elective office,
9 whether or not such individual is elected, and, for the
10 purpose of this paragraph, an individual shall be con-
11 sidered to seek nomination for election, or election, to an
12 elective office, if such individual has—

13 "(A) taken the action required to qualify for
14 nomination for election, or election; or

15 "(B) received political contributions or made
16 expenditures, or has given consent for any other
17 person to receive political contributions or make ex-
18 penditures, with a view to bringing about such in-
19 dividual's nomination for election, or election, to
20 such office;

21 "(3) 'political contribution'—

22 "(A) means a gift, subscription, loan, advance,
23 or deposit of money or anything of value, made for
24 any political purpose;

25 "(B) includes a contract, promise, or agree-

1 ment, express or implied, whether or not legally
2 enforceable, to make a political contribution for
3 any political purpose;

4 "(C) includes the payment by any person,
5 other than a candidate or a political party or affli-
6 cated organization, of compensation for the personal
7 services of another person which are rendered to
8 such candidate or political party or affiliated organi-
9 zation without charge for any political purpose; and

10 "(D) includes the provision of personal serv-
11 ices for any political purpose;

12 "(A) 'superior' means an employee who exercises
13 supervision of, or control or administrative direction
14 over, another employee;

15 "(5) 'elective office' means any elective public
16 office and any elective office of any political party or
17 affiliated organization;

18 "(6) 'State' means each of the several States and
19 the District of Columbia;

20 "(7) 'person' means any individual, corporation,
21 trust, association, any State, local, or foreign govern-
22 ment, any territory or possession of the United States,
23 or any agency or instrumentality of any of the foregoing;
24 and

25 "(8) 'restricted position' means any position with

1 *respect to which there is in effect a determination by the*
 2 *Office of Personnel Management, by regulation, that—*

3 *“(A) the duties and responsibilities of such*
 4 *position require such employee—*

5 *“(i) as a substantial part of his official*
 6 *activities, to engage in foreign intelligence*
 7 *activities relating to national security;*

8 *“(ii) in the normal course of carrying out*
 9 *such duties and responsibilities—*

10 *“(I) to make decisions binding on em-*
 11 *ployees with respect to whom he is a supe-*
 12 *rior with regard to who shall be the subject*
 13 *of any action which is to be taken by any*
 14 *such employee in connection with the en-*
 15 *forcement of any civil or criminal law (in-*
 16 *cluding any inspection or audit under any*
 17 *such law);*

18 *“(II) to actually carry out any such*
 19 *action; or*

20 *“(III) to make a final determination*
 21 *with respect to any such action; or*

22 *“(iii) in the normal course of carrying out*
 23 *such duties and responsibilities—*

24 *“(I) to make binding decisions on who*
 25 *shall be awarded contracts which are for*

1 *the procurement of goods or services for the*
 2 *Government and which have substantial*
 3 *monetary value, or who shall be awarded*
 4 *licenses, grants, subsidies, or other benefits,*
 5 *which involve funds or other interests hav-*
 6 *ing a substantial monetary value; or*

7 *“(II) to supervise individuals engaged*
 8 *in the awarding, administering, or monitor-*
 9 *ing of such contracts, licenses, grants, sub-*
 10 *sidies, or benefits; and*

11 *“(B) the restrictions on political activity im-*
 12 *posed on such employee in such position are justi-*
 13 *fied in order to insure the integrity of the Govern-*
 14 *ment or the public's confidence in the integrity of*
 15 *the Government.*

16 *“§ 7323. Use of official influence or official information;*
 17 *prohibition*

18 *“(a) An employee may not directly or indirectly use*
 19 *or attempt to use the official authority or influence of such*
 20 *employee for the purpose of—*

21 *“(1) interfering with or affecting the result of any*
 22 *election; or*

23 *“(2) intimidating, threatening, coercing, com-*
 24 *manding, influencing, or attempting to intimidate,*
 25 *threaten, coerce, command, or influence—*

1 “(A) any individual for the purpose of inter-
2 fering with the right of any individual to vote as
3 such individual may choose, or of causing any indi-
4 vidual to vote, or not to vote, for any candidate or
5 measure in any election;

6 “(B) any person to give or withhold any
7 political contribution; or

8 “(C) any person to engage, or not to engage,
9 in any form of political activity whether or not such
10 activity is prohibited by law.

11 “(b) An employee may not directly or indirectly use or
12 attempt to use, or permit the use of, any official information
13 obtained through or in connection with his employment for
14 any political purpose, unless such official information is
15 available to the general public.

16 “(c) For the purpose of subsection (a) of this section,
17 ‘use of official authority or influence’ includes—

18 “(1) promising to confer or conferring any bene-
19 fit (such as any compensation, grant, contract, license,
20 or ruling) or effecting or threatening to effect any re-
21 prisal (such as deprivation of any compensation, grant,
22 contract, license, or ruling); or

23 “(2) taking, directing others to take, recommend-
24 ing, processing, or approving any personnel action (as
25 defined in section 2302(a)(2)(A) of this title).

1 “§ 7324. Solicitation; prohibition

2 “(a) An employee may not—

3 “(1) give or offer to give a political contribution
4 to any individual either to vote or refrain from voting,
5 or to vote for or against any candidate or measure, in
6 any election;

7 “(2) solicit, accept, or receive a political contribu-
8 tion to vote or refrain from voting, or to vote for or
9 against any candidate or measure, in any election;

10 “(3) knowingly give or hand over a political con-
11 tribution to a superior of such employee; or

12 “(4) knowingly solicit, accept, or receive, or be in
13 any manner concerned with soliciting, accepting, or
14 receiving, a political contribution—

15 “(A) from another employee (or a member of
16 another employee’s immediate family) with respect
17 to whom such employee is a superior; or

18 “(B) in any room or building occupied in the
19 discharge of official duties by—

20 “(i) an individual employed or holding
21 office in the Government of the United States,
22 in the government of the District of Columbia,
23 or in any agency or instrumentality of the fore-
24 going; or

25 “(ii) an individual receiving any salary or

1 *compensation for services from money derived*
 2 *from the Treasury of the United States.*

3 “(b) *In addition to the prohibitions of subsection (a)*
 4 *of this section, an employee holding a restricted position may*
 5 *not solicit, accept, or receive a political contribution from,*
 6 *or give a political contribution to, any individual who is an*
 7 *employee, a Member of Congress (or a candidate for such*
 8 *office), or a member of a uniformed service, or any agent*
 9 *of any such individual. The preceding sentence shall not be*
 10 *construed to prohibit an employee from giving a political*
 11 *contribution to a political committee.*

12 “(c)(1) *In addition to the prohibitions of subsection*
 13 *(a) of this section, an employee may not solicit, accept, or*
 14 *receive a political contribution from, or give a political con-*
 15 *tribution to, any person who—*

16 “(A) *has, or is seeking to obtain, contractual or*
 17 *other business or financial relations with the agency in*
 18 *which the employee is employed;*

19 “(B) *conducts operations or activities which are*
 20 *regulated by such agency; or*

21 “(C) *has interests which may be substantially af-*
 22 *ected by the performance or nonperformance of such*
 23 *employee's official duties.*

24 “(2) *The Office of Personnel Management shall prescribe*
 25 *regulations which exempt an employee from the application*

1 *of paragraph (1) of this subsection with respect to any politi-*
 2 *cal contribution to or from an individual who has a family*
 3 *or personal relationship with the employee if the employee*
 4 *complies with such requirements as the Office shall so pre-*
 5 *scribe which relate to the disqualification of such employee*
 6 *from engaging in any official activity involving such*
 7 *individual.*

8 “(3) *The Office of Personnel Management shall pre-*
 9 *scribe regulations which exempt the application of paragraph*
 10 *(1) of this subsection with respect to any political contribu-*
 11 *tion from a person in situations in which the facts and cir-*
 12 *cumstances indicate there would not be any adverse effect*
 13 *on the integrity of the Government or the public's confidence*
 14 *in the integrity of the Government.*

15 “§ 7325. *Political activities on duty, etc.; prohibition*

16 “(a) *An employee may not engage in political*
 17 *activity—*

18 “(1) *while such employee is on duty;*

19 “(2) *in any room or building occupied in the dis-*
 20 *charge of official duties by an individual employed or*
 21 *holding office in the Government of the United States,*
 22 *in the government of the District of Columbia, or in*
 23 *any agency or instrumentality of the foregoing; or*

24 “(3) *while wearing a uniform or official insignia*
 25 *identifying the office or position of such employee.*

1 “(b) The provisions of subsection (a) of this section
2 shall not apply to—

3 “(1) an employee—

4 “(A) paid from the appropriation for the
5 White House Office;

6 “(B) paid from funds to enable the Vice Presi-
7 dent to provide assistance to the President; or

8 “(C) on special assignment to the White House
9 Office;

10 “(2) the Mayor of the District of Columbia, the
11 Chairman or a member of the Council of the District
12 of Columbia; or

13 “(3) any activity of an employee which is not
14 otherwise prohibited by or under law and which is part
15 of such individual's official duties.

16 “(c) Nothing in this section shall be construed to author-
17 ize an employee designated in subsection (b) of this section
18 to engage in political activity otherwise prohibited by or under
19 law.

20 “(d)(1) In addition to the prohibitions of subsection
21 (a) of this section, an employee holding a restricted position
22 may not take an active part in political management or
23 political campaigns unless such part—

24 “(A) is in connection with—

25 “(i) an election and preceding campaign if none

1 of the candidates is to be nominated or elected at that
2 election as representing a party any of whose candi-
3 dates for Presidential elector received votes in the
4 last preceding election at which Presidential electors
5 were selected; or

6 “(ii) a question which is not specifically identi-
7 fied with a National or State political party or po-
8 litical party of a territory or possession of the
9 United States; or

10 “(B) is permitted by regulations prescribed by the
11 Office of Personnel Management and involves the mu-
12 nicipality or political subdivision in which such employee
13 resides, when—

14 “(i) the municipality or political subdivision is
15 in Maryland or Virginia and in the immediate vicin-
16 ity of the District of Columbia or is a municipality
17 in which a majority of voters are employed by the
18 Government of the United States; and

19 “(ii) the Office determines that because of
20 special or unusual circumstances which exist in
21 the municipality or political subdivision it is in the
22 domestic interest of the employees to permit politi-
23 cal participation.

24 “(2) For the purpose of this subsection, ‘an active part
25 in political management or in political campaigns’ means

1 those acts of political management or political campaigning
 2 which were prohibited on the part of employees in the com-
 3 petitive service before July 19, 1940, by the determinations
 4 of the Civil Service Commission under the rules prescribed
 5 by the President.

6 "§ 7326. Candidates for elective office; leave, notification
 7 by employees

8 "(a) An employee shall promptly notify the agency in
 9 which he is employed upon becoming a candidate for elective
 10 office and upon the termination of such candidacy.

11 "(b) An employee who is a candidate for elective office
 12 shall, upon the request of such employee, be granted leave
 13 without pay for the purpose of allowing such employee to
 14 engage in activities relating to such candidacy.

15 "(c) Notwithstanding section 6302(d) of this title, an
 16 employee who is a candidate for elective office shall, upon
 17 the request of such employee, be granted accrued annual
 18 leave for the purpose of allowing such employee to engage
 19 in activities relating to such candidacy. Such leave shall be
 20 in addition to leave without pay to which such employee may
 21 be entitled under subsection (b) of this section.

22 "(d) The foregoing provisions of this section shall not
 23 apply in the case of an individual who is an employee by
 24 reason of holding an elective public office.

1 "§ 7327. Penalties

2 "(a) An employee who is found by the Merit Systems
 3 Protection Board under section 1207 of this title to have
 4 violated any provision of—

5 "(1) section 7323 of this title shall, upon a final
 6 order of the Board, be suspended without pay from such
 7 employee's position for a period of not less than 30 days,
 8 or shall be removed in which event that employee may not
 9 thereafter hold any position (other than an elected posi-
 10 tion) as an employee (as defined in section 7322(1) of
 11 this title);

12 "(2) section 7324 or 7325 of this title shall, upon
 13 a final order of the Board, be—

14 "(A) removed from such employee's position,
 15 in which event that employee may not thereafter
 16 hold any position (other than an elected position)
 17 as an employee (as defined in section 7322(1) of
 18 this title) for such period as the Board may pre-
 19 scribe;

20 "(B) suspended without pay from such em-
 21 ployee's position for such period as the Board may
 22 prescribe; or

23 "(C) disciplined in such other manner as the
 24 Board shall deem appropriate.

25 "(b) The Merit Systems Protection Board shall notify

1 the Special Counsel, the employee, and the employing agency
2 of any penalty imposed under this section. The employing
3 agency shall certify to the Board the measures undertaken to
4 implement the penalty.

5 "§ 7328. Regulations

6 "(a) The Office of Personnel Management and the Merit
7 Systems Protection Board shall prescribe rules and regula-
8 tions to carry out their respective responsibilities under this
9 subchapter.

10 "(b) The regulations referred to in section 7322(8) of
11 this title shall be prescribed not later than 90 days after the
12 effective date of such section. Thereafter any revision of such
13 regulations shall be prescribed not later than March 1 of
14 the calendar year in which such revision is to take effect.
15 Any employee holding any position with respect to which
16 any such regulation is prescribed may institute an action for
17 judicial review of such regulation by filing a petition in the
18 United States Court of Appeals for the District of Columbia
19 Circuit, or in the United States court of appeals for the
20 judicial circuit in which such employee resides or is em-
21 ployed, except that no such action may be instituted more
22 than 30 days after the effective date of such regulation."

23 (b) (1) Section 3302(2) of title 5, United States Code,
24 is amended by striking out "7321, and 7322" and inserting

1 "and" before "7203" (as added in section 703(d)(2) of this
2 Act).

3 (2) Section 1308(a) of title 5, United States Code, is
4 amended—

5 (A) by inserting "and" at the end of paragraph
6 (2);

7 (B) by striking out paragraph (3); and

8 (C) by redesignating paragraph (4) as paragraph
9 (3).

10 (3) The second sentence of section 8332(k)(1) of title
11 5, United States Code, is amended by striking out "second"
12 and inserting "last" in lieu thereof.

13 (4) The section analysis for subchapter III of chapter
14 73 of title 5, United States Code, is amended to read as
15 follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"7381. Political participation.

"7382. Definitions.

"7383. Use of official influence or official information; prohibition.

"7384. Solicitation; prohibition.

"7385. Political activities on duty, etc.; prohibition.

"7386. Candidates for elective office; leave, notification by employees.

"7387. Penalties.

"7388. Regulations."

16 (c) Sections 602 and 607 of title 18, United States
17 Code, relating to solicitations and making of political contri-
18 butions, are each amended by adding at the end thereof the
19 following new sentence: "This section does not apply to any
20 activity of an employee, as defined in section 7322(1) of

1 title 5, unless such activity is prohibited by section 7324 of
2 that title.”

3 (d) Section 6 of the Voting Rights Act of 1965 (42
4 U.S.C. 1973d) is amended by striking out “the provisions of
5 section 9 of the Act of August 2, 1939, as amended (5
6 U.S.C. 118i), prohibiting partisan political activity” and
7 by inserting in lieu thereof “the provisions of subchapter III
8 of chapter 73 of title 5, United States Code, relating to
9 political activities, as enforced under sections 1206 and
10 1207 of such title.”

11 (e) Sections 103(a)(4)(D) and 203(a)(4)(D) of
12 the District of Columbia Public Education Act are each
13 amended by striking out “sections 7324 through 7327 of title
14 5” and inserting in lieu thereof “section 7325 of title 5”.

15 (f) Sections 8332(k)(1), 8706(e), and 8906(e)(2)
16 of title 5, United States Code, are each amended by inserting
17 immediately after “who enters on” the following: “leave
18 without pay granted under section 7326(b) of this title, or
19 who enters on”.

20 STATE AND LOCAL EMPLOYEES’ POLITICAL ACTIVITIES

21 SEC. 902. (a) Subsection (a) of section 1502 of title
22 5, United States Code, relating to political activities of cer-
23 tain State and local employees, is amended—

24 (1) by inserting “or” at the end of paragraph (1);

1 (2) by striking out “; or” at the end of paragraph
2 (2) and inserting in lieu thereof a period; and

3 (3) by striking out paragraph (3).

4 (b)(1) Section 1502 of title 5, United States Code, is
5 amended by striking out subsection (c).

6 (2) Section 1503 of title 5, United States Code, is
7 hereby repealed.

8 (3) The section analysis for chapter 15 of title 5, United
9 States Code, is amended by striking out the item relating to
10 section 1503.

11 EFFECTIVE DATE

12 SEC. 903. (a) The amendments made by this title shall
13 take effect 120 days after the date of the enactment of this
14 Act, except that the authority to prescribe regulations granted
15 under section 7328 of title 5, United States Code (as added
16 by section 901 of this title), shall take effect on the date of the
17 enactment of this Act.

18 (b) Any repeal or amendment made by this title of any
19 provision of law shall not release or extinguish any penalty,
20 forfeiture, or liability incurred under such provision, and
21 such provision shall be treated as remaining in force for
22 the purpose of sustaining any proper proceeding or action
23 for the enforcement of such penalty, forfeiture, or liability.

24 (c) No provision of this title shall affect any proceedings

1 with respect to which the charges were filed on or before the
 2 effective date of the amendments made by this title. Orders
 3 shall be issued in such proceedings and appeals shall be
 4 taken therefrom as if this title had not been enacted.

5 STUDY CONCERNING POLITICAL PARTICIPATION BY
 6 FEDERAL EMPLOYEES

7 SEC. 904. The Office of Personnel Management shall
 8 study and review the effects of the amendments made by this
 9 title on—

10 (1) the level of participation by Federal employees
 11 in activities relating to Federal, State, and local
 12 elections;

13 (2) the merit system particularly the hiring, termi-
 14 nation, or advancement of Federal employees; and

15 (3) matters generally affecting and contributing to
 16 the improper use of official influence or official informa-
 17 tion by Federal employees as prohibited under subchap-
 18 ter III of chapter 73 of title 5, United States Code (as
 19 amended by this title).

20 The Office shall report to the Congress not later than
 21 March 31, 1980, and March 31, 1982, the results of such
 22 study and review any findings therefrom together with such
 23 legislative or administrative recommendations as the Office
 24 considers appropriate.

1 TITLE X—FIREFIGHTERS

2 BASIC WORKWEEK OF FIREFIGHTERS

3 SEC. 1001. (a) Chapter 61 of title 5, United States
 4 Code, relating to hours of work, is amended by inserting
 5 after section 6101 the following new section:

6 “§ 6102. Basic workweek of firefighters

7 “(a) The regularly scheduled administrative workweek
 8 of each firefighter shall be an average of 56 hours per week,
 9 computed on the basis of a period of 21 consecutive days.
 10 The duration and frequency of work-shifts occurring within
 11 such period shall be determined under regulations prescribed
 12 by the Office of Personnel Management.

13 “(b) For the purpose of this section, ‘firefighter’ means
 14 an employee in an Executive agency, the duties of whose
 15 position are primarily to perform or to supervise work di-
 16 rectly connected with the control and extinguishment of
 17 fires or the maintenance and use of firefighting apparatus
 18 and equipment. Such term does not include any employee
 19 who has a regularly scheduled administrative workweek of
 20 40 hours which is established under section 6101(a)(2)
 21 (A) of this title.”

22 (b)(1) Section 5545 of title 5, United States Code, is
 23 amended by adding at the end thereof the following new
 24 subsection:

25 “(e)(1) Each firefighter with a regularly scheduled

1 administrative workweek established under section 6102(a)
 2 of this title shall be entitled, in lieu of premium pay provided
 3 by other provisions of this subchapter (other than premium
 4 pay provided in paragraph (2) of this subsection), to pre-
 5 mium pay equal to 25 percent of so much of his annual rate
 6 of basic pay as does not exceed the minimum rate of basic
 7 pay for GS-10.

8 "(2) Hours of work officially ordered or approved in
 9 excess of the regularly scheduled administrative workweek
 10 established under section 6102(a) of this title are overtime
 11 work and shall be paid for in accordance with the rates speci-
 12 fied in section 5542 of this title.

13 "(3) For the purpose of this subsection, 'firefighter' has
 14 the meaning set forth in section 6102(b) of this title."

15 (2) Section 5545(c)(1) of title 5, United States Code,
 16 is amended by inserting " , unless subject to subsection (e)
 17 of this section," after "shall receive".

18 (3) Section 5547 of title 5, United States Code, is
 19 amended by striking out "sections 5542, 5545(a)-(c), and
 20 5546 (a), (b)" and inserting in lieu thereof "sections 5542,
 21 5545(a)-(c) and (e), and 5546 (a) and (b)".

22 (4) Sections 5595(c), 8114(e), 8331(3)(C), and
 23 8704(c) of title 5, United States Code, are each amended
 24 by striking out "section 5545(c)(1)" and inserting in lieu
 25 thereof "section 5545(c)(1) and (e)(1)".

1 (c) The analysis of chapter 61 of title 5, United States
 2 Code, is amended by inserting after the item relating to
 3 section 6101 the following new item:
 "6102. Basic workweek of firefighters."

4 EFFECTIVE DATE

5 SEC. 1002. The amendments made by section 1001 of
 6 this title shall take effect at the beginning of the first applicable
 7 pay period which begins at least 60 days after the date of the
 8 enactment of this Act.

9 TITLE XI—MISCELLANEOUS

10 STUDY ON DECENTRALIZATION OF GOVERNMENTAL

11 FUNCTIONS

12 SEC. 1101. (a) As soon as practicable after the effective
 13 date of this Act, the Director of the Office of Personnel
 14 Management shall conduct a detailed study concerning the
 15 decentralization of Federal governmental functions.

16 (b) The study to be conducted under subsection (a) of
 17 this section shall include—

18 (1) a review of the existing geographical distribu-
 19 tion of Federal governmental functions throughout the
 20 United States, including the extent to which such func-
 21 tions are concentrated in the District of Columbia; and

22 (2) a review of the possibilities of distributing
 23 some of the functions of the various Federal agencies
 24 currently concentrated in the District of Columbia to

1 field offices located at points throughout the United
2 States.

3 Interested parties, including heads of agencies, other Federal
4 employees, and Federal employee organizations, shall be
5 allowed to submit views, arguments, and data in connection
6 with such study.

7 (c) On the completion of the study under subsection (a)
8 of this section, and in any event not later than one year
9 after the effective date of this Act, the Director of the Office
10 of Personnel Management shall submit to the President and
11 to the Congress a report on the results of such study together
12 with his recommendations. Any such recommendation which
13 involves the amending of existing statutes shall include draft
14 legislation.

15 SAVINGS PROVISIONS

16 SEC. 1102. (a) Except as otherwise provided in this
17 Act, all executive orders, rules, and regulations affecting
18 the Federal service shall continue in effect, according to their
19 terms, until modified, terminated, superseded, or repealed by
20 the President, the Office of Personnel Management, the
21 Merit Systems Protection Board, the Equal Employment
22 Opportunity Commission, or the Federal Labor Relations
23 Authority with respect to matters within their respective
24 jurisdictions.

25 (b) No provision of this Act shall affect any ad-

1 ministrative proceedings pending at the time such provision
2 takes effect. Orders shall be issued in such proceedings and
3 appeals shall be taken therefrom as if this Act had not been
4 enacted.

5 (c) No suit, action, or other proceeding lawfully com-
6 menced by or against the Director of the Office of Personnel
7 Management or the members of the Merit Systems Protection
8 Board, or officers or employees thereof, in their official ca-
9 pacity or in relation to the discharge of their official duties,
10 as in effect immediately before the effective date of this Act,
11 shall abate by reason of the enactment of this Act. Determi-
12 nations with respect to any such suit, action, or other pro-
13 ceeding shall be made as if this Act had not been enacted.

14 AUTHORIZATION OF APPROPRIATIONS

15 SEC. 1103. There are authorized to be appropriated,
16 out of any moneys in the Treasury not otherwise appro-
17 priated, such sums as may be necessary to carry out the pro-
18 visions of this Act.

19 POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS 20 PROVISIONS

21 SEC. 1104. Except as otherwise expressly provided in
22 this Act, no provision of this Act shall be construed to—

23 “(1) limit, curtail, abolish, or terminate any func-
24 tion of, or authority available to, the President which

1 the President had immediately before the effective date
2 of this Act; or

3 "(2) limit, curtail, or terminate the President's
4 authority to delegate, redelegate, or terminate any dele-
5 gation of functions.

6 TECHNICAL AND CONFORMING AMENDMENTS

7 SEC. 1105. (a) Title 5, United States Code, is
8 amended—

9 (1) in sections 5347, 8713, and 8911, by striking
10 out "Chairman of the Civil Service Commission" and
11 inserting in lieu thereof "Director of the Office of Per-
12 sonnel Management";

13 (2) in section 3304 by striking out "a Civil Service
14 Commission board of examiners" and inserting in lieu
15 thereof "the Office of Personnel Management";

16 (3) in sections 1301, 1302, 1304, 1308, 2105,
17 2951, 3110, 3304a, 3308, 3312, 3318, 3324, 3325, 3344,
18 3351, 3363, 3373, 3502, 3504, 4102, 4106, 4113-
19 4118, 5102, 5103, 5105, 5107, 5110-5115, 5303,
20 5304, 5333, 5334, 5336, 5338, 5343, 5346, 5347,
21 5351, 5352, 5371, and 5372 (as redesignated in section
22 801(a)(3)(A)(ii) of this Act), 5374 (as redesignated
23 in section 801(a)(3)(A)(ii) of this Act), 5504, 5533,
24 5545, 5548, 5723, 6101, 6304-6306, 6308, 6311,

1 6322, 6326, 7203, and 7204 (as redesignated in
2 section 703(a)(1) of this Act), 7312, 8151, 8331,
3 8332, 8334, 8337, 8339-8343, 8345-8348, 8501,
4 8701-8712, 8714, 8714a, 8716, 8901-8903, 8905,
5 8907-8910, and 8913, by striking out "Civil Service
6 Commission" and inserting in lieu thereof "Office of Per-
7 sonnel Management";

8 (4) in sections 1505-1508 and 3383 by striking out
9 "Civil Service Commission" and "Commission" each
10 place they appear and inserting in lieu thereof "Merit
11 Systems Protection Board" and "Board", respectively;

12 (5) in section 1504 by striking out "Civil Service
13 Commission. On receipt" and all that follows down
14 through the end thereof and inserting in lieu thereof
15 "Special Counsel of the Merit Systems Protection
16 Board.";

17 "(6) in section 5335(c)—

18 "(A) by striking out "Commission" the first
19 place it appears and inserting in lieu thereof "Office
20 of Personnel Management";

21 "(B) by striking out "Commission" the second
22 place it appears and inserting in lieu thereof "Merit
23 Systems Protection Board";

24 "(C) by striking out "Commission" the third

1 place it appears and inserting in lieu thereof
2 "Office"; and

3 "(D) by striking out "Commission" the fourth
4 place it appears and inserting in lieu thereof
5 "Board";

6 (7) in section 8347(d), by striking out "Commis-
7 sion" the first time it appears and inserting in lieu there-
8 of "Merit Systems Protection Board" and by striking
9 out "Commission" the second time it appears and insert-
10 ing in lieu thereof "Board";

11 (8) in section 552(a)(4)(F)—

12 (A) by striking out "Civil Service Commission"
13 and "Commission" each place they appear and in-
14 serting in lieu thereof, "Special Counsel"; and

15 (B) by striking out "its" and inserting in lieu
16 thereof "his";

17 (9) in section 1303—

18 (A) by striking out "Civil Service Commis-
19 sion" and inserting in lieu thereof "Office of Person-
20 nel Management, Merit Systems Protection Board,
21 and Special Counsel"; and

22 (B) by striking out "Commission" in paragraph
23 (1) and inserting in lieu thereof "Office of Per-
24 sonnel Management";

1 (10) in section 1305, by striking out "For the pur-
2 pose of sections 3105, 3344, 4301(2)(E), 5362, and
3 7521 of this title and the provisions of section 5335(a)
4 (B) of this title that relate to administrative law judges
5 the Civil Service Commission may" and inserting in lieu
6 thereof "For the purpose of section 3105, 3344, 4301(2)
7 (D) and 5372 of this title and the provisions of section
8 5335(a)(B) of this title that relate to administrative law
9 judges, the Office of Personnel Management may, and for
10 the purpose of section 7521 of this title, the Merit Sys-
11 tems Protection Board may";

12 (11) in section 1306, to read as follows: "The
13 Director of the Office of Personnel Management and au-
14 thorized representatives of the Director, may administer
15 oaths to witnesses in matters pending before the Office";

16 (12) in sections 1302, 1304, 1308, 2951, 3304a,
17 3308, 3312, 3317b, 3318, 3324, 3351, 3363, 3504,
18 4106, 4113-4115, 4117, 4118, 5105, 5107, 5110-5112,
19 5114, 5333, 5343, 5346, 5545, 5548, 5723, 6304,
20 6405, 7312, 8331, 8332, 8337, 8339-8343, 8345-8348,
21 8702, 8704-8707, 8709-8712, 8714a, 8716, 8901-8903,
22 8905, 8907, 8909, 8910, and 8913 (as such sections
23 are amended in paragraph (3) of this subsection), by
24 striking out "Commission" each place it appears and
25 inserting in lieu thereof "Office";

1 (13) in sections 1303, 8713, and 8911 (as such
2 sections are amended in paragraph (1) of this sub-
3 section), by striking out "Commission" and inserting in
4 lieu thereof "Office";

5 (14) in section 8344(a), by striking out "Commis-
6 sion" and inserting in lieu thereof "Office of Personnel
7 Management";

8 (15) in section 8906, by striking out "Commission"
9 each place it appears and inserting in lieu thereof "Office
10 of Personnel Management" the first time it appears and
11 "Office" the other times it appears;

12 (16) in the section heading for section 2951 and
13 in the item relating to section 2951 in the analysis for
14 chapter 29, by striking out "Civil Service Commission"
15 and inserting in lieu thereof "Office of Personnel Man-
16 agement"; and

17 (17) in the section heading for section 5112 and in
18 the item relating to section 5112 in the analysis for
19 chapter 51, by striking out "Civil Service Commission"
20 and inserting in lieu thereof "Office of Personnel Man-
21 agement".

22 (b) Section 1307 of title 5, United States Code, is
23 hereby repealed.

24 (c)(1) Section 5109(b) of title 5, United States Code,
25 is hereby repealed.

1 (2) Section 5109 of such title is further amended by re-
2 designating subsection (c) as subsection (b).

3 (d) The President or his designee shall, as soon as practi-
4 cable, but in any event not later than 30 days after the date
5 of the enactment of this Act, submit to the Committee on Post
6 Office and Civil Service of the House of Representatives and
7 the Committee on Governmental Affairs of the Senate a
8 draft of any additional technical and conforming amend-
9 ments to the provisions of title 5, United States Code, and
10 any other provisions of law which have not been made by the
11 provisions of this Act and which are necessary to reflect
12 throughout such provisions the amendments to the substan-
13 tive provisions of law made by this Act and by Reorgani-
14 zation Plan Numbered 2 of 1978.

15 EFFECTIVE DATE

16 SEC. 1106. Except as otherwise expressly provided in
17 this Act, the provisions of this Act shall take effect 90 days
18 after the date of the enactment of this Act.

Amend the title so as to read: "A bill to reform the civil
service laws, and for other purposes."

CIVIL SERVICE REFORM ACT
OF 1978

REPORT
OF THE
COMMITTEE ON POST OFFICE AND
CIVIL SERVICE

ON
H.R. 11280
TO REFORM THE CIVIL SERVICE LAWS



JULY 31, 1978.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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CIVIL SERVICE REFORM ACT OF 1978

JULY 31, 1978.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NIX, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 11280]

together with

SEPARATE, SUPPLEMENTAL, ADDITIONAL, INDIVIDUAL, AND DISSENTING VIEWS

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 11280) to reform the civil service laws, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

AMENDMENTS

The committee has amended the bill as introduced by striking out all language after the enacting clause and inserting a new text which is printed in *italic* in the reported bill.

The committee has also amended the title.

EXPLANATION OF AMENDMENTS

The Committee amendments include a complete substitute for the text of H.R. 11280 as introduced and an amendment to the title.

The changes made by the committee amendments to the text of the bill are explained in the body of this report.

The committee has amended the title to reflect more accurately the content of the bill as amended.

PURPOSE

The purpose of this legislation is to reform the Civil Service of the Government of the United States.

COMMITTEE ACTION

On March 2, 1978, President Carter transmitted to Congress his message on civil service reform which included a draft of legislation. That legislation was introduced on March 3, 1978, by Mr. Nix and Mr. Derwinski (by request) as H.R. 11280.

The Committee on Post Office and Civil Service conducted 13 days of hearings (including hearings conducted by Representative Gladys Noon Spellman at four Federal agency locations) on March 14, 21; April 4, 5, 6, 11, 12, 28; and May 8, 12, 15, 22, and 23.

Testimony was given by 203 witnesses representing Federal employees, business organizations, women's groups, veterans, public interest groups, and the executive branch, which presented testimony by the Director of the Office of Management and Budget, the Chairman of the Civil Service Commission, the Secretary of Health, Education, and Welfare, and the Secretary of Defense. Additional written communications have been received from 36 organizations and individuals.

At the conclusion of the hearings, the committee met for 10 days (June 21, 22, 23, 28, 29, and July 11, 12, 13, 17, and 19) to mark up H.R. 11280. Seventy-seven separate amendments were considered by the committee, and extensive discussion occurred on all aspects of the bill. In an unusual procedure by the Committee on Post Office and Civil Service, direct testimony was heard during the course of markup sessions from administration officials so that the President's position on specific issues would be announced. Forty-two rollcall votes were taken during the committee's deliberations and on July 19, 1978, by a vote of 18 to 7, the committee ordered the bill reported to the House with one amendment striking all after the enacting clause and substituting an entirely new text incorporating all of the amendments adopted by the committee. The rollcall vote to report the bill was as follows:

Ayes—Mr. Nix, Mr. Udall, Mr. Hanley, Mr. Wilson, Mr. White, Mr. Ford, Mr. Clay, Mrs. Schroeder, Mr. Lehman, Mr. Solarz, Mr. Myers, Mr. Heftel, Mr. Garcia, Mr. Metcalfe, Mr. Ryan, Mr. Derwinski, Mr. Leach, and Mr. Corcoran.

Nays—Mrs. Spellman, Mr. Harris, Mr. Rousselot, Mr. Collins, Mr. Taylor, Mr. Gilman, and Mr. Lott.

INTRODUCTION

In his message to the Congress on March 2, 1978, President Jimmy Carter stated:

Nearly a century has passed since enactment of the first Civil Service Act—the Pendleton Act of 1883. That act established the U.S. Civil Service Commission and the merit system it administers. These institutions have served our Nation well in fostering development of a Federal work force which is basically honest, competent, and dedicated to constitutional ideals and the public interest.

But the system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in redtape, delay, and confusion.

Civil service reform will be the centerpiece of government reorganization during my term of office.

I have seen at first hand the frustration among those who work within the bureaucracy. No one is more concerned at the inability of Government to deliver on its promises than the worker who is trying to do a good job.

Most civil service employees perform with spirit and integrity. Nevertheless, there is still widespread criticism of Federal Government performance. The public suspects that there are too many Government workers, that they are underworked, overpaid, and insulated from the consequences of incompetence.

Such sweeping criticisms are unfair to dedicated Federal workers who are consistently trying to do their best, but we have to recognize that the only way to restore public confidence in the vast majority who work well is to deal effectively and firmly with the few who do not. * * *

The objectives of the civil service reform proposals I am transmitting today are:

To strengthen the protection of legitimate employee rights;

To provide incentives and opportunities for managers to improve the efficiency and responsiveness of the Federal Government;

To reduce the redtape and costly delay in the present personnel system;

To promote equal employment opportunity;

To improve labor-management relations.

H.R. 11280 embodies the President's proposals for civil service reform. As amended by the committee, it reflects changes in the original proposal and is designed to improve the civil service system, ensure adequate protection for employees against unlawful abuses by agency management, and provide a framework for labor-management relations in the Federal Government.

JUSTIFICATION

Civil servants administer almost all functions of Federal activities. Of 2.8 million civilian positions in the executive branch, more than 1.5 million are in the competitive service; that is, the positions are filled on the basis of competitive civil service examinations in which any qualified citizen is entitled to participate. Appointments are made by agencies from lists of qualified eligibles. In this process, the Civil Service Commission is responsible for examining applicants, establishing civil service registers, and referring registers to agencies for consideration.

The problems of any organization employing as many as work for the Federal Government would be staggering regardless of the effectiveness of the system, but it is evident that the Federal civil service does not serve the public interest satisfactorily in several specific areas:

The delay between the time an individual applies for a civil service position and the time he is actually appointed, even if the agency appointing him makes every possible effort to speed the appointment process.

The time necessary for an agency to dismiss an employee who has tenure but has proven to be an unsatisfactory worker. Although all employees who have tenure should be protected from arbitrary and capricious actions, neither the employee nor the Government benefits from a system in which unnecessary delay exists. The employee does not benefit because he may be removed from a pay status 30 days after a notice of dismissal is given and spends much of his time preparing his defense for a hearing on the appeal, thus losing time he could devote to other employment. The agency does not benefit because it has to devote costly time to the defense of its action.

The "bureaucracy" at the higher level of the civil service is sometimes considered to be not sufficiently responsive to an Administration's program. Career employees cannot be displaced, transferred or reduced to a lower level position for any reason without requiring a full-fledged adverse action procedure with its attendant appeals and, in some cases, judicial proceedings.

The opportunity to provide employment for many well-qualified individuals, particularly women, is severely limited because of veterans' preference, which requires that most former members of the armed services be given preference over applicants who do not have this statutory preference.

H.R. 11280 is designed to resolve these and other civil service problems.

SUMMARY OF MAJOR REFORMS

Title I establishes in law the general policies of the merit system principles applicable to the competitive civil service and throughout the executive branch. Under existing law, there is no clear statement embodying the merit principles, upon which the Civil Service Act of 1883 was based, and under which the civil service system has gradually evolved in the last century. The President's proposal and the committee's recommendations include a specific statement of principles to serve as guidelines for all Executive agencies to follow.

The bill also enumerates specific practices which may not be engaged in and for which an individual shall be disciplined if these prohibited activities occur. In particular, the bill prohibits reprisals against employees who divulge information to the press or the public (generally known as "whistleblowers") regarding violations of law, agency mismanagement, or dangers to the public's health and safety. Generally, title I provides protection for all employees against discrimination, political coercion or unfair, arbitrary, or illegal actions regarding appointments and advancements within the civil service.

Title II provides legislative authority for the division of the Civil Service Commission into two agencies: the Office of Personnel Management and the Merit Systems Protection Board. The Office of Personnel Management shall be headed by a Director and Deputy Director appointed by the President, with the advice and consent of the Senate, and will be the central personnel office of the executive branch. The Merit Systems Protection Board will be an independent agency exercising appellate authority now vested in the Civil Service Commission. The Board will have a Special Counsel, appointed by the President, with the advice and consent of the Senate, who will have

broad authority to investigate, particularly "whistleblower" cases. Title II also revises existing law for the appraisal of employee performance on the job, requires the establishment of specific performance standards, and establishes procedures for adverse actions and suspensions.

Title III includes changes in the law relating to the appointment and retention of former members of the armed services—commonly called veterans' preference.

Title IV establishes the Senior Executive Service, generally embodying those management positions which now comprise "supergrades"—positions in grades GS-16, GS-17, and GS-18 under the General Schedule in title 5, United States Code. The Senior Executive Service is designed to provide greater mobility in the highest level of political and nonpolitical positions in the civil service and help ensure a high quality of executives in agency management. Perhaps more than any other provision in this bill, the Senior Executive Service can provide the framework to meet the Government's management needs.

Title IV also authorizes performance awards for employees in upper level positions whose work is of a sustained and outstanding nature. Although bonuses are common in the private sector, there is almost no opportunity under existing law for a Federal employee, regardless of his achievements, to receive any financial reward for doing a superior job. Title IV establishes such a program for career employees in the Senior Executive Service.

Title V establishes a merit pay system for management employees in the levels below the Senior Executive Service—GS-13, GS-14, and GS-15. Under this program, automatic step increases will be eliminated and periodic adjustments, other than comparability increases, will be based solely upon performance.

Title VI authorizes research programs and demonstration projects in Executive agencies and improves the intergovernmental personnel relations program between the Federal and State governments.

Title VII establishes a new labor-management program applicable to most agencies in the executive branch. Under the existing system of labor-management relations in the executive branch, the President, by Executive order, has complete authority to establish the labor-management program. Title VII establishes a new program and provides for greater employee and employee organization participation. However, title VII does not authorize collective bargaining on substantive issues of pay and fringe benefits, as is currently permitted in some agencies, such as the Postal Service, the Tennessee Valley Authority, and the Bonneville Power Administration.

Title VIII provides a new system for the salary and grade protection of employees who are adversely affected by position reclassification decisions or downgradings resulting from reductions in force.

Title IX incorporates revisions in the so-called "Hatch Act," which places restrictions upon the political activity of certain Federal, State, and local government employees.

Title X revises the working hours of employees of the Federal Government engaged in firefighting.

Title XI includes miscellaneous provisions necessary to carry out the purpose of this legislation.

MAJOR CHANGES IN EXISTING CIVIL SERVICE LAWS

ORGANIZATION

The structure of the civil service system will be changed by abolishing the U.S. Civil Service Commission and establishing two new Federal agencies. The Office of Personnel Management will administer the personnel system, issue rules and regulations applicable to agency personnel system, and serve as the President's agent for all civil service personnel matters. This independent establishment in the executive branch will be headed by a Director, appointed by the President with the advice and consent of the Senate, and a Deputy Director, similarly appointed. The Director will be the chief executive officer of the agency for all administrative purposes and may appoint as many as five associate directors.

RECRUITMENT AND EXAMINING

A principal problem of the existing appointment system is that all examining authority is vested in the Civil Service Commission. Although uniformity has some advantages, it invariably results in delay in the appointment process. Hundreds of cases over the past few years have been brought to the committee's attention demonstrating inordinate delay in the appointment process. The Office of Personnel Management will have the authority to delegate the examining authority to individual agencies so that the entire appointment process can be handled by an agency. This delegation will not relieve the Office of Personnel Management from the responsibility to ensure that all aspects of the competitive civil service system are conducted in accordance with the merit system principles and uniform standards established by the Office.

MERIT SYSTEMS PROTECTION BOARD

The Merit Systems Protection Board will take over the appellate authority now vested in the Civil Service Commission. Under existing law, when an agency proposes to remove an employee, an employee may appeal the agency's decision to the Federal Employee Appeals Authority and subsequently to the Appeals Review Board, which are part of the Civil Service Commission. The Board's decisions are final unless the Civil Service Commissioners reopen the case for reconsideration, a procedure which does not often happen. One of the inherent conflicts in the present system is that the Commission has both the enforcement authority as the chief personnel office of the executive branch and also the administrative review authority in adverse action cases. Almost all witnesses appearing before the committee supported the proposal to divide the Commission's authority in the manner proposed by the President. The Merit Systems Protection Board will be composed of three members appointed by the President with the advice and consent of the Senate, each to serve a term of 7 years.

The Office of the Special Counsel in the Merit Systems Protection Board is a new position designed to ensure that employees are fairly protected. The Special Counsel is vested with specific authority to

investigate any allegation of a prohibited personnel practice and, in exceptional cases, to issue a stay against any personnel action proposed to be taken by an agency if the Special Counsel believes that such a stay is necessary to prevent a substantial and adverse impact on the employee involved. The stay will remain effective for 30 days and may be extended if the Board agrees to the extension. The quasi-judicial authority vested in the Special Counsel goes farther than the President proposed, but the committee believes that this authority is necessary to adequately protect employees.

The Special Counsel has specific authority to investigate violations of the Hatch Act and to bring actions against employees who have engaged in prohibited personnel practices. The Merit Systems Protection Board will have the authority to discipline any person who has engaged in a prohibited personnel practice, including the power of removal, reduction in grade, debarment from the civil service, or civil penalties of up to \$1,000.

ADVERSE ACTIONS

Under existing law, an employee against whom an adverse action is proposed has a right to 30 days' advance notice and an appeal to the Civil Service Commission. Although the agency may remove the employee from the payroll upon the expiration of the 30-day period, there are many instances in which an employee is not removed for several months. The average length of time between the notification of an adverse action and a decision by the Federal Employee Appeals Authority is more than 5 months.

H.R. 11280 does not fully address the problem of the adverse action system. The committee considered at length the advisability of adopting a new system which guarantees an employee the right to a hearing before being removed from the payroll. This alternative was rejected without prejudice at this time because a majority of the committee does not believe that this legislation is the appropriate vehicle for such change without further study. However, the adverse action system is deficient and the committee requests that the Office of Personnel Management undertake an immediate study of the adverse action system with the view to proposing changes in the system during the 96th Congress.

PROTECTION OF EMPLOYEE RIGHTS

The President's proposal would have placed the burden of proof on the employee against whom an adverse action is taken to demonstrate upon appeal that the agency action to remove or suspend him was wrong. The President's proposal also eliminated the "preponderance of the evidence" rule, which is the current basis for reaching a decision in appeals cases. The committee has revised this proposal to retain the "preponderance of the evidence" rule and to give the employee to greater opportunity, upon appeal, to demonstrate reversible error. However, the committee agrees with the administration that a "reduction in rank" shall no longer be considered an adverse action subject to appeal. A reduction in rank includes those cases in which an employee is moved from a position in the organizational structure of the agency to another position of equal pay but not necessarily of

equal stature. Under the committee proposal, such a change will not be an adverse action unless the action involves a reduction in pay or grade. However, the employee in such a case would have an appeal right if the reduction in rank involves a prohibited personnel practice.

However, the employees in such a case would have an appeal right if the reduction in rank involves a prohibited personnel practice.

VETERANS' PREFERENCE

The committee recommends that existing preference for certain former members of the Armed Forces be altered to provide greater employment opportunities for Vietnam era veterans and to encourage the recruitment and retention of qualified applicants, particularly women and minority applicants, who frequently are not now within reach on civil service registers because of the statutory preference for veterans.

Under existing law, a veteran (which generally means an honorably discharged individual who has served in the Armed Forces on active duty during a period of war or armed conflict, or in an area for which a campaign badge is authorized, or for a period exceeding 180 days any part of which occurred between January 31, 1955 and October 31, 1976, and in certain cases the spouse or mother of such a person) is entitled to appointment and retention preference in the competitive service. Preference is given by adding 5 points to the passing score of an applicant entitled to preference, but an applicant who is disabled on account of his military service receives 10 points, and an applicant who is disabled and is receiving compensation from the Veterans' Administration because of such a disability is entitled to 10 points and automatically rises to the top of the civil service register of eligibles. A preference eligible may not be passed over to select a non-preference eligible unless the Civil Service Commission approves the appointment. For retention purposes, all preference eligibles are retained within their competitive group during a reduction in force until all nonpreference eligibles have been displaced.

The committee endorses the retention of veterans' preference laws as a benefit which the Government bestowed and should continue to bestow on its citizens who have served in the armed services during a period of war or armed conflict. However, the lifetime preference which all preference eligibles have today works to the extreme disadvantage of Vietnam veterans and women and minority applicants who do not have preference eligibility. We are now in a period in which the Government and private industry are strongly encouraged to provide employment opportunities for women and minority applicants to improve career opportunities for these citizens. The veterans' preference laws, particularly that portion of the law which grants preference for peacetime service between the end of the Korean conflict in 1953 and the beginning of the Vietnam conflict in 1965, effectively serves as a barrier for women and minority applicants attempting to obtain competitive positions in the civil service.

The committee has amended the bill to modify veterans' preference in the following manner:

In the case of any individual who is retired from the Armed Forces on account of physical disability, no change in existing law

is proposed. These individuals will continue to enjoy lifetime veterans' preference for both appointment and retention.

In the case of an individual retired at the rank of major or its equivalent except a disabled veteran, appointment preference will be eliminated.

In the case of a nondisabled veteran retired below the rank of major, veterans' preference will be modified so that the individual will have appointment preference for a period of 3 years following his separation from the military service.

In all other cases, individuals who under current law have preference on account of military service, will have appointment preference for a period of 15 years following separation from the military service or until appointed to a permanent position in the civil service, whichever occurs first.

For retention purposes in reductions in force, individuals retired for physical disability incurred as a direct result of armed combat will continue to have full preference. Others retired will have no preference, as is the case under existing law, 5 U.S.C. 3501(a)(3)(A). All other individuals entitled to retention preference will have retention preference for a period of 8 years following their separation from the military service.

DUAL COMPENSATION

The committee has amended the provisions of law enacted in the Dual Compensation Act of 1964 affecting the pay of retired officers who are employees in civil service positions.

Under existing law, a Regular officer who retires for reasons other than physical disability incurred as a direct result of war or armed conflict and who is subsequently employed in a civilian position in the Federal Government is required to take a reduction in retired pay during the period of civilian service. The reduction does not apply in the case of a retired Reserve officer, or in the case of a Regular officer retired for combat disability.

Earlier this year, the committee, through its Subcommittee on Investigations, found numerous instances where retired Regular officers occupying civilian positions are paid total compensation substantially in excess of the pay of members of the Cabinet, Justices of the Supreme Court, and others at the highest levels of Federal pay. The dual compensation reduction formula permits a retired Regular officer to receive only the first \$2,000 of his retired pay, plus 50 percent of any amount in excess of \$2,000. The \$2,000 figure is subject to a cost-of-living escalation clause which, as of July 1978, actually permits a base rate of \$4,320 plus 50 percent of the remainder. Although this limitation may have been suitable when the Dual Compensation Act was written in 1964, the rapid increase in retired military pay since 1964 has resulted in very substantial pensions for senior officers, which, when combined with civilian pay, particularly at the supergrade level, result in pay levels which the committee believes are not justified for an individual who is in essence on two Federal payrolls at the same time.

The committee recommends that, on a prospective basis only, the dual compensation provisions be revised so that any retired officer,

Regular or Reserve, who becomes employed in a civilian position in the Federal Government receives his full military pension and his civilian pay but that an absolute ceiling be imposed at the rate in effect for level V of the Executive Schedule of title 5, currently \$47,500.

The committee amendment will have no effect upon any officer already retired from the military service. The provisions of existing law will continue to apply to those individuals.

SENIOR EXECUTIVE SERVICE

Title IV establishes a new Senior Executive Service to include management and program officials in Executive agencies who are now generally in the GS-16, GS-17, and GS-18 positions in the executive branch, and individuals not appointed by the President with the advice and consent of the Senate whose positions are in levels IV and V of the Executive Salary Schedule under title 5.

The "supergrades" in Executive agencies were created under the Classification Act of 1949 and, with the exception of certain scientists and professional positions, the total number of administrative supergrade positions is controlled by acts of Congress. There are more than 10,000 supergrade positions in the executive branch, but most are scientific positions. Management supergrade positions are allocated to agencies by the Civil Service Commission generally on the basis of agency need.

The major disadvantage in the existing program, in the administration's view, is that it does not have sufficient flexibility to meet agency or Government-wide needs. Individuals of exceptional qualifications are limited because of the inflexibility, and the rewards which can be given to employees of superior capabilities and performance are extremely limited.

The new Senior Executive Service is designed to resolve these management problems. Upon establishment, employees currently occupying supergrade positions who are responsible for the management or direction of a program will be permitted to volunteer to join the Senior Executive Service or to remain under the existing supergrade system, which will continue to be applicable to nonmanagement positions. Employees in the Senior Executive Service will be subject to promotion and reassignment to meet agency needs and will be subject to a probationary period to determine whether they are fully qualified in the position to which they have been appointed. Career employees who fail to meet this test or who subsequently fail to perform at a fully satisfactory level of work will be guaranteed the right to be reassigned to a permanent non-Senior Executive Service position at no loss of salary. Pay increase will be based on performance. No more than 10 percent of all Senior Executive Service positions may be filled by non-career appointees; no agency may have more than 25 percent of non-career appointees in these positions (except certain agencies which, on the effective date of this legislation, have a greater percentage); and at least 70 percent of all employees in the Senior Executive Service at any one time must have at least 5 years' Federal Service.

Career employees in the Senior Executive Service will be eligible for monetary performance awards based on sustained excellent work. Non-career appointees will not be eligible for these awards.

The committee adopted an amendment proposed by Representative Spellman to establish an experimental program for the Senior Executive Service. Under the Spellman amendment, the Senior Executive Service will be conducted on a trial basis in three executive departments for a period of 2 years. Thereafter, the program will be established on a Government-wide basis in the executive branch upon the adoption of a concurrent resolution by the Senate and House of Representatives.

MERIT PAY

The administration bill recommended the establishment of a new pay system for individuals in management positions in grades GS-13, GS-14, and GS-15 of the General Schedule. Under the administration's proposal, these employees would not be entitled to annual pay comparability increases and would not be subject to periodic step increases.

The committee agrees with the administration proposal that step increases for management employees be eliminated and periodic adjustments be made on the basis of performance alone.

The committee does not agree, however, that annual comparability adjustments should be eliminated. Pay comparability is a concept which establishes basic rates for positions in the Federal service, not for individual occupants of those positions. The long struggle to achieve comparability for Federal employees under the General Schedule prevailed only after a 10-year period of attempting to perfect a statutory and administrative system for comparability and pay reform. To abandon that principle, particularly for those employees in the higher level positions in the Government, would be unfair and unwise. If the administration advocates changing comparability as the basic principle of pay for Federal employees, it should do so across the board rather than advocating that lower-level employees receive comparability and higher-level employees not receive comparability.

The committee agrees with the recommendation that superior performance cash awards be made available to management employees in the GS-13, GS-14, and GS-15 positions.

RESEARCH AND DEMONSTRATION PROJECTS

The committee approved the administration's recommendation for personnel research programs and demonstration projects in the executive branch.

As proposed by the administration, the Office of Personnel Management is authorized to develop a program for personnel research and demonstration projects. The committee has amended the proposal so that all plans for such projects will be submitted to the Congress and subject to disapproval by either House of Congress if a resolution of disapproval is adopted by either House within 60 days.

The committee also recommends that the Office of Personnel Management undertake a study, immediately following the enactment of this legislation, on the overall problem of the decentralization of Federal Government functions.

LABOR-MANAGEMENT RELATIONS

The committee has considered labor-management relations legislation for several years. Over a long period of time, the Subcommittee on Civil Service and its predecessor subcommittees have considered legislation. Last year, following additional hearings, Representatives William D. Ford and William (Bill) Clay, introduced H. R. 9094 representing what the sponsors considered to be a reasonable compromise between the Administration which favored continuation of labor-management relations under the Executive order and Federal employee organizations which generally favor collective bargaining for Federal employees.

Following the submission of his message to the Congress on civil service reform, President Carter proposed additional legislation to be incorporated in this bill establishing, by law, a system of labor-management relations for employees in the executive branch. The President's proposal was essentially the codification of the existing Executive Order No. 11491 originally established by President John F. Kennedy in 1962, and subsequently revised by President Richard Nixon in 1969.

The committee agrees that the time has come to establish by statute a labor-management relations system for Federal employees, but disagrees with the President's specific proposal. Employees in the private sector have been covered by the Wagner Act since 1935. Major employers in this Nation are subject to the collective-bargaining procedures of that law and other Federal statutes governing labor law. More than half a million postal employees gained the right of collective bargaining in the Postal Reorganization Act 8 years ago. In the case of postal workers, their collective-bargaining rights extend to all aspects of employment, including wages, fringe benefits, hours, and work conditions. Employees in several smaller agencies, including the Tennessee Valley Authority, have had collective bargaining for decades. But most Federal employees have been subject to congressional control of pay and fringe benefits or, in more recent years, congressional-Presidential control of pay and a very limited program of collective bargaining established by Executive order.

The committee recommends that a new broad program for labor-management relations be established by law and that employees, through their unions, be permitted to bargain with agency management throughout the executive branch on most issues, except that Federal pay will continue to be set in accordance with the pay provisions of title 5, and fringe benefits, including retirement, insurance, and leave, will continue to be set by Congress.

Title VII adopts some of the provisions of that bill but does not permit an agency shop or bargaining on wages and fringe benefits and does not go as far as H. R. 9094 in the scope of bargaining. The committee amendment also includes a specific broad statement of management rights.

A majority of the committee believes that this system strikes a proper balance between the public interest and the demands of citizens who are employees of the Federal Government who wish to have a greater voice in the employment policies applicable to them.

DOWNGRADING AND SAVED PAY

The committee has amended the bill to include as title VIII the provisions of H.R. 9279, relating to protections for employees who are downgraded either because of position reclassification or because of agency reorganizations. This legislation was separately reported by the committee on March 21, 1978, and received specific support from President Carter who expressed his desire to have downgrading protection enacted to assist in the various executive agency reorganization programs. The administration continues to favor this legislation and has expressed its approval of the inclusion of the downgrading bill in the civil service reform bill.

Over the past several years the downgrading of Federal employees for reasons beyond their control has become one of the most pressing problems facing the Government's civilian work force. Downgradings occur when positions are recognized as being overgraded because of erroneous classifications or when, as a result of staff reductions, mission changes, consolidation of functions, or reorganizations, a reduction-in-force action results in employees being placed in lower grades.

While these reclassification and reduction-in-force actions are necessary, the major impact of such actions is felt almost exclusively by the employee. Employees who are downgraded not only experience a reduction in pay but in many cases suffer irreversible damage to their careers. For an employee who is approaching retirement, a reduction in grade can be particularly damaging.

Under existing law, an employee who is reduced in grade as a result of the reclassification of his position or as a result of certain reductions in force is entitled to retain his existing rate of pay, but not his grade, for a maximum period of 2 years. At the end of the 2-year period his pay is fixed at the appropriate step of the grade to which he has been reduced. In certain cases, such as reductions in force caused by lack of funds or curtailment of work, the employee is denied even pay retention.

The current pay retention law does not afford sufficient protection for an employee who has accepted a particular grade level in good faith and subsequently is reduced to a lower grade because of circumstances over which he has no control.

Title VIII will substantially improve the protections afforded to employees by authorizing indefinite grade retention for employees who are reduced in grade as a result of reclassification actions and by authorizing temporary grade retention for 2 years to be followed by pay retention, if necessary, for employees who are downgraded as a result of reductions in force. Most employees will be assured that they will not be substantially harmed by the effects of necessary downgrading actions. At the same time, this legislation should assist Federal agencies in carrying out the important tasks of reviewing and correcting job classifications and should facilitate the accomplishment of the President's plans for reorganizing various Federal agencies.

HATCH ACT REFORM

The committee has amended the bill to include the provisions of H.R. 10, relating to revisions in the Hatch Act governing political

activities of certain Federal, State, and local government employees, as title IX of the bill. This legislation passed the House by a vote of 244 to 164 on June 7, 1977, but has not been acted upon in the Senate.

Although the House has approved similar legislation, the committee believes that it is desirable to include the provisions of H.R. 10 as title IX in H.R. 11280 because it is unlikely that the Senate will have time to complete action on H.R. 10 this year. Placing the Hatch Act reform provisions in H.R. 11280 ensures that, if the civil service reform bill is approved by the House, the provisions of the bill relating to Hatch Act reform will at least be considered by the Senate.

The committee rejects the argument that modifying the Hatch Act will inject too much politics into the civil service system. A majority of the committee believes that there are no greater priorities than to broaden the extent to which Federal employees may participate in political activities and strengthen protections to both the public and public employees against coercion and improper political activities. Guaranteeing the constitutional rights of free speech and association to Federal employees is an integral part in the reform of the entire civil service system.

The Hatch Act and its subsequent amendments contain two main restrictions: a prohibition against the use of official authority or influence to affect the results of an election and a prohibition against taking an active part in political management or political campaigns during on-duty or off-duty hours. The House and the President, who advocated Hatch Act reform as part of his Presidential campaign in 1976 and subsequently supported the enactment of H.R. 10, have concluded that such restrictions are improper and inappropriate.

The Civil Service Commission, the agency responsible for the administration of the Hatch Act, has always broadly interpreted the law's restrictions against partisan activities, thereby prohibiting a wide range of political activities. At the time of its enactment four decades ago, the Hatch Act incorporated over 3,000 administrative determinations by the Commission. The committee believes that these determinations are too broad and infringe upon the right of Federal employees to participate in the political process.

The committee has been guided by the importance of striking the proper balance between the right of Federal employees to participate in the political life of this Nation at all levels and the right of the public to an impartial, nonpolitical, civil service.

Title IX strikes a balance by relaxing the existing restrictions and instead prohibiting only those activities which might, actually or apparently, erode the integrity of the Government's ability to provide protection for employees and the public against improper influences. Title IX will also help avoid direct or subtle political coercion and establish the means by which the law may be effectively enforced.

FIREFIGHTERS

The committee has amended the bill to include as title X the provisions of H.R. 3161, relating to the pay and hours of work of employees who are engaged in firefighting. This legislation previously passed both Houses but was vetoed by President Carter on June 19, 1978. The Presi-

dent's veto message was referred to the committee for further consideration on June 28, 1978.

Title X revises the laws relating to hours of work and prescribes a new basic workweek for Federal firefighters. Under existing laws, the authority to fix the hours of work for firefighters rests with the heads of employing agencies. The typical workweek of the Federal firefighter is 72 hours, consisting of three 24-hour shifts. Each shift contains an 8-hour period of actual work and a 16-hour period of standby status. During the standby period the firefighter has a sleeping period; however, the entire standby period may be interrupted without additional compensation not only for emergencies but for duties normally performed during the designated work period. In no case may a firefighter be away from assigned duties during the 24-hour shift.

The Federal Government employs approximately 11,500 civilian firefighters. About 10,500 of this number are employees of the Department of Defense. The remainder are employed by the Department of Transportation, the Nuclear Regulatory Commission, the Department of Agriculture, and the Veterans' Administration. For some time, the Civil Service Commission has appeared to be unwilling to discuss the firefighters' workweek with representatives of the firefighting employees. In view of this apparent refusal, the committee recommends that legislation be enacted to resolve the dispute.

Title X provides that the regularly scheduled administrative workweek of each Federal firefighter shall average 56 hours per week. In addition, it authorizes payment of 25-percent premium pay to firefighters who have a 56-hour workweek and authorizes overtime pay for all hours in excess of the 56-hour workweek.

SECTIONAL ANALYSIS

Section 1 prescribes a short title for the bill, the "Civil Service Reform Act of 1978".

Section 2 is the table of contents.

Section 3 is a statement of congressional findings and a statement of purpose.

Section 3(1) states the necessity for a statutory expression of the principles of the merit system which shall be applicable to the Federal civil service.

Section 3(2) states the necessity for establishing the Merit Systems Protection Board.

Section 3(3) states the necessity for the Special Counsel of the Merit Systems Protection Board.

Section 3(4) states the desirability for delegating appointment power from a central authority to individual agencies in the executive branch under the supervision and control of the Office of Personnel Management.

Section 3(5) states the necessity for the creation of a Senior Executive Service.

Section 3(6) states that in appropriate instances pay increases should be based on quality of performance rather than longevity.

Section 3(7) states the necessity for a personnel research and demonstration program to improve Government management.

Section 3(8) states the necessity for retraining of Federal employees to avoid separations during reductions in force, which now results in the loss of knowledgeable and experienced employees.

TITLE I

MERIT SYSTEM PRINCIPLES

Section 101(a) amends title 5, United States Code, by adding a new chapter 23, relating to merit system principles. The new chapter consists of four new sections: 2301, 2302, 2303, and 2304.

Merit system principles

The new section 2301 sets forth the merit system principles. Under section 2301(a), the merit system will apply to Executive agencies, the Administrative Office of the U.S. Courts, and the Government Printing Office.

The new section 2301(b) establishes the policy of recruiting and retaining a Federal work force of high quality and maintaining a personnel system consistent with the merit system principles.

The new section 2301(c) enumerates the merit system principles:

(1) Recruitment of qualified individuals reflecting all segments of the national population: recruitment and advancement will be based solely on relative ability, knowledge, and skills under a system designed to ensure open competition and equal opportunity;

(2) Discrimination on account of political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, should not be a factor in Federal employment;

(3) The principle of equal pay for equal work shall be continued as a basic pay policy, and pay rates determined under title 5 shall reflect national and local rates in the private sector. The use of the term "local rates" means specifically the rates applicable to employees in the trades and crafts paid at prevailing rates under title 5, and is not meant to be used to alter the present system for determining comparability for employees under the General Schedule;

(4) Employees should maintain high standards of integrity, conduct, and concern for the public interest;

(5) The Federal work force should be used efficiently and effectively;

(6) Employees whose performance is inadequate should be encouraged to improve, and employees who cannot and will not improve their performance to meet established standards should be separated from the Federal service;

(7) Employees should receive education and training to improve agency and individual performance;

(8) Employees should be protected against arbitrary actions, personnel favoritism, or partisan political coercion: and

(9) Employees who disclose information which they believe evidences violations of law, misuse of funds, or other wrongful actions, should be protected from reprisals for such disclosure.

The new section 2301(d) directs that the President take such actions as he determines necessary to carry out the policies of subsection (b) of this section.

Prohibited personnel practices

The new section 2302 enumerates prohibited personnel practices. The provisions of section 2302 are applicable to Executive agencies, the Administrative Office of the U.S. Courts, and the Government Printing Office, but are not applicable to Government corporations or agencies specifically enumerated in section 2302(a)(2)(B) or agencies designated by the President which engage in foreign intelligence or counterintelligence activities.

The new section 2302(a) defines "prohibited personnel practice", "personnel action", and "agency".

The new section 2302(b) prohibits any supervisor authorized to take any personnel action from discriminating on the bases enumerated in the new section 2302(b)(1).

The new section 2302(b)(2)-(11) enumerates specific prohibited personnel practices actions which any supervisor may not take.

The new section 2302(c) vests in the head of each agency the responsibility to carry out and enforce applicable civil service laws, rules, and regulations.

The new section 2302(d) reinforces equal employment opportunity and affirmative action programs guaranteed under Federal law.

The new section 2303 authorizes the General Accounting Office to conduct audits and reviews of executive agencies, when requested by either House or any committee of either House, or upon the initiation of the Comptroller General.

The new section 2304 provides that this chapter relating to merit system principles will not impair the specific statutory authority stated in the National Security Act, the Central Intelligence Agency Act, Public Law 86-36, and Public Law 88-290. The purpose of this section is to ensure that, although the merit system principles will be applicable to security agencies, the activities of such agencies which necessarily require departures from basic merit system principles may be undertaken to carry out agency functions provided for by law. This language has been included at the request of these agencies. The committee notes that in any event, statements of principle which do not involve the use of mandatory language should not be construed to be judicially enforceable.

TITLE II

CIVIL SERVICE FUNCTIONS

Section 201(a) of the bill amends chapter 11 of title 5, United States Code, to provide for the establishment of a new Office of Personnel Management. The provisions of amended chapter 11 are explained below by Code section reference.

Section 1101 establishes the Office of Personnel Management as an independent establishment in the executive branch.

Section 1102 provides for the appointment of a Director and a Deputy Director by the President, by and with the advice and consent of the Senate. Associate Directors of the Office of Personnel Management will be appointed by the Director.

Section 1104 provides for the delegation of power for personnel management by the President to the Director and by the Director to heads of agencies. Under the new section 1104(b), the Office is given

specific statutory authority to establish personnel management standards applicable to agencies covered by the chapter, to oversee agency activities, and to ensure agency compliance.

Section 1104(c) authorizes the Office to require agency compliance when agency actions are contrary to law, rule, regulations, or Office standards.

Section 1105 provides for periodic reports from the Office of Personnel Management to the Congress and specifically provides that upon the request of any committee or subcommittee of the Congress, the Director shall report without review, clearance, or approval by any other administrative authority. This section is designed to ensure that the Office of Management and Budget will not have any authority concerning the views expressed by the Director in response to a formal request by any committee or subcommittee of the Senate or House of Representatives.

Section 1106 provides that the rulemaking provisions of section 553 of title 5 shall be applicable to the administrative procedures of the Office of Personnel Management.

Section 201(b) of the bill places the Director of the Office of Personnel Management in level II of the Executive Salary Schedule of title 5, the Deputy Director in level III, and the Associate Directors in level IV.

Merit Systems Protection Board

Section 202(a) of the bill creates statutory authority for the Merit System Protection Board and the Special Counsel of the Board. A new chapter 12 is added to title 5 and is explained below by Code section reference.

The new section 1201 provides for a Merit Systems Protection Board composed of three members appointed by the President with the advice and consent of the Senate.

The new section 1202 provides a term of office of 7 years for each member, prescribes procedure for filing vacancies, and requires a quorum of two members to transact business.

The new section 1203 provides that the President shall designate the Chairman and Vice Chairman.

The new section 1204 provides for the appointment by the President, with the advice and consent of the Senate, of a Special Counsel for a term of 7 years. The Special Counsel, who shall be independent of any supervision or control by the Board, may be removed only by the President, only upon notice of hearing, and only for misconduct, inefficiency, neglect of duty, or malfeasance.

The new section 1205 establishes the powers and functions of the Board and the Special Counsel. The Board has the specific authority to issue subpoenas and to seek judicial enforcement of its subpoenas.

The new section 1206 provides for the authority and responsibilities of the Special Counsel in investigating cases of prohibited personnel practices.

The new section 1206(a) authorizes the Special Counsel to investigate allegations of prohibited personnel practices and to respond to individuals who have alleged that prohibited personnel practices have occurred.

The new section 1206(b) authorizes the Special Counsel to issue a stay of any personnel action proposed to be taken against an employee for a period of 30 days if the proposed personnel action is alleged to be the result of a prohibited personnel practice, and if the personnel action would have a substantial and adverse impact on the employee.

Under the new section 1206(b)(2), the 30-day stay ordered by the Special Counsel may be extended after the Special Counsel petitions the Board for an extension. If the total period of the stay, as proposed to be extended, does not exceed 60 days, any member of the Board may approve the Special Counsel's petition. If the total period of the stay exceeds 60 days, it must be authorized by the full Board.

The new section 1206(c) provides for handling cases involving disclosures of information. In such cases, the Special Counsel shall protect the identity of an employee unless disclosure of the identity is necessary to carry out the investigation.

Under the new section 1206(c)(2), the Special Counsel shall determine within 15 days whether the disclosed information warrants an investigation. If he determines an investigation is warranted, he shall notify the head of the agency and require him to conduct an investigation and submit a written report to the Special Counsel and the General Accounting Office within 60 days.

The new section 1206(c)(3) enumerates the matter to be included in the agency report.

The new section 1206(c)(4) provides that in cases involving possible criminal violations, the agency shall refer the matter to the Attorney General, and advise the Office of Personnel Management and the Office of Management and Budget of the referral.

Under the new section 1206(c)(5), the Special Counsel shall review agency reports and determine whether the report is sufficient.

Under the new section 1206(c)(6), the General Accounting Office shall review agency reports and report the results of its review to the Congress if it determines the action of the agency is inadequate.

The new section 1206(c)(7) reflects the intent of the committee that except as specifically authorized nothing in section 1206(c) shall be construed to authorize the disclosure of any information by the Congress, any agency, or any person if the information is (a) specifically prohibited from disclosure by any other provision of law, or (b) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Under the new section 1206(c)(8), the Special Counsel is authorized (with the consent of the employee involved), to participate in proceedings before the Board under section 7701 of title 5 (relating to appeals to the Board), if the Special Counsel believes the appeal involves a reprisal for a disclosure of information.

The new section 1206(d) provides that the Special Counsel shall recommend to the Board appropriate action for an agency to take to correct prohibited personnel practices. The Board shall make a final decision as to what action an agency shall be required to take.

The new section 1206(d)(2) provides for the Special Counsel to report possible criminal violations to the Attorney General and the head of the agency, and advise the Directors of the Office of Personnel Management and the Office of Management and Budget of his action.

The new section 1206(d)(3) authorizes the Special Counsel to report noncriminal violations to the head of an agency and require a report from the agency head as to the disposition of the Special Counsel's recommendations.

The new section 1206(e) authorizes the Special Counsel to investigate allegations of violations of the Hatch Act and certain other special matters.

The new section 1206(f) provides that no disciplinary action may be taken against an employee for an alleged prohibited personnel practice or violation of the Hatch Act during the period of the Special Counsel's investigation without the approval of the Special Counsel.

The new section 1206(g) provides authority for the Special Counsel to bring actions against employees. In the case of individuals appointed by the President of the United States, the Special Counsel's report shall be presented to the President for whatever action the President determines is appropriate.

The new section 1206(h) authorizes the Special Counsel to appoint personnel to carry out the functions of the office of the Special Counsel.

The new section 1206(i) authorizes the Special Counsel to issue regulations.

The new section 1206(j) prohibits the Special Counsel from issuing advisory opinions except in Hatch Act cases.

The new section 1206(k) requires the Special Counsel to prepare and submit to the President and the Congress an annual report.

The new section 1207 prescribes the administrative procedure for hearings before the Board on complaints filed against employees by the Special Counsel under section 1206.

The new section 1208 provides for periodic reports to the Congress by the Board and, as is the case with the Office of Personnel Management, specifically prohibits any prior clearance by the Office of Management and Budget or any other administrative authority.

Section 202(b) of the bill establishes the pay of the Chairman and the members of the Merit Systems Protection Board at levels III and IV of the Executive Schedule, respectively, and the pay of the Special Counsel at level IV of the Executive Schedule.

Performance appraisal

Section 203 of the bill amends chapter 43 of title 5 to provide a new system for employee performance appraisal. The provisions of the amended chapter 43 are explained below by Code section references.

The new section 4301 establishes the coverage of the performance appraisal system.

The new section 4301(3) defines "unacceptable performance" to mean performance which fails to meet established performance standards in one or more "critical elements" of an employee's position. The committee recognizes that performance standards are not adequately described under the present civil service system. For that reason, the committee, in section 4302(b)(2) authorizes a 3-year delay in the establishment of performance standards and the description of critical elements of a job. Between now and October 1, 1981, the Office of Personnel Management must ensure that disciplinary actions against employees based on a failure to meet acceptable performance standards in one or more critical elements of the job are very carefully adminis-

tered so that no employee will be disciplined when performance standards and critical elements have not been adequately defined by an agency.

The new section 4302 provides for the establishment of performance appraisal systems in Executive agencies and provides that the Office of Personnel Management shall issue regulations governing all performance appraisal systems.

Section 4302(b)(7) authorizes promotions of more than one grade during a 12-month period in individual cases of exceptional merit. This authorization changes a policy in effect since the Supplemental Appropriations Act, 1951, which has limited most promotions to not more than one grade in a 12-month period. The restriction was enacted in 1950 as an emergency personnel control measure during the Korean conflict, and, under the provisions of the National Emergencies Act of 1976, is due to expire on September 14, 1978. The Office of Personnel Management must carefully monitor this authorization and should initially submit periodic reports to this committee concerning the implementation of this authority.

The new section 4303 provides authority for the removal or reduction in grade of an employee for unacceptable performance. Employees shall have a right to notice, representation by an attorney or other person, an opportunity to improve performance, a written decision by the agency, and, in the case of a preference eligible in the excepted service or any employee in the competitive service, the right of appeal to the Merit Systems Protection Board. The rights of appeal provided in this section do not apply to individuals serving a probationary period or to a nonpreference eligible in the excepted service.

The new section 4304 establishes the authority of the Office of Personnel Management to require agency compliance and to ensure that performance appraisal systems meet standards established by the Office of Personnel Management.

The new section 4305 authorizes the Office of Personnel Management to prescribe regulations.

Adverse actions

Section 204 of the bill revises chapter 75 of title 5 relating to adverse actions. The revised provisions are explained below by Code section references.

The new subchapter I of chapter 75 relates to suspensions from a pay status for a period of 14 days or less. Under existing law, suspensions of not more than 30 days are not considered adverse actions for the purpose of employee appeals. The committee recommends that the 30-day period be reduced to 14 days, which constitutes one full pay period in the executive branch. The committee believes that a suspension of more than one full pay period is a penalty of such magnitude that an employee should have a right of appeal.

The new sections 7501 and 7502 provide definitions and descriptions of coverage for the subchapter.

Under the new section 7503, an employee against whom a suspension of 14 days or less is proposed is entitled to notice, a reasonable time to answer, representation, and a written decision. An employee is not entitled to an appeal.

Subchapter II of chapter 75 relates to removals and suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30

days or less. These actions are adverse actions and in such cases, an employee is entitled to full administrative protections.

The new section 7511(a) describes the classes of employees who are entitled to these protections.

The new section 7511(b) describes exclusions from the subchapter.

The new section 7511(c) authorizes the Office of Personnel Management to apply the subchapter to any position or group of positions otherwise excepted from the competitive service.

The new section 7512 prescribes the personnel actions which are subject to or excluded from this subchapter. A principal change recommended by the committee is that a "reduction in rank" will no longer be an adverse action. A reduction in rank involves a change in an employee's relative position in his agency which does not involve a reduction in pay or grade.

The new section 7513 sets out the procedure involved in administering adverse actions. Employees are entitled to 30 days' advance notice, representation, a written decision, and an appeal to the Merit Systems Protection Board.

The new section 7514 authorizes the Office of Personnel Management to issue regulations.

The new section 7521 continues the present system of providing protection for administrative law judges.

Appeals

Section 205 of the bill amends chapter 77 of title 5 relating to appeals. The amended provisions are explained below by Code section references.

The new section 7701 guarantees that an employee or an applicant for employment may appeal actions which are otherwise appealable to the Merit Systems Protection Board. An employee or applicant is entitled to a hearing on the record and may be represented by an attorney or other person. The Board may hear any case or refer a case to an administrative law judge or another employee of the Board designated to hear appeals. The decision of the agency to remove an employee shall not be sustained if the employee shows that harmful error occurred, that the decision was based on discrimination or any other prohibited personnel practice, or was not otherwise in accordance with law.

The Board must find that the agency decision is supported by the preponderance of evidence. This standard of evidence is currently used in Federal personnel cases and it should be continued. The committee believes that the "substantial evidence" rule is not sufficient to protect employees. "Substantial evidence" means merely enough evidence to avoid a directed verdict in a court of law. That standard is not sufficient in adverse action cases.

The new section 7701(d) provides that a decision of the Board is final unless a party or the Director of the Office of Personnel Management petitions for review. The Director may not petition unless he is of the opinion that the decision is wrong and will have a substantial impact on civil service operations.

The new section 7701(e) authorizes the Equal Employment Opportunity Commission to delegate its authority to the Merit Systems Protection Board in discrimination cases to make preliminary deter-

minations, but the Commission will continue to exercise the authority to make final determinations.

The new section 7701(f) authorizes the Board to consolidate and join appeals cases.

The new section 7701(g) provides for awarding attorney fees.

The new section 7702(a) provides for judicial review by the Court of Claims or any United States district court of decisions of the Board appealed by an employee or applicant for employment. Under the new section 7702(d), the Director of the Office of Personnel Management is authorized to file appeals in cases where he believes the decision of the Board is erroneous and will have a substantial impact on civil service operations.

TITLE III

STAFFING

Voluntary services

Section 301 of the bill amends chapter 31 of title 5, to add a new section 3111 providing for the use of volunteer student services. The committee has amended this administration proposal to ensure that volunteers will not be used in positions ordinarily occupied by Federal employees.

Veterans' preference and probationary period for supervisors

Section 302 of the bill amends section 2108 of title 5, to eliminate preference eligibility for a retired member of the Armed Forces who is retired at or above the field grade officer rank of major or its equivalent. The elimination of preference does not apply if the retired officer is a disabled veteran.

Section 303(a) amends chapter 31 of title 5 by adding a new section 3112 which permits the noncompetitive appointment of disabled veterans who have compensable service-connected disabilities of 30 percent or more, or disabled veterans who are enrolled in or have completed job training courses prescribed by the Administrator of Veterans' Affairs.

Section 304(a) amends chapter 33 of title 5 by adding a new section 3303a. This new section provides that an individual who is entitled to veterans' preference but who is not a retired member of the Armed Forces will have appointment preference for a period of 15 years following separation from active duty or until appointment to a permanent position in the competitive service, whichever occurs first. The new section 3303a also provides that an individual who is a retired member of the Armed Forces and who retired below the rank of major or its equivalent shall have appointment preference for a period of 3 years following separation from active duty.

Section 304(b) amends section 3305 of title 5 so that a preference eligible may request a competitive examination for any position for which there is an appropriate list of eligibles.

Section 304(c) amends section 3309 of title 5 to make technical changes relating to added points and placement on civil service registers for veterans entitled to preference.

Section 304(g) amends section 3321 of title 5 to authorize probationary periods for supervisors and managers in the competitive serv-

ice. An individual who is appointed to a supervisory position but who does not satisfactorily complete the probationary period is entitled to be placed in a position of no lower grade pay than the position that he occupied immediately prior to his promotion to a supervisory position.

Section 305 revises veterans' preference for the purpose of retention in the cases of reductions in force. Under existing law, a preference eligible is entitled to be retained until all nonpreference eligibles are removed when both classes of employees are in the same competitive group. Section 305(b) amends section 3502(b) of title 5 to limit retention preference to the 8-year period following the preference eligible's initial appointment to a position in the competitive service.

Training

Section 306 of the bill amends section 4103 of title 5 to authorize training for employees who would otherwise be separated in order to avoid hardship for employees as well as the loss to the Government of the employee's talents.

Travel and transportation

Section 307 of the bill amends section 5723(d) of title 5 to authorize the Office of Personnel Management to delegate its authority to determine positions for which there is a manpower shortage. This change in existing law will permit agencies to pay the travel and transportation expenses of a new employee and his family when he is appointed to a position for which a manpower shortage exists.

Retirement

Section 308 of the bill amends section 8336(d)(2) of title 5 to authorize early retirement in cases of an agency undergoing a major agency reorganization, a major agency reduction in force or a major transfer of function. Under existing law, this early retirement benefit is limited to cases where an agency is undergoing a major reduction in force.

Veterans' readjustment

Section 309 of the bill amends section 2014(b) of title 38 to authorize the Office of Personnel Management to provide for noncompetitive appointments for veterans of the Vietnam era.

Civil service vacancies

Section 310 of the bill adds a new section 3327 to chapter 33 of title 5 to establish a new system for public notice of vacancies in the civil service. Under existing law, Federal agencies do not advise the public generally when vacancies exist in the civil service. In fact, there is no "central marketplace" where citizens looking for jobs can ascertain vacancies in the Federal civil service.

This amendment requires that each Executive agency shall promptly notify the Office of Personnel Management of each vacant position in the agency as well as each appointment to previously vacant positions. The Office of Personnel Management shall notify the United States Employment Service of vacancies on a monthly basis. The committee notes that employers in the private sector are currently required by law to make such listings with the U.S. Employment Service.

Dual compensation

Section 311 of the bill amends section 5532 of title 5 to provide a new salary limitation for retired officers of the Armed Forces. Under existing law, retired Regular officers (other than those retired on combat disability) who are appointed to positions in the Federal service, are required to take a reduction in their retired military pay. At the present time, such an officer may receive the first \$4,320 of his retired pay plus one-half of the remainder, if any. The reduction does not apply to a retired Reserve officer or a Regular officer retired for combat disability.

The amendments made by section 311 (a) change the pay limitation so that retired officers, either Regular or Reserve, who are appointed to positions in the Federal service will receive the full amount of their retired pay and the full amount of their civilian position pay, subject to an absolute maximum rate of pay equal to the rate payable for level V of the Executive Schedule, currently \$47,500. The exception for officers retired for combat disability will continue to apply.

Section 311(d) amends section 5532(d) of title 5 to repeal the authority of the Civil Service Commission, the Speaker, and the Vice President to make exceptions to the pay reductions on retired officers holding civilian positions. This section also repeals the special authority of the Administrator of the National Aeronautics and Space Administration to make exempt 30 positions from the pay reductions.

Section 311(f) provides that the amendments made by section 311 shall be prospective only and shall not affect the pay of any retired member whose eligibility for retired pay vested prior to the effective day of this act. Similarly, the authority of the Civil Service Commission, the Speaker, the Vice President, and the Administrator of NASA to make exceptions will continue in effect for the appointment of an individual whose eligibility to receive retirement pay vested before the effective day of this act.

Minority recruitment

Section 312 of the bill amends section 7151 of title 5 to establish a minority recruitment program in the Federal service.

Under the new section 7151, the Office of Personnel Management in cooperation with the Equal Employment Opportunity Commission will establish the program for the recruitment of members of minority groups for positions in Federal agencies. Under this program, each agency shall conduct a continuing effort for the recruitment of members of minorities to eliminate underrepresentation of minorities within the agency. The Office of Personnel Management will provide assistance to agencies and generally evaluate and review the recruitment programs to determine their effectiveness. The Equal Employment Opportunity Commission will establish guidelines and make determinations of when underrepresentation of minority groups exists in Federal agencies.

TITLE IV**THE SENIOR EXECUTIVE SERVICE**

Title IV of the bill provides the statutory framework for the new Senior Executive Service.

General provisions

Section 401(a) of the bill adds a new section 2101a to title 5. This new section defines for purposes of title 5 "Senior Executive Service" as consisting of Senior Executive Service positions (as defined in section 3132(a)(2) of title 5 as added by the bill and discussed below). Section 401(b) of the bill amends section 2102(a)(1) of title 5, relating to the competitive service, to exclude from the competitive service positions in the Senior Executive Service; and section 401(c) of the bill makes a similar amendment to section 2103(a) of title 5 to exclude Senior Executive Service positions from the excepted service. The effect of the amendments made by sections 401(a), 401(b), and 401(c), is to create a new "service", the Senior Executive Service, which is separate and apart from the two existing services (competitive and excepted) within the civil service. Thus, while a Senior Executive Service position is subject to the laws which apply to the civil service generally, it is not subject to those laws which apply solely to the "competitive service" or the "excepted service".

Section 401(d) of the bill amends section 2108(3) of title 5, relating to the definition of "preference eligible", to exclude from that definition "applicants for, or members of the Senior Executive Service." The effect of this amendment is to exclude the Senior Executive Service from the application of the various veterans' preference provisions scattered throughout title 5.

Senior Executive Service

Section 402 amends chapter 31 of title 5, by adding a new subchapter II relating to Senior Executive Service.

The new section 3131 of title 5 states the purpose of the subchapter and the reasons for the creation of the Senior Executive Service.

The new section 3132(a) provides definitions and exclusions for the Senior Executive Service. The Senior Executive Service will consist of career employees selected through a merit staffing process, and employees who do not have career status, including "limited term", "limited emergency", and "noncareer" appointees. This new section also defines the positions in the Senior Executive Service to include "career reserved" which may be filled only by career employees, and "general positions" which may be filled by any qualified individual.

The new section 3132(b) authorizes the Office of Personnel Management to prescribe criteria and issue regulations concerning the designation of career reserved positions and the appointment of individuals who have career status to these positions.

The new section 3132(c) authorizes an agency to apply for an exclusion from any provision or requirement of the Senior Executive Service. The Office of Personnel Management will review the application and recommend to the President whether the exclusion should be granted.

The new section 3132(d) authorizes the President, upon recommendation of the Office of Personnel Management, to revoke exclusions granted under the new section 3132(c).

The new section 3132(e) provides for periodic reports to the Congress concerning exclusions and revocations under this subchapter.

The new section 3133 establishes a method for authorizing positions in the Senior Executive Service and the authority for appointment.

The new sections 3133 (a) and (b) provide that during each odd-numbered calendar year, each Executive agency shall determine its need for Senior Executive Service positions for the next two fiscal years and submit a detailed request to the Office of Personnel Management for a specified number of positions.

The new section 3133(c) authorizes the Office of Personnel Management, after consultation with the Office of Management and Budget, to authorize a specific number of Senior Executive Service positions for each agency.

The new section 3133(d) authorizes the Office of Personnel Management to adjust the number of positions for each agency. However, the total number of positions in the Senior Executive Service may not exceed the number initially authorized by the Office of Personnel Management by more than 5 percent during any fiscal year.

The new section 3133(e) authorizes Executive agencies to make appointments to the Senior Executive Service.

The new section 3134 establishes limits on noncareer appointments in the Senior Executive Service.

The new section 3134(a) requires each agency to determine its needs for noncareer appointees and to request authority to appoint a specific number of noncareer employees to the Senior Executive Service for a fiscal year.

The new section 3134(b) authorizes the Office of Personnel Management to determine the number of noncareer appointees in the Senior Executive Service but imposes a limit so that the total number of noncareer appointees in the Senior Executive Service may not exceed 10 percent of the total number of employees in the Senior Executive Service.

The new section 3134(c) (1) imposes a limit on the number of noncareer appointees in the Senior Executive Service in any one agency. Under this limitation, noncareer appointees in an agency may not exceed 25 percent of the total number of employees in the Senior Executive Service within the agency.

The new section 3134(c) (2) provides an exception in the case of agencies having a number of noncareer employees in supergrade positions in excess of 25 percent on the date of enactment of this legislation. The limitation will also not apply to any agency having fewer than four Senior Executive Service positions.

The new section 3135 provides for a biennial report by the Office of Personnel Management to the Congress and enumerates the specific matter to be included in the report.

The new section 3136 authorizes the Office of Personnel Management to issue regulations to carry out the purposes of the new subchapter.

Section 402(b) of the bill provides that appointments of experts and consultants under section 3109 of title 5 may not be used for appointments to the Senior Executive Service.

Appointments and career development

Section 403(a) amends chapter 33 of title 5, by adding a new subchapter VIII relating to the appointment, reassignment, transfer, and career development in the Senior Executive Service.

The new section 3391 of title 5 cross-references definitions for the Senior Executive Service to the definitions provided in section 3132(a) of title 5 as amended by the bill.

The new section 3392 relates to appointments in the Senior Executive Service.

Under the new section 3392(a), each agency will establish qualification standards for each Senior Executive Service position in accordance with qualification requirements established by the Office of Personnel Management.

The new section 3392(b) provides that no person may be appointed to the Senior Executive Service unless the appointing authority has determined that the person meets the qualification requirements of the position to which his appointment is proposed. This new section also provides that at least 70 percent of all individuals serving at any time in the Senior Executive Service must have at least 5 years' service in the civil service before being appointed to a Senior Executive Service position. The President is authorized to make exceptions by certification to the Congress that the limitation would hinder the efficiency of the Government. Under existing law (5 U.S.C. 2101(1)), the civil service is defined to include all appointed positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services.

The new section 3392(c) provides that if a career appointee in the Senior Executive Service is appointed to a position by the President which requires Senate confirmation, and the position is paid at a rate equal to or greater than level V of the Executive Schedule, the appointee may at his option continue under the provisions of law relating to pay, awards and other benefits governing the Senior Executive Service while he serves under the Presidential appointment.

The new section 3393 provides for the system for career appointments in the Senior Executive Service which each agency will carry out during its recruitment program under guidelines established by the Office of Personnel Management. Each agency shall establish executive resources boards to review candidates for appointment and make appropriate recommendations.

The new section 3393(c) provides that the Office of Personnel Management shall establish qualifications review boards for the Senior Executive Service which shall certify as to the qualifications of candidates for initial entry as career appointees in the Senior Executive Service.

The new section 3393(d) provides for a probationary period of 1 year before an individual who is appointed as a career appointee in the Senior Executive Service acquires tenure.

The new section 3394 provides that noncareer, limited-term, and limited-emergency appointments may be given only to individuals who meet the qualifications of the position to which they are appointed.

The new section 3395 provides for the reassignment and transfer of senior executives.

The new section 3395(a) provides that a career appointee may be reassigned to any other Senior Executive Service position in the agency for which he is qualified and may transfer to another Senior Executive Service position in another agency for which he is qualified with the approval of the agency to which he is transferring.

The new section 3395 (b) provides that a limited emergency appointee may be reassigned in the same agency to meet urgent agency needs for a period of up to 18 months. A limited-term appointee may be transferred to another position in the agency if the duties of the new position will expire within 3 years.

The new section 3395 (c) provides that limited and emergency appointments may not be renewed if the appointee holding the appointment has served more than 36 months in any such limited or emergency appointment within the immediately preceding 48 months.

The new section 3395 (d) provides that a noncareer appointee in the Senior Executive Service may be transferred or reassigned to any position within the agency for which he is qualified or to any other agency with the approval of the other agency.

The new section 3395 (e) provides that career appointees in the Senior Executive Service may not be involuntarily reassigned to another position within the agency within the first 120 days of service of a new head of the agency.

The new section 3396 provides for the career development of senior executives.

Under the new section 3396 (c), career appointees may be granted a sabbatical for up to 11 months. The sabbatical may not occur more than once in any 10-year period and is available only to appointees who have completed at least 7 years of service in or comparable to the Senior Executive Service. The sabbatical will not be applicable to an individual who is eligible for voluntary retirement on an immediate annuity under the civil service retirement system. Service on assignment to State and local governments under section 3373 of title 5 may not be considered in determining eligibility for a sabbatical.

Section 3396 (c) (3) provides that career appointees who accept a sabbatical must agree to complete 2 years of service following their term or reimburse the United States, including salary, for the sabbatical taken.

The new section 3397 authorizes the Office of Personnel Management to prescribe regulations.

Section 404 of the bill amends section 3501 (b) of title 5, to provide that members of the Senior Executive Service shall not be entitled to veterans' preference.

Removal and reinstatement

Section 404 (b) of the bill adds a new subchapter V to chapter 35 of title 5, relating to the removal, reinstatement, and placement of appointees in the Senior Executive Service.

The new section 3591 provides cross-references to the definitions provided in the new section 3132 (a).

The new section 3592 provides for the removal of appointees from the Senior Executive Service.

The new section 3592 (a) provides that career appointees in the Senior Executive Service may be removed during the period of probation, or at any time for "less than fully successful managerial performance."

The new section 3592 (b) provides that limited emergency, limited term, and noncareer appointees may be removed at any time.

The new section 3593 provides for the reinstatement of career appointees in the Senior Executive Service.

The new section 3593(a) provides that a former career appointee may be reinstated if he has completed the probationary period and left the Senior Executive Service under satisfactory conditions.

The new section 3593(b) provides that a former career appointee appointed by the President to a position outside the Senior Executive Service who leaves the position he holds by Presidential appointment under satisfactory conditions may be reinstated in the Senior Executive Service during the first 90 days after separation from the position to which he was appointed by the President.

Guaranteed placement

The new section 3594 provides for guaranteed placement outside the Senior Executive Service.

The new section 3594(a) provides that a career appointee in the Senior Executive Service who was appointed from a career position outside the Senior Executive Service and who is removed from the Senior Executive Service during the period of probation is entitled to a career position outside the Senior Executive Service in any agency in the Executive branch.

The new section 3594(b) provides that a career appointee who has completed the period of probation and who is removed from the Senior Executive Service for less than fully successful managerial performance is entitled to a position outside the Senior Executive Service in any Executive agency.

The new section 3594(c) provides that the positions to which the individuals described in the new section 3594 (a) or (b) are entitled to be placed shall be permanent full-time positions at grade GS-15 of the General Schedule or an equivalent position. An appointee so placed shall be entitled to the rate of pay of the position to which he is appointed, at the current rate of pay for the position in the civil service which he held immediately before being appointed to the Senior Executive Service, or his rate of pay in the Senior Executive Service, whichever is higher.

The new section 3594(c) (1) (C) provides that placements made under this authority may not cause a separation or reduction in grade of any other employee.

The new section 3594(c) (2) provides that appointees placed under this authority who continue to receive pay at a "saved rate" shall be entitled to one-half of each annual comparability increase until the pay of the position under the placement appointment is equal to the pay received by the appointee.

The new section 3595 authorizes the Office of Personnel Management to issue regulations.

Performance appraisals

Section 405 of the bill adds a new subchapter II to chapter 43 of title 5, relating to performance appraisals.

The new section 4311 cross-references definitions to the new section 3132(a).

The new section 4312 provides for performance appraisals in the Senior Executive Service.

The new section 4312(a) provides that each agency shall develop performance appraisal systems for the efficient management of the Senior Executive Service.

The new section 4312(b) enumerates the procedure for performance appraisal systems.

The new section 4312(c) authorizes the Office of Personnel Management to ensure agency compliance in the establishment of performance appraisal systems.

The new section 4313 provides criteria to be included in performance appraisals.

The new section 4313 provides a method of rating appointees by performance appraisals and requires adequate review.

The new section 4314(b)(1)(C) specifically provides that a performance appraisal for a career appointee may not be made within 120 days after the beginning of a new Presidential administration. The committee defines a "new Presidential administration" to mean an administration of a President other than the President in office immediately before the beginning of the current administration.

The new section 4314(b)(3) and (4) provides that an appointee in the Senior Executive Service who receives an unsatisfactory rating shall be reassigned, transferred, or removed. Any appointee who receives two unsatisfactory ratings within a 5-year period shall be removed, and any appointee who twice in any 3-year period receives a less than fully successful rating shall be removed.

The new section 4314(c) provides that performance review boards shall be established to review the performance of appointees of the Senior Executive Service.

The new section 4315 authorizes the Office of Personnel Management to issue regulations.

Ranks for outstanding service

Section 406 of the bill adds a new section 4507 to chapter 45 of title 5.

The new section 4507(a) cross-references definitions to the new section 3132(a).

The new section 4507(b) provides for agency recommendations of appointees for the rank of "Meritorious Executive" and "Distinguished Executive." The Office of Personnel Management shall review the recommendations and recommend to the President those which it considers appropriate.

The new section 4507(c) authorizes the President to award career appointees in the Senior Executive Service the ranks of "Meritorious Executive" and "Distinguished Executive."

The new section 4507(d) limits the number of Meritorious and Distinguished Executive ranks. Meritorious Executive ranks may not exceed 5 percent of the total number of appointees in the Senior Executive Service, and Distinguished Executive ranks may not exceed 1 percent.

The new section 4507(e) provides that Meritorious Executives may receive a one-time cash award of \$2,500 and Distinguished Executives may receive a one-time cash award of \$5,000.

Senior Executive Service pay

Section 407(a) of the bill adds a new subchapter VIII to chapter 53 of title 5, relating to pay in the Senior Executive Service.

The new section 5381 cross-references definitions to the new section 3132(a).

The new section 5382(a) provides that the Senior Executive Service pay schedule shall include at least five rates.

The new section 5382(b) provides that the minimum rate of pay shall not be less than the minimum rate for GS-16 and the maximum rate shall not exceed the rate for level IV of the Executive Schedule.

The new section 5382(c) provides for annual comparability adjustment for the rates of pay of the Senior Executive Service.

The new section 5383(a) authorizes pay for individual appointees in the Senior Executive Service.

The new section 5383(b) provides that the total pay for any individual in the Senior Executive Service in any 1 year, including awards or ranks under the new section 4507 and the new section 5384, may not exceed 95 percent of the current rate for level II of the Executive Schedule.

The new section 5383(c) provides that senior executives may not receive more than one merit pay increase during any 12-month period.

Performance awards

The new section 5384 provides for performance awards for appointees in the Senior Executive Service. Performance awards may be as much as 20 percent of current salary, but may not be paid to more than one-half of the senior executives in an agency. The limitation does not apply to agencies which have fewer than four senior executive positions.

The new section 5385 authorizes the Office of Personnel Management to issue regulations.

Section 408 (1) and (2) includes appointees in the Senior Executive Service within the biweekly pay period pay administration provisions of section 5504(a) of title 5.

Section 408(3) amends section 5595 of title 5, relating to severance pay, to ensure that appointees in the Senior Executive Service will be covered by severance pay.

Section 409 amends section 5723(a)(1) of title 5 and authorizes agencies to pay the travel expenses of a new appointee in the Senior Executive Service, and adds a new section 5752 to chapter 57 of title 5 to pay travel expenses of candidates for positions in the Senior Executive Service to be interviewed by Federal agencies.

Section 410 of the bill amends section 6304 of title 5, to exempt appointees in the Senior Executive Service from the provision of law which limits the accumulation of annual leave to a maximum of 30 days.

Disciplinary actions

Section 411 amends chapter 75 of title 5, to provide a new subchapter IV relating to disciplinary actions for appointees of the Senior Executive Service.

The new section 7541 provides definitions.

The new section 7542 describes the actions covered by the new subchapter.

The new section 7543 prescribes the cause and procedure of disciplinary action. A career appointee in the Senior Executive Service against whom a disciplinary action is proposed are entitled to advance notice, a reasonable time to reply, representation, and a written decision by the agency. An appointee is entitled to appeal to the Merit Systems Protection Board.

Section 412 of the bill amends section 8336 of title 5, to permit a career appointee in the Senior Executive Service to retire on a reduced annuity after completing 25 years of service or after reaching age 50 with 20 years service if the appointee is removed from the Senior Executive Service for less than fully successful managerial performance.

Conversion

Section 413 provides for conversion to the new Senior Executive Service.

Section 413(a) provides definitions by cross-reference to the definitions provided in the new section 3132(a) and the new section 2101a of title 5, as added by this legislation.

Section 413(b) provides that each agency shall designate the positions in the agency which should be designated as Senior Executive Service positions, and, of those, which should be career reserved positions. The agency recommendations shall be submitted to the Office of Personnel Management, which shall establish interim authorizations for such positions and allocate a specific number of Senior Executive Service positions to each agency.

Section 413(c) provides conversion rules for the appointment of an individual serving in a position which is included in the Senior Executive Service under section 413(b) of this legislation. An employee may accept conversion into the Senior Executive Service or decline to accept.

An employee who declines appointment shall be placed in a position outside the Senior Executive Service under the current type of appointment without loss of pay, grade, seniority, and other benefits.

Each employee will be given 90 days to decide whether to elect or decline to elect to be converted into the Senior Executive Service.

Section 413(d)—(h) provides technical language for the conversion of employees into appropriate positions under appropriate appointments in the Senior Executive Service.

Section 413(i) provides pay protection for employees converted into the Senior Executive Service.

Section (413(j) authorizes the Office of Personnel Management to issue regulations. The regulations shall provide for employee appeals to the Merit Systems Protection Board.

Repeal of existing supergrade authority

Section 414 of the bill repeals existing authority for supergrade positions under section 5108(b)—(g) of title 5 and their equivalents. The authority for agencies to appoint individuals to such positions is terminated.

Section 414(a) (1) (C) authorizes the Director of the Office of Personnel Management to establish and revise the total number of posi-

tions, not in excess of 10,920, which may be placed in GS-16, GS-17, and GS-18 of the General Schedule and the Senior Executive Service.

Section 414(a)(2)(A) terminates the authority of agencies to establish scientific and professional positions outside of the General Schedule (Public Law 313 authority).

Section 414(a)(2)(B) amends section 3104 of title 5 to vest in the Director of the Office of Personnel Management the authority to create scientific and professional positions outside of the General Schedule, except that the authority granted shall not include authority to create scientific and professional positions in the Senior Executive Service.

Section 414(a)(3) provides a saving clause for current occupants of scientific and professional positions.

Executive level positions

Section 414(b)(1) adds a new section 5311(b) to title 5 and provides that within six months after the enactment of this act, the Director of the Office of Personnel Management shall determine the total number of executive level positions in the Executive branch and that the total number shall be the maximum number for such positions. Executive level positions include those positions paid at a rate equal to or in excess of the rate applicable to level V of the Executive Schedule but does not include positions in the Senior Executive Service.

Section 414(b)(2) requires the President to submit to Congress a plan for authorizing future executive level positions by January 1, 1980.

Section 415(a) provides effective dates to title IV of the bill.

The Spellman amendment

Section 415(b) of the bill is the Spellman amendment, limiting the Senior Executive Service to an experimental program in three Executive departments for a two-year period.

Section 415(b)(1) provides that not later than 60 days after the enactment of this legislation, the Director of the Office of Personnel Management shall issue regulations providing for the establishment of the Senior Executive Service in "only three Executive departments" designated by the Director.

Section 415(b)(2) provides that within 30 days after the end of the first two fiscal years, the Director shall submit a report on the Senior Executive Service to the Congress.

Section 415(b)(3) provides that the Senior Executive Service will cease to exist unless the Congress, within 90 days of continuous session following the receipt of the second annual report, adopts a concurrent resolution favoring the continuation of the Senior Executive Service.

TITLE V

MERIT PAY

Section 501 amends part III of title 5, by adding a new chapter 54, relating to merit pay.

The new section 5401 states the purpose of the merit pay system.

The new section 5402(a) provides that the merit pay system shall apply to all supervisory or management positions in grades GS-13, GS-14, and GS-15 of the General Schedule.

The new section 5402(b) provides for the range of salaries in the grades under the merit system.

The new section 5402(c) (1) provides for annual comparability pay adjustments in the rates of pay under the merit pay system.

Under the new section 5402(c) (2), employees currently occupying such positions are protected from any loss of pay or future pay increases.

The new section 5402(d) authorizes the Office of Personnel Management to issue regulations for agency implementation of pay increases for employees covered by the merit pay system. Merit pay increases may take into account individual performance and agency accomplishments and shall be based on employee efficiency, productivity, and quality of service, among other factors.

The new section 5402(d) (3) provides that merit pay increases shall be made only to the extent funds are available for merit pay increases.

The new section 5402(d) (4) authorizes the Office of Personnel Management to determine the amount of funds available for an agency to make merit pay increases.

The new section 5402(e) provides that the benefit of advancement through the range of pay in grades in the merit system shall be preserved in the case of an employee whose civilian service is interrupted for military service or essential civilian service during a period of war or national emergency.

The new section 5402(f) is a technical amendment which provides that the rates of pay under the merit pay system will be the pay basis for ascertaining cost-of-living allowances under 5 U.S.C. 5941.

Cash awards

The new section 5403(a) authorizes the head of an agency to pay cash awards to employees for outstanding suggestions, inventions, and accomplishments or special acts or services in the public interest.

The new section 5403(b) provides that the President may pay such awards.

The new section 5403(c) provides that the cash awards are in addition to any other pay and that acceptance of a cash award constitutes an agreement by the employee for the Government's use of any idea, method or device for which the award is made.

The new section 5403(e) (1) provides that cash awards generally cannot exceed \$10,000.

The new section 5403(e) (2) provides that, upon approval by the Office of Personnel Management, cash awards may exceed \$10,000 but not exceed \$25,000.

The new section 5403(f) provides for the payment of cash awards notwithstanding the death or separation of the employee concerned.

The new section 5404 requires the Office of Personnel Management to submit a report on the operation of the merit pay system by January 1, 1982.

The new section 5405 authorizes the Office of Personnel Management to issue regulations.

Section 502 of the bill makes technical and conforming amendments in title 5, relating to the merit pay system.

Section 503 of the bill provides that the merit pay system shall become applicable on the first day of the first pay period on or after

October 1, 1981, except the system may be commenced earlier as prescribed by the Director of the Office of Personnel Management.

TITLE VI

RESEARCH, DEMONSTRATION AND OTHER PROJECTS

Section 601 of the bill amends part III of title 5 to add a new chapter 47, relating to personnel research and demonstration projects.

The new section 4701 provides definitions.

The new section 4702 authorizes the Office of Personnel Management to establish research and development projects for the improvement of methods and technology in the Office of Personnel Management.

The new section 4703(a) authorizes the Office of Personnel Management to conduct and evaluate demonstration projects. Such projects may be undertaken notwithstanding any lack of specific authority and notwithstanding any other provision of law relating to personnel.

The new section 4703(b) requires that the Office of Personnel Management develop a specific plan for each demonstration project and enumerates the contents to be included in each plan. Any proposal to waive any provision of law, rule, or regulation shall be cited and the entire plan shall be published in the Federal Register and subject to public hearings.

The new section 4703(c) provides that each research or demonstration project may not be undertaken until a copy of the plan has been submitted to the Congress and the plan has not been disapproved by either House by the adoption of a resolution of disapproval within 60 calendar days of continuous session after the plan has been submitted.

The new section 4703(d) enumerates the provisions of law which may not be waived in research or demonstration projects.

The new section 4703(e) provides general limits on any demonstration project.

The new section 4703(f) authorizes the Office of Personnel Management or an agency to terminate demonstration projects.

The new section 4703(g)(1) provides that employees in a unit subject to a negotiated contract between an agency and a labor organization may not be included within a demonstration project if the project would violate the agreement unless there is a written agreement between the agency and the organization with respect to the project.

The new section 4703(g)(2) provides that a project which includes employees in a unit subject to a negotiated contract not covered by a labor-management agreement shall not become effective until consultation or negotiation has taken place between the agency and the labor organization.

The new section 4704 authorizes the use of appropriated funds for research and demonstration projects.

The new section 4705 provides for the inclusion of reports on research and demonstration projects in the annual report of the Office of Personnel Management.

The new section 4706 authorizes the Office of Personnel Management to issue regulations.

Section 602(a) amends section 208 of the Intergovernmental Personnel Act (IPA) to: (1) authorize Federal agencies through the Office of Personnel Management, to require State and local governments, as a condition of participation in Federal assistance programs, to have merit personnel systems based on this bill's merit principles for the positions engaged in the administration of such programs; and (2) abolish all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments, except those listed in section 208 of the IPA, those that prohibit discrimination in employment or require equal employment opportunity or affirmative action, the Davis-Bacon Act, and the Hatch Act.

Section 602(b) amends section 401 of the IPA to extend the authority to participate in the mobility program to "other organizations."

Section 602(c) amends section 403 of the IPA to make commissioned Public Health Service officers eligible to participate in the IPA mobility program.

Section 602(d) amends section 502 of the IPA to define the Trust Territory of the Pacific Islands as a jurisdiction which is eligible to participate in all IPA programs.

Section 602(e) amends section 506 of the IPA to include the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands in the formula allocation of IPA grants and exclude these jurisdictions from the local government allocation.

Section 603 amends the mobility program.

Sections 603 (a) through (d) amend section 3371 through 3375 of title 5 to extend eligibility to participate in the mobility program to the Trust Territory of the Pacific Islands; to a military department; a court of the United States; the Administrative Office of the U.S. Courts; the Library of Congress; the Botanic Garden; the Government Printing Office; the Congressional Budget Office; the U.S. Postal Service; the Postal Rate Commission; the Architect of the Capitol; the Office of Technology Assessment; and other organizations such as a national, regional, statewide, or metropolitan organization, representing member State or local governments; an association of State or local public officials; or a nonprofit organization, one of whose principal functions is to offer professional advisory, research, development, or related services to governments or universities concerned with public management. Federal employees in noncareer appointments in the Senior Executive Service and employees in the excepted service who are serving in confidential or policy determining positions are excluded from participation in the mobility program.

Section 603(d) amends section 3374 of title 5 to provide technical amendments designed to ensure fairness and equity for persons participating in mobility assignments. Federal retirement and other benefits, in the rare cases where such programs apply to certain State and District of Columbia government employees, would not be lost by employees while they are on mobility assignments. Federal agencies would be authorized to reimburse State and local governments, institutions of higher learning, and "other organizations" for various fringe

benefits (health and life insurance, retirement, etc.) of employees on detail from such organizations.

Section 603(e) amends section 3375 of title 5, to authorize an executive agency to reimburse mobility assignees for certain miscellaneous relocation expenses related to a geographic move for purposes of mobility assignment on the same basis such payments are authorized on a permanent change of station (automobile registrations, drivers' license, etc.).

TITLE VII

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Title VII of the bill establishes a statutory basis for labor-management relations in the Federal service. Since 1962, Executive orders have governed the collective bargaining relationship in the Federal sector. Title VII would for the first time enact into law the rights and obligations of the parties to this relationship—employees, agencies, and labor organizations.

Title VII, in concert with the President's Reorganization Plan No. 2 of 1978, also constructs a new framework for the conduct of Federal labor-management relations. The Federal Labor Relations Authority, an independent establishment in the establishment, together with its Office of General Counsel, will be primarily responsible for the administration of the program and the enforcement of the policies reflected in Title VII. The Federal Service Impasses Panel (an entity within the Authority) and the independent Federal Mediation and Conciliation Service will be empowered to facilitate the collective bargaining process.

SECTION 701

Section 701 of the bill amends subpart F of part III of title 5, United States Code, by adding new language to chapter 71. The provisions are explained below by Code section references.

Findings and purpose

Section 7101(a) sets forth the finding that collective bargaining in the Federal Service is in the public interest, in that it safeguards employee rights and contributes to the effective conduct of public business by encouraging amicable resolution of employment related disputes. Statutory protection of Federal employees' right to organize and bargain collectively through labor organizations is in the public interest.

Section 7101(b) states the chapter's purpose: to prescribe the rights and obligations of employees and to establish procedures to meet the special needs of the Federal Government in the labor-management relationship.

Employees' rights

Section 7102 provides that each Federal employee shall have the right to form, join, or assist any labor organization—or to refrain from that activity—freely and without fear of penalty or reprisal, and that each employee shall be protected in the exercise of this right. Except as otherwise provided by the chapter, this basic right includes the rights: (1) To act for a labor organization as a representative and

to present the views of a labor organization to Executive branch officials, to the Congress, and to other authorities; (2) to engage in collective bargaining over conditions of employment through chosen representatives; and (3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

Definitions; application

Section 7103 defines various terms used throughout the chapter. The definitions effectively set the coverage and exclusion from coverage for individuals, agencies, and labor organizations.

Section 7103(a)(1) defines "person" to include an individual, labor organization, or agency. The definition is critical to the meaning and effect of later sections which vest "persons" with substantive and procedural rights (e.g., section 7123, Judicial Review). "Agency" and "labor organization" are defined terms in section 7103.

Subsection (a)(2) of section 7103 defines "employee" for the chapter's purposes as an individual who is employed in an agency (as defined by section 7103(a)(3)). Also to be deemed an "employee" is any individual whose work as an employee in an agency has ceased as the result of an unfair labor practice as described in section 7116, as added by this bill, and who has not obtained any other regular and substantially equivalent employment, as determined under regulations to be prescribed by the Federal Labor Relations Authority. Such an individual, for example, would be eligible to vote in a representation election under section 7111, as added by this bill.

Subparagraphs (i) through (iv) exclude certain individuals from the definition of "employee"; aliens or noncitizens occupying positions outside the United States; members of the uniformed services (as defined by section 2101(3) of title 5; the armed forces; commissioned corps of the Public Health Service and of the National Oceanic Atmospheric Administration); supervisors or management officials (as defined by section 7103; and individuals in the Foreign Service of the United States employed in the Department of State, Agency for International Development, or International Communication Agency.

Subsection (a)(3) defines "agency" as an Executive agency (including the Veterans' Canteen Service, the Veterans' Administration, and nonappropriated fund instrumentalities under section 2105(c) of title 5, such as the Army and Air Force Exchange Services, the Army and Air Force Motion Picture Service, and similar instrumentalities under the jurisdiction of the Armed Forces), the Library of Congress, and the Government Printing Office. Specifically excluded from coverage are GAO, the FBI, and CIA, NSA, the Foreign Service, TVA, the Federal Labor Relations Authority, and the Federal Service Impasses Panel. Section 7103(b) sets forth a procedure through which any other agency may apply for exclusion on national security grounds.

Subsection (a)(4) of section 7103 defines "labor organization" as an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment. The committee intends that the latter criterion be deemed as met by an organization which has one of its basic purposes,

though not its only purpose, or its primary purpose, the representation of employees in a collective bargaining relationship. The term "labor organization" is thus intended to encompass professional associations (such as the American Nurses Association, the National Education Association, the National Association of Social Workers, the Physicians National Housestaff Association, and the National Economic Council of Scientists) which seek to avail themselves of representational rights under chapter 71. An organization which is not a "labor organization" under section 7103 (a) (4) is one: (1) whose basic purpose is purely social, fraternal, or limited to special interest objectives only incidentally related to matters affecting conditions of employment; or, (2) which denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; or, (3) which is sponsored by an agency.

Subsection (a) (5) of section 7103 defines "dues" to mean dues, fees, and assessments.

Subsection (a) (6) defines "Authority" to mean the Federal Labor Relations Authority.

Subsection (a) (7) defines "Panel" to mean the Federal Service Impasses Panel.

Subsection (a) (8) defines "collective bargaining agreement" as an agreement entered into as a result of collective bargaining pursuant to chapter 71. The term "collective bargaining" is defined in subsection (a) (12) of section 7103.

Subsection (a) (9) of section 7103 defines "grievance" to mean any complaint by any agency, labor organization, or employee concerning: (1) any matter relating to the employment of such person with an agency; or, (2) the effect or interpretation, or claim of breach, of a collective bargaining agreement; or, (3) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. It should be noted that, although this subsection is virtually all-inclusive in defining "grievance", section 7121 excludes certain grievances from being processed under a negotiated grievance procedure, thereby limiting the net effect of the term.

Subsections (a) (10) and (a) (11) of section 7103 define the key terms "supervisor" and "management official". Any individual deemed a "supervisor" or a "management official" is generally excluded from inclusion in bargaining units and is ineligible to act as a representative of any labor organization. A "supervisor" or a "management official" is generally a representative of the agency in the collective bargaining relationship.

Subsection (a) (12) of section 7103 defines the terms "collective bargaining" and "bargaining" to mean the performance of the mutual obligation of management and labor to meet, confer, and consult in a good-faith effort to reach agreement on matters affecting conditions of employment. Any agreement reached must, upon the request of either party, be reduced to writing and executed. Neither party is compelled to agree to a proposal or to make a concession.

Subsection (a) (13) of section 7103 defines a "confidential employee" as one who acts in a confidential capacity to an individual who formulates or effectuates management policies in the field of labor-management relations. Confidential employees are generally excluded from bargaining units.

Subsection (a) (14) of section 7103 defines a critically important term "conditions of employment." Management and labor are obliged to bargain over all matters affecting "conditions of employment." The term is defined to mean personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions—except for policies, practices, and matters: (A) relating to employment discrimination on the basis of race, color, religion, sex, age, national origin or handicapping condition; or (B) relating to prohibited political activities; or (C) to the extent they are specifically provided for by Federal statute. Certain "conditions of employment" are removed from the obligation to bargain.

Subsection (a) (15) of section 7103 sets forth the criteria for determining whether an employee is a "professional employee." The term is relevant primarily to the determination of appropriate bargaining units under section 7112.

Subsection (a) (16) of section 7103 defines another key term, "exclusive representative," as any labor organization which has been: (1) is certified pursuant to section 7111, below, as the representative of employees in an appropriate bargaining unit; or, (2) was recognized as a unit's representative before effective date of this chapter and continues to be so recognized pursuant to this chapter (see section 7136, below). The committee intends that these pre-existing recognitions (granted or continued under the provisions of Executive Order 11491, as amended), in conformance with section 7136 continue until withdrawn or modified under the provisions of this chapter.

Subsections (a) (17) and (a) (18), and (a) (19) of section 7103 define the terms "firefighter," and "United States," and "dues," respectively, for the purposes of the chapter.

Subsection (b) of section 7103 sets forth the procedures and standards by which an agency (or any sub-unit) not specifically excluded by section 7103 may be granted an exclusion from coverage under this chapter on national security grounds.

Federal Labor Relations Authority

Section 7104, in concert with Reorganization Plan No. 2 of 1978, establishes and describes the Federal Labor Relations Authority, an independent establishment in the executive branch. The committee intends that the Authority's role in Federal sector labor-management relations be analogous to that of the National Labor Relations Board in the private sector. Functions which, under the Executive Order 11491 program, were distributed among various entities (such as the Civil Service Commission and the Department of Labor) are to be consolidated under the Authority.

Subsection (a) of section 7104 provides that the Authority be composed of three members. No more than two may be of the same political party. No member may engage in other business or employment, or hold another position in the Federal Government, except as otherwise provided by law. The committee intends that the position of member be a full-time position, just as is the position of member of the National Labor Relations Board.

Subsection (b) of section 7104 provides that Authority members be appointed by the President, subject to Senate confirmation. They may be removed by the President only for cause, and only upon notice

and hearing. This provision is intended to help ensure the independence of the Authority. The President may name any one of the members as Chairman. The committee intends that members be eligible for reappointment.

Subsection (c) of section 7104 provides for staggered terms for Authority members. A member shall serve until the member's successor takes office or until the last day of the Congress beginning after the member's term is scheduled to expire (whichever comes first). An individual appointed to fill a vacancy shall be appointed only to serve the unexpired term. It is intended that any sitting member be eligible for reappointment.

Subsection (d) of section 7104 provides that a vacancy shall not impair the functions of the Authority. The committee intends that neither one nor two vacancies impair the Authority's functions. It is also intended that the President promptly nominate successors to fill any vacancies.

Subsection (e) of section 7104 requires the Authority to submit an annual report of its activities to the President for transmittal to Congress.

Subsection (f) of section 7104 describes the Office of General Counsel of the Authority. The committee intends that the General Counsel be analogous in role and function to the General Counsel of the National Labor Relations Board. Subsections (f) (1) and (f) (2) provide that the General Counsel be appointed by the President (subject to Senate confirmation) for a 5-year term, and be removable by the President at will. The General Counsel may investigate alleged violations of this chapter, file and prosecute complaints, intervene in unfair labor practice proceedings, and exercise any other powers delegated by the Authority.

Subsection (f) (3) gives the General Counsel direct authority over, and responsibility for, all employees in the Office of General Counsel, including those in field offices of the Authority.

Subsection (f) (4) prescribes the procedure for filling any vacancy in the Office of General Counsel. The President is to promptly name an Acting General Counsel, and then submit a nomination for a new General Counsel within 40 days of the vacancy's occurrence. If the Congress adjourns sine die before the 40-day period expires, the nomination is to be submitted within 10 days after Congress reconvenes.

Powers and duties of the Authority

Section 7105 sets forth the powers and duties of the Authority.

Subsection (a) directs the Authority to provide leadership in establishing policy and giving guidance in labor-management relations matters under chapter 71, and, except as otherwise provided, be responsible for carrying out the purposes of chapter 71.

Subsections (b) through (d) are administrative provisions relating to the Authority. The Authority is required to adopt an official seal which shall be judicially noticed, establish its principal office in or about the District of Columbia, although it may meet and exercise any or all of its powers at any time or place, appoint an Executive Director, regional directors, administrative law judges, and other employees. It is intended that the Authority may establish and operate

any field offices it deems necessary. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by any agents it designates, make any inquiry necessary to carry out its duties wherever persons subject to chapter 71 are located. A member who participates in an inquiry is not disqualified from later participating in a decision of the Authority in any case.

Subsection (e) authorizes the Authority to delegate its functions relating to the determination of exclusive representation to its regional directors. The Authority may delegate to its administrative law judges its functions under section 7118 to determine whether any person has engaged, or is engaging in, an unfair labor practice.

Section 7105(f) provides that, upon the filing of an application by any interested person, the Authority may review and, upon review, may modify, affirm, or reverse any action taken by a regional director or administrative law judge in performing a delegated function under section 7105. The application must be filed within 60 days after the date of the action. The review itself does not operate as a stay of an action unless the Authority specifically so orders. If the Authority does not undertake to grant review within 60 days after the date of the action, or within 60 days after an application for review is filed, the action becomes the final action of the Authority.

Subsection (g) of section 7105 grants the Authority necessary power to hold hearings, administer oaths, take testimony and depositions, and subpoena witnesses and documents.

Management rights

Section 7106 sets forth rights which are reserved to management. The effect of this section is to place limits on the number of subjects about which agency management may bargain with a labor organization.

Subsection (a) (1) reserves to agency management the right (subject only to subsection (b) of section 7106) to determine the mission, budget, organization, number of employees, and internal security practices of the agency. Management may not bargain away its authority to make decisions in these areas.

Subsection (a) (2) sets forth the other areas of management authority which may not be subject to collective bargaining: (1) to direct employees; (2) to assign work, to make determinations with respect to contracting-out, and to determine the personnel by which agency operations shall be conducted; and (3) to take whatever actions may be necessary to carry out the agency's mission during national emergencies.

Subsection (b) of section 7106 provides that management and the union may bargain over the procedures management will use in exercising their authority to determine the mission, budget, organization, number of employees, and internal security practices of the agency. They may also negotiate appropriate arrangements for employees adversely affected by management's exercise of authority in these areas.

The committee's intention in section 7106 is to achieve a broadening of the scope of collective bargaining to an extent greater than the scope has been under the Executive Order program, but to preserve the es-

sential prerogatives and flexibility Federal managers must have. The "management rights" language of Executive Order 11491 has been a substantial barrier against negotiations. The committee intends that section 7106—which retains several of management's rights under the Executive Order, but also eliminates several—be read to favor collective bargaining whenever there is doubt as to the negotiability of a subject or a proposal.

For example, in the controversial area of promotions, section 7106 does not contain the Executive Order's "management right" to "promote." The committee thereby intends that promotion standards and procedures be negotiable within the limits set by statute and applicable government-wide regulations.

Another troublesome area—overtime—is an example. Whether overtime is necessary and how much is necessary are non-bargainable management decisions. But procedures to be used in assigning overtime are negotiable. For example, management and the union could negotiate a rotation system for assignments. Rates of overtime pay are not bargainable, because they are specifically provided for by statute.

Exclusive recognition of labor organizations

Section 7111 sets forth the procedures for determining whether employees will be represented by a labor organization.

Subsection (a) states the general rule that exclusive recognition will be accorded to a labor organization selected by a majority of employees in an appropriate bargaining unit who participate in an election in conformity with this chapter's requirements.

Subsection (b) (1) of section 7111 sets forth the procedures for initiating a representation proceeding. If any person (meaning an individual, labor organization, or agency) files a petition with the Authority alleging that 30 percent of the employees in an appropriate unit wish to be exclusively represented, or, where there currently is an exclusive representative, that 30 percent no longer wish to have that exclusive representative; or, seeking clarification of, or an amendment to, an existing certification or a matter relating to representation, the following procedures apply. (The committee intends that existing practice be continued in determining whether the requisite number of employees have satisfactorily indicated their desires, i.e., the "showing of interest." Valid signatures on petitions or authorization cards should suffice.)

The Authority must investigate each petition and, if it has reasonable cause to believe there is a question of representation (i.e., whether the subject employees wish to have a labor organization as an exclusive representative), provide an opportunity for a hearing. Questions of appropriateness of unit, showing of interest sufficiency, and employee eligibility should be raised and, if possible, resolved during this phase of the proceedings. Except as provided by subsection (e), if the Authority finds on the compiled record that a question of representation does exist, it shall conduct a secret ballot election in accordance with procedures set forth. No election may be held in any unit or unit subdivision in which a valid representation election has been held during the previous 12 calendar months.

Subsection (b) (2) (A) of section 7111 requires the Authority to proceed with the election in the petitioned-for unit even if, 45 days after

the petition was filed, there are still unresolved issues about the unit, voter eligibility, or any other election-related matter. Subparagraph (B) requires the Authority, after the election, to expedite resolution of the issue or issues. If the Authority determines the disputed matter did not affect the election's outcome, the election results shall be certified. If the matter did affect the outcome, the election must be re-run. For example, if ten individuals the labor organization claimed to be in the unit were, after the election, found to be outside the unit (and therefore ineligible to vote), but the labor organization won the election by one hundred votes, then the election probably would not have to be re-run, because ten votes one way or the other would not have affected the outcome. If, however, the labor organization's margin of victory were only five votes, the election would probably have to be rerun.

Subparagraph (c) of section 7111 provides a right to intervene in a representation proceeding, and to be placed on the ballot in any election, to any labor organization which: (1) presents a "showing of interest" of 10 percent of unit employees; or (2) submits a valid copy of a current or recently expired collective bargaining agreement for the unit (in other words, the incumbent exclusive representative); or (3) presents any other evidence that it is the current exclusive representative of the employees involved.

Subsection (d) of section 7111 directs the Authority to determine eligibility and rules for elections. In every election, employees must be given the right to choose one labor organization from those on the ballot, or to choose to have no labor organization as exclusive representative. If no choice on the ballot receives a majority of the votes cast, the Authority must hold a run-off between the two choices receiving the most votes. A labor organization receiving the majority of votes cast in any election shall be certified by the Authority as exclusive representative of the employees in the unit.

Subsection (e) of section 7111 sets forth the conditions under which a petitioning labor organization may be certified as an exclusive representative without a secret ballot election. The Authority may so certify if, after investigation, it determines: (1) that agency conduct which is prohibited under section 7116 precludes the holding of a free election; or (2) that the labor organization represents a majority of employees in an appropriate unit based on the securing of the valid signatures on petitions or authorization cards of more than 50 percent of the employees. In the latter case, the majority status must have been achieved without benefit of an unfair labor practice by either the agency or the labor organization. Also, no other petition for recognition or request for intervention may be pending and no other question of representation may exist in the unit. This subsection necessarily entails a determination by the Authority of unit appropriateness.

Subsection (f) of section 7111 provides that any labor organization recognized by an agency before this chapter's effective date as the exclusive representative of employees in an appropriate unit may petition the Authority for an election to determine whether that organization is the exclusive representative of that unit, or of any appropriate unit.

Subsection (g) of section 7111 requires any labor organization seeking exclusive recognition to submit to the Authority and to the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

Subsection (h) sets forth three specific conditions under which a labor organization shall not be accorded exclusive recognition: (1) if the Authority determines the labor organization is subject to corrupt influences or influences opposed to democratic principles; (2) when, where a petition is necessary under section 7111(b)(1)(A), there is not credible evidence (i.e., valid signatures on petitions or cards) of a sufficient showing of interest; or (3) when there is in effect a lawful collective bargaining agreement between the involved agency and another labor organization covering any employees included in the petitioned for unit. The latter prohibition is commonly referred to as a "contract bar". The subsection provides, however, that there is no contract bar if: (A) the agreement has been in effect for more than three years; or, (B) the petition for exclusive recognition is filed during the 4-month period which begins on the 180th day before the expiration date of the agreement (commonly known as the "open season"). The "contract bar" provision lends stability to collective bargaining relationships by precluding continuous challenges to an exclusive representative's status, while at the same time giving employees the opportunity at reasonable intervals to choose, if they so desire, a new representative. Subparagraph (4) prohibits the according of exclusive recognition if the Authority has conducted during the previous 12 calendar months a secret ballot election involving any of the employees in the unit.

Subsection (i) of section 7111 permits the waiving of a hearing by stipulation where the parties consent to proceed to an election without further proceedings.

Determination of appropriate units for labor organization representation

Section 7112 sets forth standards for determining the units of employees which are appropriate for purposes of collective bargaining.

Subsection (a)(1) states that the Authority shall make the determinations of appropriateness. The goal for the Authority for determining in each case whether the appropriate unit should be established on an agency, plant, installation, functional, or other basis shall be to ensure employees the fullest freedom in exercising the rights guaranteed them under this chapter. Notwithstanding, a unit is to be determined "appropriate" only if the determination will ensure community of interest among the employees concerned, and promote effective dealings with, and efficiency of the operations of, the agency involved.

Subsection (b) of section 7112 states that the extent to which employees have been organized shall not be the sole criterion of appropriateness. The subsection then lists those employees who shall not be part of any appropriate unit: (1) management officials and supervisors (as defined by section 7103—except where a preexisting and continuing unit under section 7136(a) contains those individuals or where a majority of the unit is composed of firefighters or nurses; (2) confidential employees (as defined in section 7103); (3) employees

engaged in personnel work (other than in a purely clerical capacity); (4) employees engaged in administering the provisions of this chapter; (5) professional employees (as defined in section 7103) when mixed in a unit with nonprofessionals, unless the professionals vote for inclusion in that unit; (6) employees of any agency who are engaged in intelligence, investigative, and security functions which directly affect national security; or, (7) employees engaged primarily in an agency's audit or investigative functions relating to that agency's internal security.

Subsection (c) of section 7112 provides that the Authority shall consolidate two or more units in an agency for which a labor organization holds exclusive recognition by reason of elections in each of the units, if the Authority deems the larger unit to be appropriate (using the criteria in section 7112 applicable to all determinations of appropriateness). The Authority shall then certify the labor organization as the exclusive representative of the larger unit. The committee intends that this consolidation procedure be initiated by petition of the labor organization involved, or by petition of the agency.

Subsection (d) of section 7112 provides that in the case of an agency reorganization affecting one or more exclusively represented units, the certified exclusive representative, or exclusive representatives, shall continue in that status for the unit or units until new elections are held (with new appropriate unit determinations), or until 45 days elapse from the effective date of the reorganization, whichever comes first.

National consultation rights

Section 7113 provides for the granting of "national consultation rights."

Subsection (a) requires that an agency grant national consultation rights, when there is no exclusive recognition on an agency-wide basis, to any labor organization which exclusively represents a substantial number of that agency's employees. The Authority shall prescribe the standards and procedures for granting national consultation rights. Exclusive representation of 10 percent of the total number of employees in an agency should satisfy the "substantial number" criterion. Consultation rights terminate when the labor organization no longer meets the Authority's criteria. Questions of a labor organization's initial or continuing eligibility shall be resolved by the Authority.

Subsection (b) of section 7113 requires that any labor organization having national consultation rights in an agency be informed in advance of any change in conditions of employment proposed by that agency and be given a reasonable time to present its views and recommendations regarding the change. The agency must consider any views and recommendations so submitted, and give the labor organization a written statement of the reasons for its final decision on the matter.

Subsection (c) states that collective bargaining rights are not affected in any way by national consultation rights.

Representation rights and duties

Section 7114 sets forth the rights and obligations of agency management and a labor organization once the latter has been accorded exclusive recognition.

Subsection (a) states that a labor organization accorded exclusive recognition is the exclusive representative of all employees in the unit, and is entitled to act for and negotiate agreements with management covering those employees. It must represent the interests of all employees in the unit without discrimination and regardless of membership or nonmembership in the organization. It has the right to be given the opportunity to be represented at: (1) any discussion between one or more agency representatives and one or more employees (or their representatives) concerning any grievance, personnel policy or practice or other condition of employment; or, (2) any discussion between an employee and an agency representative if the employee reasonably believes he may be the subject of a disciplinary action (when an employee is interviewed by a supervisor concerning alleged abuse of leave or interrogated by the agency's internal security division concerning alleged irregularities in a travel voucher). The agency and the exclusively-recognized labor organization are obligated to meet and negotiate in good faith, through appropriate representatives, for the purpose of arriving at a collective bargaining agreement. Nothing in this subsection, however, is to be construed so as to preclude an employee's being represented by an attorney or other representative of his own choosing in procedures other than those negotiated by the exclusive representative and the agency pursuant to this chapter.

Subsection (b) specifies that the mutual obligation to negotiate in good faith includes the obligation to: (1) resolve to reach an agreement; (2) be represented by duly authorized and prepared representatives; and (3) meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays. Subsection (b) (4) requires an agency to provide to the exclusive representative, upon request and within the limits of Federal law, any normally maintained and reasonably available data necessary for the negotiations. Subsection (b) (5) requires that if an agreement is reached, it must, upon request of either party, be reduced to writing and executed. All steps necessary for implementation must be taken by both parties.

Allotments to representatives

Section 7115 provides for the withholding of labor organization dues through payroll deductions. The section reflects a compromise between two sharply contrasting positions which the committee considered: no guarantee of withholding for any unit employee and mandatory payment by all unit employees ("agency shop"). The committee believes section 7115 to be a fair resolution for agencies, labor organizations, and employees.

Subsection (a) provides that if an employee in an exclusively represented unit presents to the agency a written assignment authorizing the agency to deduct the labor organization's dues from the employee's pay each pay period, the agency must honor the assignment and must deduct the dues. The decision to pay, or not to pay is solely the employee's. If the employee decides to have dues withheld, the agency must honor that decision. The allotments are to be made at no cost to the employees or to the labor organization. Assignments normally are to be irrevocable for one year.

Subsection (b), however, requires that an allotment terminate when: (1) the existing collective bargaining agreement between the agency and labor organization ceases to be applicable to the employee (the employee is promoted to a management position or leaves the employ of the agency); or (2) the employee is suspended or expelled from the labor organization.

Subsection (c) of section 7115 provides for the negotiation of dues withholding agreements in units in which there is no exclusive representative. Any person may file a petition with the Authority alleging a labor organization has as members at least 10 percent of the employees in a nonrepresented unit. If, after investigation, the Authority certifies that there is, in fact, 10-percent membership, the agency is obligated to negotiate with the labor organization solely concerning a voluntary dues withholding agreement. This procedure necessarily entails a determination by the Authority as to the appropriateness of the unit. Any withholding agreement reached pursuant to this subsection shall automatically terminate upon certification of an exclusive representative.

Unfair labor practices

Section 7116 sets forth actions by agencies and by labor organizations which constitute "unfair labor practices".

Subsection (a) provides that it shall be an unfair labor practice for an agency: (1) to interfere with, restrain, or coerce employees in the exercise of the rights assured by chapter 71; (2) to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment; (3) to sponsor, control, or otherwise assist any labor organization, except that the agency may furnish customary and routine services and facilities when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status (e.g., providing equal bulletin board space to two labor organizations which will be on the ballot in an exclusive representation election); (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, petition, or has given any information or testimony under chapter 71; (5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by chapter 71; (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71; (7) to fail or refuse to comply with any provision of chapter 71; or, (8) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by chapter 71 or which is in conflict with any applicable agreement negotiated under chapter 71.

Subsection (b) provides that it shall be an unfair labor practice for a labor organization to: (1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by chapter 71; (2) cause or attempt to cause an agency to discriminate against an employee in the exercise of his rights under chapter 71; (3) coerce or attempt to coerce, discipline, or fine a member of the labor organization as punishment or reprisal for the purpose of hindering or impeding his work performance, productivity, or the discharge of his duties as an employee of an agency; (4) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed,

national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; (5) refuse to consult, confer, or negotiate in good faith with an agency as required by chapter 71; (6) fail or refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71; (7) call or engage in a strike, work stoppage, or slowdown, or to condone any such activity by failing to take action to prevent or stop it; or (8) fail or refuse to comply with any provision of chapter 71.

The language "fail or refuse to comply with any provision of this chapter" used in section 7116(a)(7) and section 7116(b)(8) is intended to include the failure or refusal on the part of an agency or a labor organization to comply with any order or decision issued in accordance with chapter 71 such as the final order of the Authority in an unfair labor practice proceeding. This does not in any way affect the rights of the Authority or any person under section 7123, below (Judicial Review; Enforcement).

The committee intends that disputes concerning the negotiability of proposals and matters affecting working conditions, except for questions of "compelling need" under section 7117, be resolved through the filing and processing of unfair labor practice charges under section 7116 and section 7118. Under the Executive order program, a separate procedure for resolving negotiability disputes was provided. The method of resolution provided here is analogous to that in the private sector under the National Labor Relations Act.

Subsection (c) provides that in addition to those actions enumerated in section 7116(b), it shall be an unfair labor practice for a labor organization which is accorded exclusive recognition to deny membership to an employee in the appropriate unit except for reasons specifically set forth in that subsection. Those reasons include: (1) the failure to meet reasonable occupational standards uniformly required for admission; or (2) failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. The last sentence of subsection (c) provides that the subsection does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws, provided that the procedures conform to the requirements of chapter 71.

Subsection (d) of section 7116 is directed to those situations in which an alleged improper action may (but for subsection (d)) appropriately be considered under more than one administrative procedure. For example, if an employee is removed from his position, he may have the right to appeal that action under statutory appeals procedures relating to adverse actions. In addition, the removal could constitute an unfair labor practice under section 7116(a)(1), thereby permitting the employee to utilize the unfair labor practice procedures under section 7118. The removal might also appropriately be considered in a grievance proceeding, under the terms of a collective bargaining agreement negotiated pursuant to this chapter.

Subsection (d) provides that, in such instances, the aggrieved party may choose which form of proceeding he wishes to follow. Specifically, it provides that issues which properly can be raised under (1) an appeals procedure prescribed by or pursuant to law, or (2) a grievance procedure negotiated pursuant to section 7121 of chapter 71 may, in

the discretion of the aggrieved party, be raised under either the appropriate appeals or grievance procedure, or if applicable, under the unfair labor practice proceedings under section 7118 of chapter 71, but not both. The Authority is required to issue regulations prescribing the procedure and time frame for the election. In the event an issue is decided pursuant to an appeal or grievance procedure, and that issue could also have been properly raised in an unfair labor practice proceeding, the last sentence of subsection (d) expressly provides that the appeal or grievance decision shall not be construed as an unfair labor practice decision nor as precedent for any such decision.

Duty to bargain in good faith; compelling need

Section 7117 sets forth a procedure for determining whether matters affecting conditions of employment which are the subject of any Government-wide rule or regulation shall be negotiable.

Subsection (a) (1) states the general rule that an agency's and a labor organization's duty to bargain in good faith under this chapter includes, to the extent not inconsistent with Federal law, the duty to bargain over matters which are the subject of any rule or regulation which, subject to paragraph (2), is not a Government-wide rule or regulation. However, agency-wide rules, regulations, and policies are not a bar to negotiations over matters which would otherwise be negotiable under this chapter. For example, if an agency were to have a regulation stating that each male employee in the agency must wear a necktie while on duty, and a labor organization holding exclusive recognition for a unit within the agency were to make a proposal that male employees be permitted not to wear neckties during the summer months, the agency could not invoke its regulation as a bar to negotiations on the proposal. Similarly, an agency regulation restricting the area of consideration for promotion eligibility could not be invoked as a bar to a proposal for a wider area of consideration.

Subsection (a) (2) of section 7117 provides that the duty to bargain in good faith, to the extent not inconsistent with Federal law, also extends to matters which are the subject of any Government-wide rule or regulation—for which the Authority determines that there is no "compelling need" for the Government-wide rule or regulation. The Authority is to prescribe by regulation the criteria for determining "compelling need." The committee intends that the criteria be similar to those promulgated by the Federal Labor Relations Council to determine "compelling need" for agency-wide regulations under the Executive order program, with the Authority's determination to be based primarily on whether there is a demonstrated, and justified, and overriding need for Government-wide uniformity in the matter covered by the rule or regulation.

The term "Government-wide" shall be construed literally; only those regulations which affect the Federal civilian work force as a whole are "Government-wide" regulations. No other regulations may bar negotiations.

Subsection (b) (1) of section 7117 requires the Authority to hold a hearing (in accordance with regulations it shall prescribe) whenever an exclusively recognized labor organization alleges that no

compelling need exists for a Government-wide rule or regulation which an agency has invoked as a bar to negotiations on a matter.

Subsection (b) (2) requires expedition of the proceeding to the extent practicable, so as not to delay unduly the completion of ongoing negotiations. The Authority's General Counsel may not be a party to the proceeding (as the General Counsel would be in an unfair labor practice case). The committee's intent is that the parties before the Authority will be the involved agency and labor organization, and the agency which issued the regulation. The burden shall be on the issuing agency to demonstrate "compelling need".

Subsection (b) (3) provides that the Authority shall determine that a "compelling need" does not exist (thereby making the matter negotiable) only if: (A) the agency which issued the rule or regulation informs the Authority in writing that there is no compelling need; or, (B) the Authority itself determines, after a hearing that there is no compelling need.

Subsection (b) (4) requires that the agency issuing the subject Government-wide rule or regulation be a necessary party to the proceedings. Typically, it is anticipated, the issuing agency will be the Office of Personnel Management or the General Services Administration.

The committee intends that nothing in section 7117 be construed as preventing agencies from issuing Government-wide regulations. Nor should section 7117 be read as voiding any Government-wide regulation for which a finding of "no compelling need" is made. Such a regulation would remain in full force and effect for all purposes except that it would not bar negotiations over the subject matter in the particular appropriate bargaining unit involved. Any collective bargaining agreement provision then negotiated which conflicts with the Government-wide regulation would take precedence for purposes of that bargaining unit.

Prevention of unfair labor practices

Section 7118 sets forth the procedures to be followed in processing unfair labor practice cases.

The committee intends that the process begin with the filing of an unfair labor practice charge by the aggrieved party.

Under subsection (a) (1) the sole responsibility for investigating a charge rests with the General Counsel of the Authority. If, after investigation, the General Counsel determines that a complaint should issue, he is required to cause the complaint to be served upon the charged agency or labor organization. The General Counsel's decision as to whether a complaint should issue shall not be subject to review: If a complaint is issued, it is required to contain a notice: (1) of the charges; (2) that a hearing will be held before the Authority or a member thereof, or before an individual employed by the Authority and designated for that purpose; and (3) of the time and place fixed for the hearing.

Subsection (a) (3) gives the charged party the right to answer and to be a party to the hearing.

Subsection (a) (4) prohibits the issuance of a complaint based upon an unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority unless the person aggrieved

was prevented from filing the charge because the agency or labor organization against whom the charge is made failed to perform a duty owed to the aggrieved person, or due to concealment. In addition, the concealment or failure to perform a duty must have prevented the discovery of the unfair labor practice within 6 months of its occurrence. In such a case, the 6-month period during which a charge may be filed is computed from the day of the discovery of the occurrence.

Subsection (a) (5) of section 7118, provides that, if a complaint is filed by the General Counsel, the Authority is required to hold a hearing, not earlier than 5 days after the complaint is served. (The Committee intends, however, that nothing preclude waiver of a hearing by stipulation.) The individual or individuals conducting the hearing may allow any person other than the involved labor organization or agency to intervene in the hearing and present testimony. The attendance of witnesses and the production of documents at the hearing may be compelled in accordance with section 7133, relating to subpoena power. To the extent practicable, the hearing shall be conducted in accordance with the applicable provisions of the Administrative Procedure Act. A transcript will be kept. If, after completion of the hearing, the Authority (or its designee), in its discretion, determines that further evidence or argument is necessary, it may, upon notice to the parties, receive or hear such further evidence or argument.

Subsection (a) (6) provides that a decision of the Authority or its designee, such as the administrative law judge or other individual who conducted the hearing shall be based upon the preponderance of the evidence received. If the Authority (or its designee) determines that an agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the Authority or its designee is required to state its findings of fact and to issue and cause an order to be served on the agency or labor organization. The order shall require the party to take such action to carry out the policies of chapter 71. The action ordered may include: ceasing and desisting from the unfair labor practice; directing retroactive amendment of a collective bargaining agreement; requiring an award of reasonable attorney's fees and reasonable costs and expenses of litigation; or requiring reinstatement of employees with backpay and interest.

Subsection (a) (7) requires that if, upon a preponderance of the evidence, the Authority or its designee determines that an unfair labor practice has not been committed, the Authority or its designee must state its findings of fact and issue an order dismissing the complaint.

It should be noted that under section 7105(e), the Authority is authorized to delegate its functions under section 7118 to its administrative law judges, with their decisions being subject to review by the Authority under section 7105(e).

Subsection (b) of section 7118 permits the Authority to request advisory opinions from the Director of the Office of Personnel Management concerning proper interpretation of OPM rules, regulations, and directives.

Negotiation impasses; Federal Service Impasses Panel

Section 7119 provides for mediation and arbitration of negotiation impasses, and establishes within the Authority the Federal Services

Impasses Panel, to which parties may agree to refer such impasses for resolution.

Under subsection (a), the Federal Mediation and Conciliation Service is required to provide services and assistance to agencies and labor organizations in the resolution of negotiation disputes and impasses. The Service will determine under what circumstances and in what manner it will provide services and assistance.

Subsection (b) provides that when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third party mediation fail to resolve a negotiation dispute or impasse, either party may request the Federal Service Impasses Panel to consider the matter, or the parties may agree to adopt a procedure for binding arbitration of the impasse.

Subsections (c) (1), (c) (2), (c) (3), and (c) (4) of section 7119 describe the Federal Service Impasses Panel, an entity within the Authority composed of a Chairman and at least six other members, appointed by the President, with the advice and consent of the Senate, on the basis of fitness to perform the duties and functions of the office, familiarity with Government operations, and knowledge in labor-management relations. The members are appointed for 5-year terms, staggered on a 2-year basis. An individual chosen to fill a vacancy is appointed for the unexpired term of the member replaced. A member may be removed by the President at will. Members are eligible for reappointment.

The Panel is authorized to appoint an Executive Director and other employees as it may from time to time find necessary for the proper performance of its duties. A member of the Panel who is not otherwise an employee (meaning an employee as defined in section 2105 of title 5) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses and a per diem allowance under section 5703 of title 5. A member of the Panel who is a Government employee is not entitled to any additional pay, but is entitled to travel expenses and a per diem allowance.

Subsection (c) (5) requires the Panel (or its designee) to investigate promptly any impasse presented to it under section 7119 (b). Upon consideration of the impasse, the Panel is required either to recommend procedures to the parties for the resolution of the impasse, or to assist the parties in arriving at a settlement through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate. If the parties do not arrive at a settlement, the Panel is authorized to hold hearings, compel the attendance of witnesses and production of documents (as provided in section 7133 relating to subpoenas), and take whatever action is necessary and not inconsistent with the provisions of chapter 71 to resolve the impasse. Notice of any final action of the Panel must be promptly served upon the parties, and the action is final and binding upon the parties during the term of the agreement, unless the parties agree otherwise. Final action of the Panel under this section is not subject to appeal, and failure to comply with any final action ordered by the Panel constitutes an unfair labor practice by an agency under section 7116 (a).

(6) and (7) or a labor organization under section 7116(b) (6) and (8).

Standards of conduct for labor organizations

Section 7120 (a) requires a labor organization representing or seeking to represent employees to adopt governing requirements containing explicit and detailed provisions to which it subscribes, providing for: (1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards, and provisions defining and securing the right of individual members to participation in the affairs of the labor organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings; (2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and (3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

Subsection (b) of section 7120 states the general rule (except as specifically provided by this chapter) barring management officials and supervisors, as defined in section 7103, from participating in the management of a labor organization or acting as a labor organization representative. Employees are so barred if there would be a resulting or apparent conflict of interest, or if the participation or activity would be incompatible in any way with law or with the employee's official duties.

Grievance procedures

Section 7121 (a) provides that any collective bargaining agreement entered into by an agency and a labor organization must contain procedures for the settlement of grievances, including questions of arbitrability. An employee to whom the agreement applies is specifically afforded the choice to have his grievance processed under either a procedure negotiated in accordance with chapter 71 and set forth in the agreement reached pursuant to those negotiations or any applicable appeals procedure established by or pursuant to law. It should be noted that, in addition, if the subject matter of the grievance is such that it would come within the provisions of section 7116, relating to unfair labor practices, the employee may elect to pursue procedures in accordance with section 7118. An employee, then, could conceivably have a choice of three procedures.

Section 7121 (b) further provides that a negotiated grievance procedure must be fair, simple, provide for expeditious processing, and shall include procedures that assure a labor organization the right (in its own behalf or on behalf of any employee in the unit) to present and process grievances; and assure an employee the right to present a grievance on the employee's own behalf, as well as assure the labor organization the right to be present when the grievance is adjusted. Only the exclusive representative is entitled to represent employees under the negotiated grievance procedure, but employees may represent themselves. The negotiated procedure shall provide that any grievance not satisfactorily settled in the grievance process be subject

to binding arbitration which may be invoked by either the labor organization or the agency.

Subsection (c) of section 7121 provides that either party to an agreement may seek to compel the other to proceed to arbitration by filing a complaint in the appropriate U.S. district court, or in any appropriate court of a State, territory, or possession of the United States. The court shall hear the matter without jury in an expedited manner and shall decide whether to issue an order directing that arbitration proceed under the terms of the agreement.

Subsection (d) of section 7121 provides that grievances over certain matters may not be processed through the negotiated grievance procedure. These matters include: (1) Hatch Act violations (prohibited political activities); (2) retirement, life insurance, or health insurance matters; or (3) suspensions or removals effected for reasons of national security. Grievances concerning all other matters—including other matters for which there are statutory appeals procedures, such as adverse action appeals and position classification appeals, shall be grievable and arbitrable under the negotiated procedure. A unit employee in such a case would have a choice between the statutory procedure or the negotiated procedure—or, if applicable, the unfair labor practice procedure provided by section 7118.

Subsection (e) of section 7121 sets forth the right of an employee who grieves through the negotiated procedure a matter which, in part, involves an allegation of discrimination prohibited by section 717 of the Civil Rights Act of 1964. The employee retains the right to request the Equal Employment Opportunity Commission to review the grievance decision and make the final determination on the allegation of discrimination. Reorganization Plan No. 1 of 1978 vests the function of making final determinations concerning Federal employees' allegations of discrimination in the Commission.

Exceptions to arbitral awards

Section 7122 sets forth the procedures under which a party may obtain review by the Authority of an arbitrator's award. The procedures apply in the case of either an award in an arbitration resulting from an impasse proceeding under section 7119(b), as added by the bill, or an award in a grievance proceeding under section 7121, as added by the bill. If an exception is filed by a party to an arbitral award the Authority must review the award. If upon review, the Authority finds that the award is deficient because: (1) it is contrary to any applicable law, rule, or regulation; (2) it was obtained by corruption, fraud, or other misconduct; (3) of partiality of the arbitrator; or (4) the arbitrator exceeded his powers; the Authority may take such action and make such recommendations as it considers necessary, consistent with applicable law or regulations and the provisions of chapter 71. If no exception is filed within the 60-day period beginning on the date of the award, the decision of the arbitrator is final and binding. A final decision of the Authority under section 7122 (an arbitration award which has been reviewed by the Authority or for which the time period for filing exception has run) is subject to the judicial review provisions of section 7123, as added by the bill. The Committee rejected a proposed amendment to give the Comptroller General authority to review arbitration awards to determine the le-

gality of the use of appropriated funds to pay arbitration awards. An agency must take the actions required by the final award of an arbitrator including, if ordered, payment of backpay, with interest.

Judicial review

Section 7123 provides for judicial review of certain final orders of the Authority by the circuit courts of appeal, enforcement of orders of the Authority by the same courts, and injunctive relief in appropriate cases.

Section 7123(a) provides that (1) the final order of the Authority in an unfair labor practice proceeding under section 7118, as added by the bill; (2) the award by an arbitrator (which has been reviewed by the Authority in accordance with section 7122, as added by the bill); or (3) a determination of appropriate unit under section 7112; may, upon the filing of an appropriate pleading by an aggrieved party within 60 days from the issuance of the order or award, be reviewed by the appropriate United States court of appeals. Jurisdiction is within the circuit where the aggrieved person resides or transacts business, or, in any case, in the District of Columbia Circuit.

Subsection (b) of section 7123 provides that the Authority may petition any appropriate U.S. court of appeals for enforcement of any Authority order and for appropriate temporary relief or restraining order.

Subsection (c) of section 7123 requires the Authority, upon the filing of a petition for judicial review or for enforcement, to file with the court the administrative record of the proceeding. The court must then serve notice on the parties and take jurisdiction. The court may grant temporary relief or a restraining order, and may affirm and enforce the subject Authority order, or modify and enforce the order as modified, or set it aside in whole or in part. The court may stay an Authority order, but the mere filing with the court of a petition for review of an Authority order does not operate as a stay. Review of Authority orders is on the record and the scope of review by the court is governed by section 706 of title 5 (which governs judicial review of final administrative orders). Absent extraordinary circumstances, only those objections raised and urged before the Authority may be considered by the court.

Subsection (c) further provides that the Authority's findings of fact are conclusive for purposes of judicial review and enforcement if the findings are supported by substantial evidence on the record. However, any person may apply to the court for leave to adduce additional evidence. If the court is satisfied that there is additional material evidence, and that there were reasonable grounds for failing to adduce the evidence before the Authority, the court may order the Authority to take the additional evidence and make it part of the record. The Authority may then modify its original findings of fact, affirm them, or make new findings. Modified or new findings shall be filed with the court, along with any recommendation for modifying or setting aside its original order. The court will then make its final judgment and enters its decree. In all cases, courts of appeals' judgments and decrees are final, subject only to review by the Supreme Court.

Subsection (d) sets forth a procedure through which the Authority may seek temporary relief or a restraining order concerning the commission of alleged unfair labor practices prior to final administrative or judicial processing and decision on the matter involved. Under section 7118 as added by this bill, the General Counsel of the Authority makes the final decision as to the issuance of a complaint of an unfair labor practice. If a complaint is issued, the General Counsel acts as prosecutor of the complaint. Subsection (d) of section 7123 authorizes the General Counsel, upon the issuance of the complaint, to petition the U.S. district court (for the district in which the unfair labor practice is alleged to have occurred, or where the person complained of resides or transacts business) for temporary relief or a restraining order pending prosecution of the complaint and final determination by the Authority. The petitioned court must serve notice on the parties, take jurisdiction, and grant or deny relief.

Only those labor-management relations matters specifically referred to in section 7123 shall be judicially reviewable.

Reporting requirements for standards of conduct

Section 7131 makes applicable to labor organizations which have or are seeking to obtain exclusive recognition under chapter 71, the provisions of Labor-Management Reporting and Disclosure Act of 1959, as amended; popularly known as the Landrum-Griffin Act 29 U.S.C., chapter 12. The provisions of the Labor-Management Reporting and Disclosure Act of 1959, are also specifically made applicable to the officers, agents, shop stewards, other representatives, and members of a labor organization to the extent the provisions would be applicable if the agency were an employer under section 402 of title 29, United States Code. The section further authorizes the Secretary of Labor, under regulations issued with the concurrence of the Authority, to prescribe simplified reports for labor organizations, and to revoke the provisions for simplified reports for any labor organization if he determines, after investigation and after due notice and opportunity for hearing, that the purposes of chapter 71 of title 5 and chapter 11 of title 20 would be served thereby.

Official time

Section 7132 provides standards for determining when an individual may or may not be authorized official time (paid time) to engage in activities concerning labor-management relations.

Section 7132(a) provides that employees representing an exclusively recognized or certified labor organization in the negotiation of a collective bargaining agreement under chapter 71 (including attendance at impasse settlement proceedings) are authorized official time for that purpose during the time the employees would otherwise be in a duty status. The number of employees for whom official time is authorized may not exceed the number of persons designated by the agency as representing the agency in the subject negotiations.

Section 7132(b) provides that matters solely relating to the internal business of a labor organization must be performed when the subject employee is in a nonduty status.

Section 7132(c) empowers the Authority to make determinations as to whether employees participating in proceedings before the Au-

thority shall be authorized official time. However, official time specifically required under section 7132(a) must be authorized.

Section 7132(d) makes all other matters concerning official time for unit employees engaged in labor-management relations activity subject to negotiation between the agency and the exclusively recognized labor organization involved.

Subpenas

Section 7133(a) gives the Authority—for the purposes of all hearings and investigations which it, any of its members, its agents, the Panel, or its members deem necessary and proper—the right to see and copy any evidence which relates to the subject matter of the investigation or hearing.

The Authority, any member thereof, its designee, the Panel, or any member thereof (referred to hereinafter as the “issuer”) may, on application of any party to a proceeding or investigation, or on its own initiative, issue subpenas requiring the attendance and testimony of witnesses and the production of any relevant evidence applied for including books and papers of the Federal Government to the extent otherwise available under law.

Section 7133(a) further provides a procedure through which the individual or organization receiving a subpoena for production of evidence may seek its revocation. The issuer may be petitioned to revoke within 5 days after service of the subpoena. The subpoena shall be revoked if the issuer determines the evidence sought is irrelevant, or if the subpoena does not describe the evidence sought with sufficient particularity. The issuer or its designee may administer oaths and affirmations, examine witnesses, and receive evidence.

Subsection (b) of section 7133 provides that the issuer may seek enforcement of any of its subpoenas in the appropriate U.S. district court (i.e., the court for the district in which the person to whom the subpoena is addressed resides or is served). The court may order compliance with a subpoena, and treat any failure to obey its order as contempt of court, with appropriate punishment.

Subsection (c) provides that subpoenaed witnesses be paid the same fees and mileage as are paid subpoenaed witnesses in the Federal courts.

Subsection (d) of section 7133 provides that no claim of self-incrimination or resultant penalty or forfeiture shall excuse a person from obeying a subpoena. No person making such a claim, however, shall be prosecuted or subjected to any penalty or forfeiture because of compliance, but there is no exemption from prosecution and punishment for perjury committed in testifying in compliance with a subpoena.

Subsection (e) of section 7133 authorizes a fine of up to \$5,000 or imprisonment for up to one year, or both, for any person who willfully resists, prevents, impedes, or interferes with any member or agent of the Authority or the Panel in the performance of their duties under chapter 71.

Compilation and publication of data

Section 7134(a) requires the Authority to maintain a file of its proceedings and maintain copies of all available collective bargaining

agreements and arbitration decisions. It must also publish the texts of its decisions and of all actions taken by the Panel.

Section 7134(b) requires that the Authority's files be open to inspection and reproduction, subject to the provisions of the Freedom of Information Act and the Privacy Act.

Issuance of regulation

Section 7135 authorizes and requires the Authority, the Federal Mediation and Conciliation Service, and the Panel each to prescribe rules and regulations to carry out the provisions of chapter 71 which are applicable to each of them, respectively. Unless otherwise specifically provided in this chapter, the applicable portion of the administrative procedures provisions of title 5 shall govern the issuance, revision, or repeal of these rules and regulations.

Continuation of existing laws, recognitions, agreements, and procedures

Section 7136(a) (1) provides for the continuation of existing exclusive recognitions (including appropriate unit determinations) and collective bargaining agreements granted or entered into before the effective date of this chapter. These recognitions and unit determinations continue until terminated or modified under the provisions of this chapter, and all agreements continue in effect in accordance with their own terms and the applicable provisions of this chapter.

Section 7136(a) (2) provides for the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry, and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this amended chapter. Otherwise, no management official or supervisor as defined under section 7103 of this chapter may be a member of an appropriate unit.

Section 7136(b) provides basically that provisions of the labor-management relations program established by and under the Executive order which conflict with the provisions of this chapter, or with regulations issued hereunder, are superseded by the provisions of this Act. Other provisions and Executive orders remain effective until revised or revoked by the President.

SECTION 702

Section 702 of the bill makes certain amendments to section 5596 of title 5 United States Code (commonly referred to as the Backpay Act).

Section 702(a) makes several revisions in the present section 5596(b) of title 5. First, the parenthetical "(including an unfair labor practice or a grievance decision)" is added immediately after "administrative determination" to insure that such decisions will be considered administrative determinations for purposes of section 5596 of title 5.

Second, paragraph (1) of the present section 5596(b) of title 5, is revised to specify the items which are recoverable on correction of an unwarranted personnel action. As revised by the bill, section 5596(b) (1) of title 5 entitles the employee to the recovery of an amount equal to all or any part of the pay, allowances, or differentials, as applicable that the employee normally would have earned or received

if the personnel action had not occurred, less any amounts earned by him through other employment during that period plus interest on the amount payable. The employee is also entitled to reasonable attorneys' fees and reasonable costs and expenses of litigation related to the personnel action.

Section 702(a) of the bill also amends section 5596(b)(2) of title 5, United States Code. Under the existing provisions of section 5596, an employee who is restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action is deemed for all purposes to have performed service for the agency during the period of separation except that he may not be credited with annual leave in excess of the maximum amount of leave that is authorized for the employee by law or regulation.

Section 702(a) of the bill amends section 5592(b)(2) so as to permit restoration of all of the annual leave that an employee would have earned during the period of separation. However, any annual leave which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account. The restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Office of Personnel Management. The amendment further provides that in the case of an employee who leaves the service or who enters on active duty in the armed services any leave credited under this provision which is unused and still available to the employee under the time limits prescribed by the Office shall be included in the lump-sum payment authorized under section 5551 or 5552(1), as applicable, of title 5.

With respect to employees who enter on active duty in the armed services, the annual leave credited under the provision may not be retained to the credit of the employee under section 5552(2) of title 5. The employee will be required to take a lump-sum payment.

Finally, section 702(a) of the bill adds a new sentence at the end of section 5596(b) of title 5, which defines certain terms for purposes of section 5596(b). "Unfair labor practice", "grievance", and "agreement" are given the meanings as set forth in chapter 71 of title 5 as amended by the bill (see section 7136 above), and "personnel action" is defined to include the omission or failure to take an action or confer a benefit.

SECTION 703

Section 703 of the bill contains technical amendments. Among other sections which are redesignated, the existing section 7102, concerning employees' right to petition Congress, is redesignated as section 7211.

SECTION 704

Section 704(a) of the bill states that, except as provided in subsection (b), the amendments made by title VII of this bill shall take effect on the first day of the first calendar month beginning more than 90 days after the date of enactment. Subsection (b) provides that sections 7104 and 7105 (relating to the establishment of the Authority) and section 7136 (the "grandfather" provision) be effective upon enactment.

Section 704(c) is intended to preserve the existing right of certain Federal prevailing rate employees to negotiate terms and conditions

of employment. The committee intends that this subsection preserve unchanged the scope and substance of the existing collective bargaining relationship between the employees' representatives and the agencies involved. The subsection excludes these employees from the restrictions on the scope of collective bargaining under chapter 71, and grants them authority to negotiate pay and pay practices without regard to any provision of chapters 51, 53, and 55 of title 5, or other provisions relating to rates of pay or pay practices with respect to Federal employees.

TITLE VIII

GRADE AND PAY RETENTION

Section 801(a)(1) of the bill amends chapter 53 of title 5, United States Code, by inserting a new subchapter VI entitled "Grade and Pay Retention." The provisions of the new subchapter VI are explained below by United States Code section references.

Definitions

Section 5361, consisting of seven numbered paragraphs, defines various terms for purposes of the new subchapter VI.

Paragraph (1) defines the term "employee" as meaning an employee to whom the classification provisions of chapter 51 of title 5 apply and a prevailing rate employee, as defined by section 5342(a)(2) of title 5. However, the definition specifically excludes those employees whose employment is on a temporary or term basis. Under section 5342(a)(2) of title 5, the term "prevailing rate employee" includes certain employees of nonappropriated fund instrumentalities and certain employees of the Veterans' Canteen Service.

Paragraph (2) provides that the term "agency" has the meaning given it by section 5102 of title 5.

Paragraph (3) defines the term "retained grade" as meaning the grade used for determining benefits to which an employee who is covered by the subchapter is entitled. Generally, the retained grade of an employee is the grade held by the employee immediately before the reclassification of his position to a lower grade or immediately before a reduction in force.

Paragraph (4) defines the term "rate of basic pay." Although the term "rate of basic pay" appears frequently throughout title 5 of the United States Code, the term is not now defined in the code. However, with respect to the General Schedule pay system, the term "rate of basic pay" uniformly is understood to mean the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of any kind of additional pay (see 5 CFR 531.202). With respect to prevailing rate employees, the term "scheduled rate of pay," as used in section 5343 of title 5, is synonymous with the term "rate of basic pay" as discussed above in connection with General Schedule employees.

It is the committee's intent that for purposes of subchapter VI, the term "rate of basic pay" shall mean, with respect to all employees, the rate of pay fixed by law or administrative action for the position held by the employee. Thus, as so defined, the term excludes night dif-

ferential, environmental differential, cost-of-living allowances, overtime pay, and any other form of additional pay.

Paragraph (5) defines the term "covered pay schedule" to mean the General Schedule (5 U.S.C. 5332) any prevailing rate schedule established under the provisions of subchapter IV of chapter 53 of title 5, or the merit pay system under chapter 54 of title 5, as added by section 501 of this Act.

Paragraph (6) defines "position subject to this subchapter" to mean any position under a covered pay schedule.

Finally, paragraph (7) of section 5361 defines "reduction-in-force procedures" as meaning the procedures applied in carrying out any reduction in force due to a reorganization, lack of funds, or curtailment of work, or any other factor. The Civil Service Commission's regulations governing reductions in force are contained in part 351 of title 5, Code of Federal Regulations. Those regulations, and the procedures prescribed thereunder, apply when an employee is reduced to a lower grade as a result of (1) lack of work, (2) shortage of funds, (3) reorganization, (4) reclassification of position because of a change in duties, or (5) the exercise by another individual of reemployment or restoration rights.

Grade retention following a change of positions

Section 5362 authorizes temporary (2 years) grade retention for certain employees who are reduced in grade as a result of reductions in force.

The provisions of this section apply when an employee (as defined in section 5361 (1)) who occupies a General Schedule or prevailing rate position is reduced to a lower graded General Schedule or prevailing rate position as a result of a reduction in force. In order to be eligible for grade retention, the employee must have served for 52 or more consecutive weeks in a position (or positions) at a grade (or grades) higher than the grade of the position to which he has been reduced. It should be noted that the qualifying service must have been performed in either a General Schedule or prevailing rate position but not necessarily in the same position. The service may have been performed in one or more positions under the same covered pay system or in positions under different covered pay systems. However, all service must have been at a grade or grades higher than that of the position to which reduced.

Under subsection (a) of section 5362, an employee who satisfies the requirements of the subsection is entitled to retain the higher grade of his previous position for a 2-year period beginning on the date of his placement in the new position. Grade retention under this section is an entitlement and not a requirement. Therefore, if for some reason the employee prefers not to retain his previous grade, he may waive (irrevocably) the benefits authorized under the provisions of subchapter VI.

Subsection (b) of section 5362 provides that, with certain exceptions, the retained grade of the employee shall be treated as the grade of the employee's position for all purposes during the 2-year period. Specifically, the retained grade is to be used for purposes of pay and pay administration (chapters 53, 54 and 55 of title 5), retirement (chapter

83), life insurance (chapter 87), eligibility for training, promotion, and reassignment, and other employee benefits.

Paragraph (1) of subsection (b) provides that the employee's retained grade may not be used for purposes of applying the provisions of subsection (a) of section 5362. There may be instances when an employee who is entitled to a retained grade for 2 years under subsection (a) is reduced in grade as a result of another reduction in force before the 2-year grade retention period has expired. During the second reduction in force the employee will compete at the grade of the position occupied rather than at his retained grade (see discussion of subsection (b) (2), below). Upon the expiration of the 2-year period of grade retention based on the initial reduction in grade, the employee will be entitled under subsection (a) of section 5362 to an additional period of grade retention based on the second reduction in grade. In effect, paragraph (1) of subsection (b) provides that for purposes of determining an employee's entitlement to grade retention under subsection (a), the grade of the position occupied, rather than the retained grade, shall be used. Thus, in the above example, upon expiration of the initial 2-year period of grade retention the employee is entitled to retain for an additional period the lower grade of the position occupied at the time of the second reduction in force and not the retained grade which he held at that time.

One of the underlying principles of the reduction-in-force procedures is that an employee shall compete with all other employees performing the same type of work. To preserve the application of this principle, paragraph (2) of subsection (b) specifically provides that the retained grade may not be used for purposes of applying reduction-in-force procedures. Thus, in a reduction in force, an employee with a retained grade would compete at the lower assigned grade of the position occupied rather than at the higher retained grade.

Paragraph (3) of subsection (b) provides that the Office of Personnel Management may, by regulation, establish other purposes for which the employee's retained grade shall not be treated as the grade of his position. For example, for purposes of determining the number of positions at GS-16, 17, and 18 authorized by an act of Congress, the committee believes the grade of the position occupied, rather than the retained grade, should be used.

As a result of the application of section 5362, the positions occupied by downgraded employees will, in effect, have two-grades—the higher retained grade of the employee, which will be used for most purposes, and the lower assigned grade of the position, which will be used for limited purposes.

Subsection (c) of section 5362 sets forth four conditions under which an employee's entitlement to a retained grade will terminate.

First, a break in service of one workday or more will terminate a retained grade.

Second, a demotion for personal cause will result in termination of a retained grade. For purposes of determining under this subsection whether an employee has been demoted, the assigned grade of the position occupied, rather than the employee's retained grade, must be used. For example, assume an employee occupies a GS-7 position but has a retained grade of GS-9. The subsequent placement of such employee in a GS-8 or a different GS-7 position would not constitute

a demotion and would not terminate the retained grade. Also, the placement of the employee in a lower graded position for reasons other than personal cause will not result in termination of his retained grade (for example, a demotion at the employee's request).

Third, an employee's retained grade will terminate if he is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than this retained grade. The issue of whether a particular offer of a position is reasonable will, of course, depend on the facts and circumstances of each case. However, the committee assumes that instructions and guidelines relating to this matter will be issued by the Office of Personnel Management under the authority of section 5366 of subchapter VI. Also, it should be noted here that the termination of a retained grade on the grounds the employee declined a reasonable offer is appealable to the Office of Personnel Management under section 5367 of subchapter VI, discussed below.

The fourth condition under which a retained grade may be terminated is an employee's written election to have the benefits of section 5362 terminate. The committee suspects that there may be instances when it would be advantageous for the employee to terminate the retained grade and assume the lower assigned grade of the position to which he was reduced. This may be so since under section 5362 the retained grade is treated as the grade of the employee's position for most purposes, including eligibility for training, promotion, and re-assignment.

Unless terminated earlier under one of the conditions discussed above, the retained grade will continue in effect for a period of 2 years from the date of the employee's placement in the lower grade. The employee continues to be entitled to the retained grade even if he subsequently is placed in a still lower graded position. Of course, each reduction to a lower grade, if it results from the application of reduction-in-force procedures, will entitle the employee to retain his previous higher grade for a period of 2 years under section 5362. For example, assume a GS-9 is demoted to GS-7 as a result of a reduction in force and after a period of 18 months is demoted to GS-6 as a result of another reduction in force. Under section 5362 the employee is entitled to retain the GS-9 for a full 2 years. At the expiration of the 2-year period the entitlement to GS-9 terminates and the GS-7 retained grade becomes applicable. The employee's entitlement to retain the grade GS-7 continues in effect for 18 months.

Grade retention following position reclassification

Section 5363 authorizes indefinite grade retention for employees whose positions are reduced in grade. The provisions of this section apply to an employee (as defined in section 5361(1)) who occupies a General Schedule or prevailing rate position which has been reclassified to a lower grade.

Under subsection (a) of section 5363, an employee whose position has been reduced in grade is entitled to have the grade of the position, before the reduction, be treated as his retained grade so long as he continues to occupy such position. The higher retained grade will be treated as the employee's grade for all purposes except for the application of reduction-in-force procedures. For purposes of a reduction in

force the employee will compete at the lower grade to which his position has been reduced.

The employee's entitlement to retain the higher grade terminates as soon as he vacates the position. Thus, if the employee is demoted or reassigned to another position, or if he transfers to a different agency, the retained grade will terminate.

Subsection (b) provides that the grade retention benefits provided under subsections (a) shall not apply in the case of any position which had not been classified at the higher grade for a continuous period of at least 1 year immediately before the position was reduced in grade.

Subsection (c) of section 5363 sets forth three conditions under which the provisions of subsection (a) of section 5363 will cease to be applicable to an employee. These three conditions, which are substantially the same as those discussed earlier under section 5362(c), are as follows:

1. A break in service of one workday or more;
2. A declination of a reasonable offer of a position the grade of which is equal to or higher than the employee's retained grade; and
3. A written election (irrevocable) to terminate the benefits of section 5363. The termination of benefits on the grounds stated in paragraph (2), above, is appealable to the Office of Personnel Management under section 5367(a).

Any change in position by the employee, such as reassignment, transfer, or demotion, will result in termination of the retained grade under section 5363(a).

Pay retention

Section 5364 authorizes pay retention for employees in certain situations. This section replaces the existing pay retention provisions of sections 5334(d), 5337, and 5345 of title 5, which are repealed by the bill.

Under section 5364, pay retention is authorized for—

1. An employee who ceases to be entitled to grade retention under section 5362 (reduction in force cases) because of the expiration of the 2-year period;
2. An employee who is in a General Schedule or prevailing rate position and is subject to a reduction or termination of a special pay rate established under section 5303 of title 5; or
3. Any General Schedule or prevailing rate employee under circumstances which the Office of Personnel Management determines, by regulation, warrant the application of this section.

With respect to the authority granted to the Office of Personnel Management under paragraph (3) of section 5634(a), the committee anticipates the application of the pay retention provisions to situations such as when (1) a prevailing rate employee is moved with his position to the General Schedule, or vice versa; (2) an employee moves from one pay schedule to another within the prevailing rate system; or (3) pay rates based on out-of-area data (Monroney rates) are revised or canceled. The authority granted under paragraph (3) is sufficiently broad to permit the Office to authorize pay retention in such situations and in other similar situations where pay retention is warranted.

It is important to note that, with respect to employees whose periods of grade retention under section 5362 have expired, the rates of pay of most of these employees will be accommodated within the rate range of the grades of the positions to which the employees have been reduced. The committee anticipates that the regulations of the Office of Personnel Management will specify that the pay rates of such employees which fall between rates of the grade to which reduced will be established at the higher rate. In these cases, the employees no longer would be covered by the provisions of this legislation, and they would receive the full amount of any future general increases in pay which are authorized for the rate of the grade in which they are placed.

In those cases where the employee's existing rate of basic pay exceeds the maximum rate of the grade to which reduced and, therefore, cannot be accommodated within the rate range of the grade, the employee will be entitled to the lower of (1) his existing rate of pay or (2) 150 percent of the maximum rate of basic pay payable for the grade of the position to which the employee has been reduced. Thereafter, the employee will be entitled to one-half of the amount of each increase in the maximum rate of the grade.

Subsection (c) of section 5364 provides that the pay retention provisions of that section shall cease to apply to an employee who has a break in service of one or more workdays or to an employee who is demoted for personal cause. In addition, an employee's entitlement under section 5364 terminates when he becomes entitled to a rate of basic pay which is equal to or higher than the rate of pay he is receiving under section 5364. For example, the provisions of section 5364 eventually will cease to apply to an employee who has been receiving only one-half of the increases in the maximum rate of his grade when that maximum rate equals or exceeds the employee's retained rate of basic pay.

The provisions of section 5364 also will cease to apply if the employee declines a reasonable offer of a position the rate of pay for which is equal to or higher than his retained rate of pay under section 5364. In such case the termination of benefits is appealable to the Office of Personnel Management under section 5367.

Remedial actions

Section 5365 authorizes the Office of Personnel Management to prescribe regulations under which agencies may be required to take certain actions to assist employees who have been downgraded and are receiving grade or pay retention benefits under the provisions of subchapter VI.

Paragraph (1) of section 5365 provides that the office's regulations may require an agency to report to the office information concerning existing and impending vacancies within the agency. Such information will then be available for distribution by the office to other agencies to facilitate the training of eligible employees for placement in the vacant positions.

Paragraph (2) of section 5365 provides that the office's regulations may require agencies to take appropriate steps to assure that employees who are receiving grade or pay retention benefits under sections 5362, 5363, or 5364, have the opportunity to obtain the necessary qualifica-

tions for selection to positions in grades which are at least equal to the grades from which such employees were reduced. Under the language of paragraph (2) the office has specific authority to direct agencies to establish programs for the training or retraining of eligible employees for selection to higher grade positions. It is the committee's intent that the office shall have authority to mandate specific types of programs under this section notwithstanding the provisions of section 4118(d) of title 5 which prohibit the office from prescribing the types and methods of intra-agency training under the Government Employees' Training Act (chapter 41 of title 5). Also, it is the committee's intent that, when necessary, the office may require agencies to train employees for placement in vacant positions in other agencies. It is the committee's view that such action is not precluded by sections 4103 or 4118(d) of title 5, since section 5365 will constitute separate and specific authority for the office to direct the training of certain Federal employees.

It should be noted that any program established under paragraph (2), or under paragraph (3) discussed below, will apply only to employees who are receiving grade or pay retention benefits under sections 5362, 5363, or 5364 of the new subchapter VI. Such programs and any other form of assistance directed by the Office under section 5365 are intended to minimize the need for the application of those sections. Thus, an employee who is downgraded as a result of a reclassification action or a reduction in force and who does not qualify for grade or pay retention under sections 5362, 5363, or 5364 will not be eligible for training or other programs of assistance established pursuant to the provisions of section 5365.

Paragraph (3) of section 5365 authorizes the Office to require agencies to establish programs under which eligible employees will be given either priority consideration for selection to positions which are equal to or greater than their retained grades or pay or, if necessary, priority placement in such positions.

Finally, paragraph (4) of section 5365 authorizes the Office to require agencies to place certain employees in vacant positions within such agencies notwithstanding the fact that the employee's previous position was in a different agency. The exercise of this authority, however, is limited to those circumstances in which the Office determines such action is necessary to carry out the purposes of section 5365.

Regulations

Subsection (a) of section 5366 requires the Office of Personnel Management to prescribe such regulations as are necessary to carry out the purposes of the new subchapter VI.

Subsection (b) of section 5366 authorizes the Office to prescribe regulations providing for the application of all or portions of the provisions of subchapter VI to individuals and situations not otherwise covered by such provisions. As explained above, the grade and pay retention provisions of sections 5362, 5363, and 5364 are applicable to employees who occupy positions under the General Schedule or under a prevailing rate schedule established under subchapter IV of chapter 53 of title 5. Movements within or between these pay schedules are specifically covered under the provisions of sections 5362-5364. However, the committee recognizes that there will be other circumstances in

which the application of all or part of the provisions of subchapter VI can be fully justified. Under the authority of subsection (b) the Office may provide for the application of all or any portion of the provisions of subchapter VI—

1. To individuals who are reduced to a grade of the General Schedule or a prevailing rate schedule from a position under another pay system;

2. To individuals who are not otherwise covered under the provisions of subchapter VI; and

3. To situations where such application is justified for purposes of carrying out the mission of the agency or agencies involved.

Movements of employees or positions between different pay systems are not uncommon. For example, an employee in a position under the Foreign Service pay system could be reduced to a grade under the General Schedule as a result of a reclassification action or reduction in force. The application of the grade or pay retention provisions of subchapter VI to such an employee may be fully justified. It is the purpose of section 5366(b) to authorize the application of the provisions of subchapter VI, including the provisions of section 5365, to employees and situations not otherwise specifically covered by the subchapter whenever such action is deemed justified by the Office of Personnel Management.

Appeals

Subsection (a) of section 5367 provides for an appeal to the Office of Personnel Management when benefits available to an employee under subchapter VI are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay. The declination of a reasonable offer will result in termination of the employee's retained grade under sections 5362 and 5363 and termination of retained pay under section 5364. The term "reasonable offer" is not subject to definition and reasonable men may differ as to what constitutes a reasonable offer in a particular case. Therefore, the committee concluded that the termination of benefits on such grounds should be reviewable by the Office of Personnel Management. The Office is authorized to prescribe the appeal procedures.

Paragraph (2) of subsection (a) of section 5367 provides that nothing in subchapter VI shall be construed to affect the right of any employee to file a classification appeal under section 5112(b) or 5346(c) of title 5, or under any other comparable provision, or a reduction-in-force appeal under procedures prescribed by the Office of Personnel Management (such as part 351 of the current regulations of the Civil Service Commission).

Subsection (b) of section 5367 provides that any action which is the basis of an individual's entitlement to benefits under subchapter VI or any termination of such benefits shall not be treated as an appealable action for purposes of any appeal procedure other than the appeal procedures described in paragraph (2) of subsection (a). Under subsection (b), the following actions would not be appealable (except as provided in paragraph (2) of subsection (a)):

1. Reduction of employee to lower grade as a result of reclassification of position;

2. Reduction of employee to lower grade as a result of reduction-in-force action;

3. Termination of retained grade or pay because of break in service;

4. Termination of retained grade or pay because of placement in position equal in grade or pay to employee's retained grade or pay;

5. Termination of retained grade or pay because of demotion for personal cause (demotion would constitute an appealable action);

6. Termination of retained grade because of expiration of 2-year period of entitlement under section 5362;

7. Termination of retained grade under section 5363 because of change in position; and

8. Receipt of only one-half of general pay increases under section 5364(a).

As noted above, the termination of any benefits under subchapter VI on the grounds the employee declined a reasonable offer is appealable to the Office under the provisions of subsection (a).

Repeal of pay-savings provisions

Paragraph (2) of section 801(a) of the bill repeals sections 5334(d), 5337, and 5345 of title 5, United States Code.

Section 5334(d) authorizes the Civil Service Commission to prescribe regulations governing the retention of the rate of basic pay of an employee who, together with his position, is brought under the General Schedule. Section 5337 authorizes pay retention for General Schedule employees who are reduced in grade, and subsection (c) of that section authorizes pay retention for employees who are reduced to a grade of the General Schedule from positions under other pay systems. Section 5345 authorizes pay retention for prevailing rate employees who are reduced in grade, and subsection (d) of that section authorizes pay retention for employees who, together with their positions, are brought under a prevailing rate pay schedule.

These pay-saving provisions are repealed because the provisions of the new subchapter VI contain authority for pay retention in all situations covered by the existing pay retention provisions of title 5.

Conforming amendments

Paragraph (3) of section 801(a) consists of numerous conforming amendments which are necessary to reflect the new subchapter VI provisions and the redesignation of section 5361 through 5365 of title 5 as section 5371 through 5375, respectively.

Effective date and savings provision

Paragraph (4) (A) of section 801(a) provides that the amendments made by subsection (a) of section 801 shall take effect on the first day of the first applicable pay period beginning on or after October 1, 1978, or the 90th day after the date of the enactment of the act, whichever date is later.

Paragraph (4) (B) of section 801(a) is a savings provision for those employees who were receiving saved pay benefits under sections 5334(d), 5337, or 5345 of title 5, United States Code, immediately

before the effective date prescribed in paragraph (4) (A). Paragraph (4) (B) provides that such employees shall not have their saved pay reduced or terminated by reason of the amendments made by section 801 (a) unless they are entitled to the grade retention benefits provided under section 5362 or 5363 of title 5, as amended by section 801 (a). An employee, of course would not be entitled to benefits under both the former pay savings provisions (section 5334 (d), 5337, or 5345) and the grade retention provisions of section 5362 or 5363.

Retroactive application of provisions

Paragraph (1) of subsection (b) of section 801 provides for the application, under regulations to be prescribed by the Office of Personnel Management, of the grade retention provisions of section 5362 or 5363 of title 5, as amended by subsection (a), to any employee whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a), under circumstances which would have entitled the employee to coverage under such provisions if they had been in effect at the time of the employee's demotion. To be eligible for such benefits the employee must have remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) without a break in service of one workday or more.

An employee who qualifies under paragraph (1) is entitled to receive the additional pay and benefits which he would have been entitled to receive if the amendments made by subsection (a) had been in effect at the time of the reduction in grade and is entitled to have the provisions of the new section 5362 or 5363 apply as if the reduction in grade had occurred on the effective date of the new sections. The effect of paragraph (1) is to authorize back pay and benefits for the employee for the period beginning on the date of the employee's reduction in grade and ending on the effective date of the amendments made by subsection (a), and grade retention benefits under the new section 5362 or 5363 beginning on the effective date of those sections.

With respect to the retroactive application of section 5363, relating to classification actions, the committee realizes that many employees whose positions were reduced in grade during the retroactive period may have changed positions prior to the effective date of that section. Since a change in position automatically terminates an employee's entitlement to a retained grade under section 5363, a special rule is provided under paragraph (2) of subsection (b) for employees who changed positions during the retroactive period. Under paragraph (2) an employee who changed to any other position under a covered pay schedule during the retroactive period and who is holding such position on the effective date of the amendments made by subsection (a) is entitled to retain the higher grade of the position which was reduced in grade. If after the initial reclassification of the employee's position to a lower grade, the position is reclassified to a still lower grade, the employee is entitled to retain the grade which was in effect prior to the initial reclassification action.

The provisions of paragraph (2) apply regardless of the reason for the employee's change in position except when the reason is a demotion for personal cause. An employee who qualifies for grade retention under paragraph (2) is entitled to have the retained grade be treated

as the grade of his position for all purposes except for the application of reduction-in-force procedures. The employee's entitlement to the higher grade commences on the effective date of the new section 5363 and remains in effect so long as the employee continues to hold the position he held on that effective date. The Office of Personnel Management is given specific authority to prescribe regulations to carry out the provisions of paragraph (2).

Paragraph (3) of subsection (b) provides that no employee whose reduction in grade resulted in a pay increase shall have his pay reduced by reason of the amendments made by subsection (a).

Paragraph (4) of subsection (b) provides that the continuous employment requirement under paragraph (1)(B) of subsection (b) shall be considered to be met in the case of any employee who retired with a right to an immediate annuity or who died before the effective date of the amendments made by subsection (a).

Paragraph (5) of subsection (b) provides that the Office of Personnel Management shall have the same authority to prescribe regulations under subsection (b) as it has under section 5366 of title 5, as added by subsection (a) of section 801.

TITLE IX

POLITICAL ACTIVITIES

Subsection (a) of section 901 of the bill amends subchapter III of section 7103 of this chapter may be a member of an appropriate unit. sections (5 U.S.C. 7321-7327) and adding one new section (5 U.S.C. 7328). The revised and expanded provisions of subchapter III are explained below by code section references.

Political participation

Section 7321 sets forth the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary political participation in the political processes of the Nation and their rights to form, join, or assist, or to refrain from forming, joining, or assisting, any organization, political party, committee, association, or other group which advocates or encourages political activities. The phrase "should be encouraged to fully exercise, to the extent not expressly prohibited by law", reflects the committee's belief that any legislation restricting political activities by employees should do so expressly, and that in the absence of an express prohibition, an employee may, of his own volition, engage in any political activity.

In this regard, the bill includes, in most instances in revised language, those prohibitions in the Criminal Code which pertains to political activities of Federal employees (see 18 U.S.C. 594, 597, 599, 600, 601, 602, 603, 606, 607). In other instances the bill includes, with minor revisions, definitions in the Criminal Code (see 18 U.S.C. 591 (b) and (e)).

With the inclusion of these provisions the committee intends this bill to serve as a codification of the restrictions on political activities of employees. With the exception of section 602 and 607 of title 18, which the bill amends to permit certain previously prohibited activi-

ties, the criminal provisions remain unchanged. Accordingly, activity by an employee which violates one or more of the criminal provisions cited above (including sections 602 and 607, as amended by the bill, would also constitute a violation of section 7323, 7324, or 7325 of title 5, as amended by the bill.

Definitions

Section 7322, consisting of eight numbered paragraphs, defines various terms for purposes of subchapter III.

Paragraph (1) defines "employee" to mean any individual, other than the President or the Vice President, employed or holding office in: (A) an Executive agency; (B) the government of the District of Columbia; (C) the U.S. Postal Service or the Postal Rate Commission; or (D) a position within the competitive service or within the Senior Executive Service as a career appointee (as defined in section 3132(a) (4) of title 5.) Thus, all officers and employees of agencies and the District of Columbia, whether they are in the competitive service (see 5 U.S.C. 2102), the Senior Executive Service (see U.S.C. 2101a) or in the excepted service (see 5 U.S.C. 2103) are included in the definition. Also included are those employees in the legislative and judicial branches who hold positions in the competitive service or as career appointees in the Senior Executive Service. Members of the uniformed services are specifically excluded from the definition.

Paragraph (2) defines "candidate." The definition is similar to that presently found in the Criminal Code (see 18 U.S.C. 591(b), as amended) and provides that the term "candidate" means any individual who seeks nomination for election, or election, to an elective office, whether or not the individual is elected. Thus an individual who is seeking to win a party's nomination in a primary election or in a convention as well as an individual who has already been nominated and is seeking election to a particular office is included within the definition. Subparagraphs (A) and (B) of paragraph (2) establish the point in time at which an individual is deemed to seek nomination for election, or election, as that time when an individual has: (A) taken the action required to qualify for nomination for election, or election; or (B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about that individual's nomination for election, or election.

Paragraph (3) defines "political contribution." The committee intends that this definition be given a broad interpretation.

Subparagraph (A) of paragraph (3) provides that "political contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

Subparagraph (B) provides that the term "political contribution" includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any political purpose.

Subparagraph (C) provides that the term "political contribution" also includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to a candidate or political organization without charge for any political purpose.

Subparagraph (D) provides that the term "political contribution" includes the provision of personal services for any political purpose. Thus, the term includes volunteer work.

Paragraph (4) defines "superior" to mean an employee who exercises supervision of, or control or administrative direction over, another employee. The definition is intended to include those employees who, through the exercise of the authority of their position, may influence or affect the career advancement or working conditions of other employees. Thus an employee who has the authority to promote (or recommend or approve the promotion of) another employee, or to assign work to, or to evaluate the performance of, another employee would be deemed a "superior."

Paragraph (5) defines "elective office" to mean any elective public office and any elective office of any political party or affiliated organization. The phrase "elective public office" is intended to include any Federal, State, or local office which is filled by the election of an individual. The phrase "elective office of any political party or affiliated organization" is intended to include offices of a political party or organization such as committeeperson, convention delegate, president, or chairperson which are filled by the election of an individual.

Paragraph (6) defines State to include the several States and the District of Columbia.

Paragraph (7) defines person to mean any individual, corporation, trust, association, any State, local, or foreign government, any territory or possession of the United States, or any agency or instrumentality of such entities.

Paragraph (8) of section 7322 defines restricted position. The Office of Personnel Management is required to designate, by regulation, those positions it determines should be restricted. The Office may designate a position as restricted only if it determines that the position meets the statutory criteria set forth in subparagraphs (A) and (B) of paragraph (8). Office of Personnel Management regulations designating restricted positions must be prescribed in accordance with the rule-making procedures prescribed in section 553 of title 5, United States Code.

Before designating any position as restricted, the Office must apply two separate tests. Only if a position meets both of these tests may it be designated as restricted. The first test is set forth in subparagraph (A). That subparagraph requires that the duties and responsibilities of a particular position must require the incumbent of the position to engage in one of three types of activities before the position may be considered for designation as a restricted position. The three types of activities are as follows:

(i) the duties and responsibilities of the position must require the incumbent "as a substantial part of his official activities, to engage in foreign intelligence activities relating to national security";

(ii) the duties and responsibilities of the position must require the incumbent in the normal course of carrying out his duties and responsibilities to make decisions binding on employees with respect to whom he is a superior with regard to who shall be the subject of any action which is to be taken by any such employee

in connection with the enforcement of any civil or criminal law (including any inspection or audit under any such law, to actually carry out the action, or to make final determinations with respect to the actions; or

(iii) the duties and responsibilities of the position must require the incumbent in the normal course of carrying out those duties and responsibilities to make binding decisions which are for the procurement of goods or services for the Government and which have substantial monetary value, or who shall be awarded licenses, grants, subsidies, or other benefits, which involve funds or other interests having a substantial monetary value, or to supervise individuals engaged in the awarding, administering, or monitoring of such contracts, licenses, grants, subsidies, or benefits.

If a position meets the tests required by subparagraph (A), it still may not be designated as restricted unless an additional determination is made by the Office under subparagraph (B). That subparagraph requires the Office to determine that "the restrictions on political activity imposed on such employee in such position are justified in order to insure the integrity of the Government or the public's confidence in the integrity of the Government." This subparagraph, in essence, requires the Office to apply a balancing test and reflects the committee's firm belief that employees should be prohibited from engaging in political activity only when such a prohibition is absolutely essential.

The committee stresses that the purpose of this bill is to permit employees to exercise (or not to exercise) those rights with respect to political activity which are presently enjoyed by other citizens. In applying the balancing test required by subparagraph (B) the committee intends that the Office carefully consider the restrictions on the rights of employees who hold positions designated as restricted. Substantial weight should be given by the Office to the effect of such restrictions, particularly since under the bill the vast majority of employees will be free to engage in political activity.

With respect to the application of the foreign intelligence or national security criteria, the committee intends that the terms "foreign intelligence" or "national security" be given a narrow interpretation. For example, it is not intended that "national security" be construed to relate to the security classification of a position.

This exception is necessary because of the sensitive role intelligence plays in the formulation of foreign policy. This role places intelligence employees squarely in that category of employees which the President has said must "retain in both the appearance and substance of impartiality." It is intended that the Office of Personnel Management in carrying out its responsibilities with respect to designating restricted positions will consult with the Director of Central Intelligence and the heads of departments and agencies with foreign intelligence or national security responsibilities such as the Secretary of Defense, the Secretary of State, and other heads with similar responsibilities. Employees engaged in duties relating to foreign intelligence affecting the national security covered under subparagraph (A)(i) include, but are not necessarily limited to, those substantially engaged in the collection, processing, analysis, production, or dissemination of foreign intelligence information.

If a position meets the criteria in subparagraph (A)(i), a second determination pursuant to the balancing test prescribed in subpara-

graph (B), discussed above, must also be made by the Office before a position is designated as restricted.

Use of official influence or official information; prohibition

Section 7323 sets forth prohibitions on the use of official authority or influence or official information for political purposes, and defines "use of official authority or influence."

Subsection (c) of section 7323 defines "use of official authority or influence" for purposes of the prohibitions contained in subsection (a) as including: (1) promising to confer or conferring any benefit (such as any compensation, grant, contract, license, or ruling) or effecting or threatening to effect any reprisal (such as deprivation of any compensation, grant, contract, license, or ruling); or (2) taking, directing others to take, recommending, processing, or approving any personnel action (as defined in section 2302(a)(2)(A) of this title).

Paragraph (1) pertains essentially to matters which would be of concern to persons outside the Government such as contracts, grants and licenses, which an employee could affect pursuant to the exercise of his official authority or influence. Paragraph (2) is directed primarily at matters which would be of concern to employees themselves such as promotions, transfers, assignments, and disciplinary actions, another employee could similarly affect.

Subsection (a) of section 7323, prohibits an employee from using or attempting to use that employee's official authority or influence, either directly or indirectly, for political purposes. The phrase "directly or indirectly" recognizes that the use of official authority or influence may often not be manifested in an overt act but instead may be exercised in a subtle fashion. The committee intends that such subtle use or attempted use of official authority or influence for political purposes be included in the prohibition of subsection (a).

Paragraphs (1) and (2) of subsection (a) set forth the political purposes for which it is improper for an employee to use or attempt to use official authority or influence.

Paragraph (1) prohibits the use or attempted use of official authority or influence for the purpose of interfering with or affecting the result of any election. This provision is identical to one of the primary prohibitions of the present Hatch Act (5 U.S.C. 7324(a)(1)).

Paragraph (2) of subsection (a) prohibits the use or attempted use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing, or attempting to intimidate, threaten, coerce, command, influence: (A) any individual with regard to the right of that individual to vote, or not to vote, as that individual may choose, or to cause an individual to vote for or against any candidate or measure; (B) any person to give or withhold any political contribution; or (C) any person to engage, or not to engage, in any form of political activity whether or not the activity is prohibited by law. It should be noted that although the committee intends that it be the policy of the Congress, as set forth in section 7321 discussed above, to encourage employees to fully exercise their rights of political participation, the committee also intends that the prohibitions in subsection (a) of section 7323 provide protection against the use of official authority or influence for those employees who choose not to engage in political activity.

The committee points out that section 7323 is intended to protect members of the public and employees from being coerced by employees with respect to political activities. Clearly the section does not prohibit the use of official authority or influence by employees for all purposes. Each day employees exercise such authority to award grants, hire, discipline, or promote other employees, and with respect to numerous other matters. If, however, an employee uses his official authority or influence in connection with those matters specified in subsection (a), such use would constitute a violation of section 7323 and appropriate disciplinary proceedings should be instituted with respect to that employee.

Subsection (b) of section 7323 prohibits an employee from directly or indirectly using, attempting to use, or permitting the use of any official information obtained through, or in connection with, his employment for any political purpose, unless the official information is available to the general public. The term official information is intended to include agency records as well as information contained in those records, and the prohibition against use of such information applies only if that information is obtained through or in connection with the employee's Government employment. An employee may use official information obtained through or in connection with his employment so long as that information is available to the general public. In this regard the committee does not intend that such information need be published or otherwise publicly disseminated. For purposes of subsection (b) such information is available to the general public if it would be provided upon request.

Solicitation; prohibition

Section 7324 sets forth prohibitions applicable to employees with regard to soliciting, accepting, receiving, or giving political contributions.

Paragraph (1) of section 7324(a) prohibits an employee from giving or offering to give a political contribution in return for any individual's vote, or abstention from voting, in any election.

Paragraph (2) of section 7324(a) prohibits an employee from soliciting, accepting, or receiving a political contribution in return for his vote or abstention from voting.

Paragraphs (1) and (2) parallel, with minor rewording, existing prohibitions in the Criminal Code pertaining to the buying or selling of votes (see 18 U.S.C. 597), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by these paragraphs.

Paragraph (3) of section 7324(a) prohibits an employee from knowingly giving or handing over a political contribution to a superior of that employee. The phrase "superior of that employee" is intended to limit the prohibition to instances where an employee makes a political contribution to a superior who has the authority to affect that particular employee's employment. Thus, while an employee may not give a political contribution to another employee who is his superior, an employee is not prohibited from giving a political contribution to another employee solely because the other employee is a superior as defined in paragraph (4) of section 7322. For example, an employee of

one agency is not prohibited from giving a political contribution to a supervisory employee of another agency.

Paragraph (4) of section 7324(a) sets forth two prohibitions against the solicitation or receipt of political contributions by employees.

Subparagraph (A) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution from another employee (or a member of another employee's immediate family) with respect to whom the employee is a superior. As with the prohibitions in paragraph (3) discussed above, the phrase "with respect to whom such employee is a superior" is intended to limit the prohibition to instances where a superior has the authority to affect an employee's employment. In most instances where an employee is a superior with respect to another employee, both employees would be in the same agency. The inclusion of the phrase "member of an employee's immediate family" is intended to prohibit possible circumvention of the literal prohibition against a superior soliciting political contributions from an employee such as where a superior solicits a contribution from the employee's wife. A member of an employee's immediate family would generally include those blood relations who resides in the employee's household, although in certain instances it could include other relations such as parents, children, brothers, or sisters, who reside in the nearby vicinity, and whose decision to give or not to give a political contribution to a superior of an employee could be affected by the superior-employee relationship.

Subparagraph (B) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution in any room or building occupied in the discharge of official duties by: (i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or (ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States. Thus, an employee is prohibited from soliciting political contributions in any room or building where Federal Government business is being conducted. In addition, an employee is prohibited from soliciting political contributions in any room or building where an individual being paid from money derived from the Federal Treasury is working; for example, where an individual whose salary is paid through a Federal grant or where an employee of a Federal contractor whose salary derives from Federal funds is working.

Subparagraph (B) parallels, with minor rewording, existing provisions in the Criminal Code (see, 18 U.S.C. 603), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by subparagraph (B).

Subsection (b) of section 7324 prohibits an employee holding a restricted position (as defined in section 7322(8)) from soliciting, accepting, or receiving a political contribution from, or giving a political contribution to, employees, Members of Congress (or candidates for such office), members of the uniformed service, or any agent of these

individuals. The subsection exempts from this general prohibition, however, contributions given to a political committee.

With respect to employees holding restricted positions, subsection (b) is intended to continue existing prohibitions concerning certain political contributions now contained in sections 602 and 607 of title 18, United States Code. Although sections 602 and 607 do not specifically exempt contributions given to political committees, it is the committee's understanding that both the Civil Service Commission and the Department of Justice have consistently interpreted those sections as not applying to such contributions, thereby permitting employees to contribute to campaigns.

The term political committee is not defined by the bill. Although "political committee" has been statutorily defined for other purposes, such as in connection with campaign financing laws (see, e.g., 18 U.S.C. 591(d)), such definitions generally hinge on the dollar amount of funds handled by such a committee, e.g., \$1,000, during a calendar year. Since the purpose of limiting certain political contributions by restricted employees to only those given to political committees is to permit some degree of financial participation in the electoral process but at the same time provide a layer of insulation between the employee and beneficiary of the contribution, a certain amount of flexibility should be allowable in determining what constitutes a political committee.

While the dollar amount of funds handled by a committee may be a valid criteria in some instances for determining whether an organization is a bona fide political committee, in other instances it may not. The committee anticipates that the Office of Personnel Management in the exercise of its general regulatory authority under section 7328, will define "political committee" in a manner such that these considerations may be taken into account.

Paragraph (1) of subsection (c) provides a final prohibition with respect to the solicitation of political contributions by employees. Paragraph (1) of that subsection provides that an employee may not solicit, accept, or receive a political contribution from, or give a political contribution to, a person who (A) has, or is seeking to obtain, contractual or other business or financial relations with the agency in which the employee is employed; (B) conducts operations or activities which are regulated by such agency; or (C) has interests which may be substantially affected by the performance of the employee's official duties.

Paragraph (2) of subsection (c) provides that the Office of Personnel Management shall prescribe regulations under which an employee may be exempted from the application of paragraph (1) with respect to any political contribution to or from an individual who has a family or personal relationship with the employee, if the employee complies with such requirements as the Office shall prescribe, relating to disqualification of such employee from engaging in any official activity involving such individual.

Political activities on duty, et cetera; prohibition

Subsection (a) of section 7325 prohibits an employee from engaging in political activity: (1) while on duty; (2) in any room or building in which an individual employed by the Government of the United

States, or the government of the District of Columbia is engaged in official duties; or (3) while wearing a uniform or official insignia identifying the office or position of the employee. Subsection (a) reflects the belief of the committee that political activity of employees should not be allowed to interfere with the effective conduct of the Government's business.

Subsection (b) of section 7325 provides several exceptions to the prohibitions of subsection (a). First, individuals paid from the appropriation for the White House Office, paid from funds to enable the Vice President to provide assistance to the President, or on special assignment to the White House Office, are excepted. Second, the Mayor of the District of Columbia, and the Chairman and members of the Council of the District of Columbia are excepted. The committee recognizes that these individuals hold positions that are essentially political in nature and that determining whether many activities in which they engage constitute "political activity," and thus are prohibited by subsection (a), would be difficult.

Subsection (b) also excepts any activity of an individual which is not otherwise prohibited by or under law and which is part of such individual's official duties. This exception is intended to preclude the possibility that an employee may have to decide whether a specific task which he is assigned as part of his official duties could be construed as "political activity" and thus be subject to the bill's prohibitions.

For example, if an employee of the Domestic Policy Staff prepared a paper explaining the administration's position on a particular issue at the request of his immediate superior, and he was aware that parts of that paper could be used in a campaign speech to be given by the President, he should not have to worry that by carrying out his official duties in writing the paper he would be engaging in political activity on the job. So long as an employee is performing a function which is required by the duties and responsibilities of his position, his performance of that function should not be construed to constitute political activity. Should a superior require an employee to engage in activities which are not a part of that employee's official duties, and which are political in nature, the superior would be in violation of the misuse of authority prohibition in section 7323(a)(2)(C).

Subsection (c) of section 7325 provides that nothing in section 7325 shall be construed to authorize an individual who is excepted from the prohibitions of subsection (a) to engage in political activity otherwise prohibited by or under law.

Candidates for elective office; leave notification by employees

Section 7326 authorizes leave without pay and accrued annual leave for employees who are candidates for elective office.

Subsection (a) of section 7326 requires an employee to notify his employing agency promptly upon becoming a candidate and upon the termination of his candidacy.

Subsection (b) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted leave without pay for the purpose of engaging in activities relating to that employee's candidacy. It should be noted that there is no requirement that an employee who is a candidate take leave without pay, but if the

employee requests such leave without pay, the employing agency must grant the request.

Subsection (c) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted accrued annual leave for the purpose of engaging in activities relating to that employee's candidacy. As is the case with leave without pay, an employee is not required to take accrued annual leave, but if the employee requests such leave, the employing agency must grant the request, notwithstanding the provision in section 6302(d) of title 5 which provides that the granting of annual leave is within agency discretion. The term "accrued annual leave" means that an employee is entitled only to that annual leave which he has actually earned. An agency is not required to advance annual leave.

Under section 7326, an agency is only required to grant leave to an employee who is a candidate, as defined in section 7322(2), and to prevent possible abuses of leave requests, an agency should verify that an employee is actually a candidate before granting a request. An employee's right to be granted leave without pay or accrued annual leave terminates immediately following election day whether or not the employee is elected or at such other time when the candidacy terminates such as the date on which an employee withdraws from candidacy. The phrase "to engage in activities related to such candidacy" reflects the committee's intent that leave under this section is to be used primarily for such activities. Thus, an agency may deny a request for leave under this section if it is apparent that the leave is requested for other activities, unrelated to the employee's candidacy.

Subject to the foregoing qualifications, the decision as to whether to take leave without pay, accrued annual leave, or a combination of both, rests with the employee who is a candidate. If an employee who is a candidate does not take leave and engages in activities relating to that candidacy or other political activity while on duty, the activities would violate section 7325 discussed above.

Subsection (d) of section 7326 provides that the provisions relating to leave for employees who are candidates do not apply to individuals who are employees by reason of holding an elected public office, for example, those individuals referred to in section 7325(b)(3).

Penalties

Section 7327 sets forth the penalties which the Merit Systems Protection Board may order when violations of section 7323, 7324, or 7325 have been found, and specifies the manner in which penalties shall be imposed.

The committee believes that violations of section 7323, relating to misuse of official authority, influence, or official information, constitute the most serious offenses which may be committed under the bill. It further believes that employees who misuse their official authority or influence or who misuse official information should be severely punished.

Accordingly, subsection (a)(1) requires that, as a minimum, the Board must order a penalty of suspension for not less than 30 days in the case of an employee who has been found to have violated section 7323. The maximum penalty for violating that section is removal and

if removed, the employee is permanently barred thereafter from holding any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III.

Subsection (a) (2) sets forth a range of penalties which the Board in its discretion, may order in cases involving violations of sections 7324 and 7325.

Under paragraph (2) (A) of subsection (a) the Board may order the removal of an employee and, in addition, if removal is ordered, the Board must prescribe a period of time during which the employee may not be reemployed in any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III. Under paragraph (2) (B) the Board may order the suspension without pay of an employee for such period as they prescribe. Under paragraph (2) (C) the Board may, in its discretion, order lesser forms of penalties as they deem appropriate.

The committee recognizes that certain violations of sections 7324 and 7325 are necessarily more serious than others and intends that the penalty provisions give complete discretion to the Board with regard to the severity of the penalty to be imposed in such cases so that whatever penalty is ordered may be tailored to the nature of the actual violation.

Subsection (b) requires the Board to notify the Special Counsel, the employee, and the employing agency of any penalty ordered. It is then the responsibility of the employing agency to effect the disciplinary action, and that agency is required to certify to the Board the measures it has undertaken to implement the penalty.

Regulations

Subsection (a) of section 7328 requires the Office of Personnel Management and the Merit Systems Protection Board to prescribe such rules and regulations as may be necessary to carry out their respective responsibilities under subchapter III.

Subsection (b) of section 7330 requires that regulations designating "restricted positions" must be prescribed not later than 90 days after the effective date of section 7322(8), defining "restricted positions." Since section 903(a) of the bill provides that section 7322 becomes effective 120 days after enactment, regulations designating restricted positions must be prescribed not later than 210 days after the date of enactment. Thereafter, any revision of the restricted position regulations must be prescribed not later than March 1 of the calendar year in which the revision is to take effect. The committee intends that "revision" include adding or subtracting any position from those designated as restricted.

Subsection (b) also permits an employee who holds a position which has been designated as restricted to file a petition in the U.S. Court of Appeals for the District of Columbia, or for the judicial circuit in which such employee resides or is employed, requesting judicial review of the regulation designating his position as restricted. The committee intends such review to be for the purpose of determining whether the Office of Personnel Management has correctly applied the restricted position criteria set forth in section 7322(8). An action for review of a restricted position designation may not be instituted more

than 30 days after the effective date of the regulation designating the position as restricted.

Technical and conforming amendments

Subsection (b) of section 901 of the bill contains several technical and conforming amendments to title 5.

Section 901(b)(1) amends section 3302 of title 5, relating to the President's authority to prescribe rules for necessary exceptions from certain provisions of title 5, by striking out the references to sections 7321 and 7322. Under the new subchapter III, as revised by the bill, all exceptions from the provisions of that subchapter are expressly set forth in the subchapter itself. Accordingly, no authority for additional exceptions is deemed necessary.

Section 901(b)(2) amends section 1308(a) of title 5, relating to annual reports of the Office of Personnel Management by striking out paragraph (3) relating to reports of the office concerning its actions under existing section 7325 of title 5. The remaining paragraph of section 1308(a) is appropriately redesignated.

Section 901(b)(3) corrects an existing technical error in the second sentence of section 8332(k)(1) by striking out "second" and inserting in lieu thereof "last".

Section 901(b)(4) of the bill amends the section analysis for subchapter III of chapter 73 of title 5 to reflect the changes made by section 901(a) of the bill.

Amendments to the Criminal Code

Section 901(c) of the bill amends sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, by adding a new sentence at the end of each section to provide that those sections do not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title. Since section 7324 of the bill, relating to solicitations and making of political contributions, permits employees to engage in certain activities which are presently prohibited under sections 602 and 607, this amendment is necessary to ensure that an employee is not criminally liable for an activity that, although permissible under the bill, would, except for this amendment, be prohibited under section 602 or 607. It should be noted that the amendments to the criminal provisions pertain only to activities by "employees" as defined under section 7322(1) of title 5. Accordingly, the criminal prohibitions applicable to other individuals who are covered by the prohibitions in sections 602 and 607 of title 18, remain unchanged.

Amendments to other laws

Section 901(d) of the bill is a conforming amendment which amends section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d), relating to the appointment of Federal voting examiners, by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity", and inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

Section 901(e) is a conforming amendment which amends sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public

Education Act, relating to the employment of officers and educational employees of Federal City College and the Washington Technical Institute, by striking out "sections 7324 through 7327 of title 5" and inserting in lieu thereof "section 7325 of title 5".

Section 901 (f) amends sections 8332(k) (1), relating to civil service retirement coverage, section 8706(e), relating to civil service life insurance coverage, and section 8906(e) (2), relating to civil service health insurance coverage, by inserting a reference to leave without pay granted under section 7326 (b) of title 5, as amended by this bill, in each of those sections. The effect of these amendments is to permit an employee who is a candidate and who is granted leave without pay under section 7326 (b) of title 5, as amended by the bill, to elect, within 60 days after entering on leave without pay, to continue under the civil service retirement, life insurance, or health insurance programs.

An employee who elects to continue in one or more of those programs is required to arrange through his employing agency to pay currently into the appropriate fund an amount equal to the employee and the agency contributions. An employee who so elects may continue in a program for as long as that employee remains in a leave without pay status. With regard to retirement benefits, failure of an employee to make the required election precludes the period spent on leave without pay from being included as creditable service for retirement purposes. With regard to health and life insurance benefits, the failure of an employee to make an election will result in termination of coverage under those respective programs only if the employee continues on leave without pay for longer than 12 months. The provisions of subsection (d) of section 901 relating to retirement, health insurance, and retirement coverage, accord identical treatment to employees who enter on leave without pay for purposes of engaging in candidacy for elective office as is presently accorded to employees who enter on leave without pay to serve as officers of employee organizations.

State and local employees' political activities

Section 902 (a) amends section 1502 of title 5, United States Code, relating to political activities of certain State and local government employees, by striking out paragraph (3) of such section which prohibits State and local employees from running as candidates for elective office. The effect of this amendment is to permit State and local employees to be candidates for such offices. This is consistent with the provisions applicable to Federal employees pursuant to the amendments made by section 901 of the bill. It should be noted that this amendment pertains only to restrictions on political activities imposed by Federal law. State laws and local laws relating to political activities made by State and local employees are unaffected.

Section 902 (b) makes necessary conforming amendments by striking out section 1502 (c) of title 5, repealing section 1503 of title 5, and amending the section analysis for chapter 15 of title 5 appropriately.

Section 903 of the bill provides for the effective date of the bill, and sets forth certain savings and transition provisions.

Subsection (a) of section 3 provides that the act shall become effective 120 days after the date of enactment. The authority for the Com-

mission to prescribe regulations granted under section 7328 is effective on the date of enactment.

Subsection (b) of section 903 is a savings provision which provides that any repeal or amendment made by the act shall not release or extinguish any penalty, forfeiture, or liability incurred prior to the effective date, and that existing provisions of law shall be treated as remaining in force for the purpose of sustaining any proper proceeding or action for the enforcement of any penalty, forfeiture, or liability.

Subsection (c) of section 903 is a transition provision which governs proceedings initiated under existing law which may be pending on or before the effective date of the act. It provides that if charges were filed on or before the effective date of the act, the proceeding shall be completed under the provisions of existing law and orders shall be issued and appeals shall be taken therefrom as if the act had not been enacted. The committee intends that the term charges means formal charges filed, under existing law, by the Commission's general counsel (or other appropriate officials with respect to excepted service employees) pursuant to the procedures set forth in part 733 of title 5, Code of Federal Regulations.

Study concerning political participation by Federal employees

Section 904 of the bill requires the Office of Personnel Management to study and review the effect of the amendments made by new title IX on (1) the level of participation by Federal employees in activities relating to Federal, State, and local elections; (2) the merit system particularly the hiring, termination, or advancement of Federal employees; and (3) matters generally affecting and contributing to the improper use of official influence or official information by Federal employees as prohibited under subchapter III of chapter 73 of title 5, United States Code (as amended by this title).

The Office is required to report to the Congress not later than March 31, 1980, and March 31, 1982, the results of the study and review and any findings therefrom together with such legislative or administrative recommendations as the Office considers appropriate.

TITLE X

BASIC WORKWEEK OF FIREFIGHTERS

Subsection (a) of section 1001 of the bill amends chapter 61 of title 5, United States Code, relating to hours of work, by inserting a new section 6102, entitled "Basic workweek of firefighters".

Subsection (a) of the new section 6102 provides that the regularly scheduled administrative workweek of each firefighter shall be an average of 56 hours per week, computed on the basis of a period of 21 consecutive days. The term "regularly scheduled administrative workweek" is not defined in title 5 of the United States Code. However, the term is defined in section 610.102 of the Civil Service Commission's regulations as meaning the period within an administrative workweek within which an employee is required to be on duty regularly. Thus, the regularly scheduled administrative workweek consists of the employee's basic hours of duty plus all hours of overtime work which are regularly required. Under existing law, the regularly

scheduled administrative workweek of most Federal firefighters consists of 72 hours. Under the new section 6102(a), the regularly scheduled administrative workweek of firefighters may not exceed an average of 56 hours over any period of 21 consecutive days. This means that overtime work in excess of the average 56 hours may not be regularly scheduled.

The bill prescribes a 56-hour workweek rather than the 54-hour non-overtime tour of duty established under section 6(c)(1) of the Fair Labor Standards Amendments of 1974, because the 56-hour workweek easily accommodates a "24-on-48-off" work schedule which appears to be the most practical.

Section 6102(a) further provides that the duration and frequency of work shifts occurring within a period of 21 consecutive days shall be determined under regulations to be prescribed by the Office of Personnel Management.

Definition on "firefighter"

Subsection (b) of the new section 6102 defines the term "firefighter" for purposes of the new section. The term "firefighter" means an employee in an Executive agency (as defined in 5 U.S.C. 105), the duties of whose position are primarily to perform or to supervise work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. However, the term "firefighter" does not include any employee who has a regularly scheduled administrative workweek of 40 hours established under section 6101(a)(2)(A) of title 5.

The primary purpose of this bill is to reduce the average workweek of Federal firefighters. Approximately 90 percent of Federal civilian firefighters are employed by the Department of Defense, and almost all of them have a 72-hour weekly tour of duty. However, there are other Federal firefighters (particularly in the Forest Service) who have a 40-hour workweek. Obviously, the primary intent of this legislation would not be served by extending application of the 56-hour workweek to these employees. Accordingly, the provisions of the new section 6102(a) will not apply to employees who have a regularly scheduled administrative workweek of 40 hours.

Premium pay for firefighters

Subsection (b)(1) of section 1001 of the bill amends section 5545 of title 5 by adding a new subsection (e) at the end thereof. Paragraph (1) of the new subsection (e) provides that each firefighter (as defined in the new section 6102(b) of title 5) with a regularly scheduled administrative workweek established under section 6102(a) of title 5, as added by subsection (a) of section 1001, shall be entitled to premium pay equal to 25 percent of his annual rate of basic pay or 25 percent of the minimum rate of basic pay for GS-10, whichever is less. This 25 percent premium pay for the average 56-hour regularly scheduled administrative workweek is in lieu of all other premium pay authorized under the provisions of subchapter V of chapter 55 of title 5, other than premium pay authorized in paragraph (2) of the new subsection (e), discussed below.

Presently, most Federal firefighters are eligible for premium pay under section 5545(c)(1) of title 5. That section, generally, authorizes

payment of premium pay, not in excess of 25 percent, to an employee who regularly is required to remain at his duty station during longer than ordinary periods of duty, a substantial part of which period consists of remaining in a standby status, rather than performing work. The authority to fix the rates of premium pay (up to 25 percent) under section 5545(c)(1) rests with the Civil Service Commission. Federal firefighters who have a 72-hour tour of duty are authorized to be paid the maximum percentage (25 percent) of premium pay. (See section 550.144 of the Civil Service Commission's regulations.)

Under this amendment to section 5545, and the amendment to section 5545(c)(1) discussed below, those Federal firefighters whose workweeks are established under the new section 6102(a) will be entitled to 25 percent annual premium pay under the provisions of the new section 5545(e), rather than premium pay under the existing provisions of section 5545(c)(1). Thus, most firefighters will continue to receive 25 percent annual premium pay, notwithstanding the reduction in their weekly tours of duty from 72 to 56 hours.

Paragraph (2) of the new subsection (e) of section 5545 provides that all officially ordered or approved hours of work which are in excess of the regularly scheduled administrative workweek established under section 6102(a) of title 5 (the average 56-hour workweek) constitute overtime work and shall be paid for in accordance with the rates specified in section 5542 of title 5. Since the regularly scheduled administrative workweek established under section 6102(a) may not exceed an average of 56 hours, any work in excess of the average 56 hours will have to be limited to irregular, occasional overtime and paid for in accordance with the overtime rates specified in section 5542.

The overtime pay provisions of the new subsection (e) of section 5545 are not intended to supersede the overtime provisions of the Fair Labor Standards Amendments of 1974 (20 U.S.C. 207 (k)). Since the FLSA now requires payment of overtime for all hours in excess of 54 per week, Federal firefighters who have a regularly scheduled administrative workweek of 56 hours will be entitled to payment for 2 hours of overtime under the FLSA.

Conforming amendments

Paragraphs (2), (3), and (4) of subsection (b) of section 1001 of the bill consist of conforming amendments to other provisions of title 5, which necessitated by the addition of the new section 5545(e).

Paragraph (2) amends section 5545(c)(1) to make clear that firefighters who are entitled to premium pay under the new section 5545(e) are exempt from the premium pay provisions of section 5545(c)(1).

Paragraph (3) amends section 5547 of title 5, which prescribes a limitation on the total amount of premium pay payable to an employee for any pay period, to include therein a reference to the new section 5545(e).

Paragraph (4) amends section 5595(e), relating to severance pay, section 8114(e), relating to compensation for work related injuries, section 8331(3)(C), relating to civil service retirement benefits, and section 8704(c), relating to Federal employees group life insurance, so

that premium under section 5545(e)(1) will be included as part of the employee's pay for purposes of these various benefits.

Effective date

Section 1002 of the bill provides that the amendments made by section 1001 shall take effect at the beginning of the first applicable pay period which begins at least 60 days after the date of the enactment of the act.

TITLE XI

MISCELLANEOUS

Decentralization of Government study

Section 1101 provides that the Director of Personnel Management shall, as soon as practicable after the enactment of this legislation, undertake a study of the decentralization of Government functions.

The study shall include a review of geographical distribution of Government functions and a review of the possibility of redistribution of functions now concentrated in the District of Columbia.

The report of the Director shall be presented to the President and the Congress within 1 year.

Savings provisions

Section 1102(a) provides that all Executive orders, rules, and regulations affecting the Federal service shall continue in effect until modified, terminated, or superceded in accordance with the terms of this legislation and other lawful authority.

Section 1102(b) preserves any administrative proceeding pending at the time the provisions of this legislation take effect.

Section 1102(c) preserves the status of any lawsuit in progress at the time of the effective date of the provisions of this legislation.

Authorization of appropriations

Section 1103 authorizes appropriations to carry out the provisions of this legislation.

Powers of the President

Section 1104 preserves any authority of the President except as specifically provided otherwise by the provisions of this legislation.

Technical amendments

Section 1105 provides technical and conforming amendments, principally by inserting the words Director or Director of the Office of Personnel Management, and Office of Personnel Management for the current terms Chairman, Chairman of the Civil Service Commission, and Commission or Civil Service Commission in current law.

Section 1105(o) provides that further technical and conforming amendments shall be prepared by the President or his designee and submitted to the Congress for consideration within 30 days following the enactment of this legislation.

Effective date

Section 1106 provides that, except as otherwise provided in this legislation, this legislation shall take effect 90 days following enactment.

COST

The committee has reviewed the cost estimate furnished by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974 and adopts that estimate as the cost estimate of the committee for the purpose of clause 7 of House rule XIII. The cost estimate prepared by the Congressional Budget Office is set forth below:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 31, 1978.

HON. ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, 309 Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 11280, the Civil Service Reform Act of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director.)

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JULY 31, 1978.

1. Bill number: H.R. 11280.
2. Bill title: Civil Service Reform Act of 1978.
3. Bill status: As ordered reported by the House Committee on Post Office and Civil Service, July 19, 1978.
4. Bill purpose: The purpose of this legislation is to reorganize the Federal personnel system. The Civil Service Commission would be divided into two agencies—the Office of Personnel Management and the Merit Systems Protection Board. New procedures are set forth for performance appraisal, reward, and removal of employees, and the bill establishes the merit pay system and, on an experimental basis, the Senior Executive Service. The bill also revises the "Hatch Act" and working hours of Federal firefighters.
5. Cost estimate:

(In millions of dollars)

| | Fiscal year— | | | | |
|-----------------------------------|--------------|-------------|--------------|--------------|--------------|
| | 1979 | 1980 | 1981 | 1982 | 1983 |
| Title II..... | 4.6 | 5.1 | 5.4 | 5.8 | 6.1 |
| Title III..... | -9.7 | -10.4 | -11.2 | -11.9 | -12.7 |
| Title IV..... | 13.0 | 14.4 | 15.3 | 5.6 | .5 |
| Title VI..... | 3.1 | 3.4 | 3.8 | 3.9 | 3.9 |
| Title VII..... | .3 | .5 | .6 | .6 | .7 |
| Title VIII..... | 8.5 | 39.0 | 72.8 | 109.1 | 148.0 |
| Title X..... | 20.2 | 28.2 | 32.0 | 35.1 | 36.9 |
| Other administrative costs..... | 2.0 | .4 | .4 | .5 | .5 |
| Total estimated costs..... | 42.0 | 80.6 | 119.1 | 148.7 | 183.9 |

This estimate does not include the potential costs of the early retirement provisions of section 308, and the unlimited accrual of leave permitted by section 410. These costs, which could be substantial, cannot be estimated at the present time. In addition, the net cost of the retraining program authorized in section 306 (including potential savings in severance pay) could not be estimated in the time available.

6. Basis of estimate: For the purpose of this cost estimate, it is assumed that this bill will be enacted on or about October 1, 1978. All costs have been adjusted for inflation in future years based on CBO economic assumptions. All sections of the bill with a significant cost impact are discussed below.

Section 201: Office of Personnel Management

This section defines the functions of the OPM, and establishes the positions of director, deputy director, and associate directors.

Estimated costs—OPM:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$0.5 |
| 1980 ----- | .7 |
| 1981 ----- | .8 |
| 1982 ----- | .8 |
| 1983 ----- | .9 |

It has been assumed that additional costs will be incurred only for the director, deputy director, and five associate directors, at the authorized salary levels, along with clerical support for each. All other employees of the OPM are assumed to come from the Civil Service Commission (CSC), and the cost of the functions they perform at the OPM would be the same as if performed by the CSC.

Section 202: Merit Systems Protection Board and Special Counsel

The MSPB, to be composed of three members, a special counsel, and such other employees as deemed necessary, is to be responsible for the investigation, hearing or adjudication of adverse or prohibited personnel actions, for conducting studies relating to the civil service and other merit systems, and for establishing rules and regulations pertaining to its activities.

Estimated costs—MPSB:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$0.4 |
| 1980 ----- | .5 |
| 1981 ----- | .5 |
| 1982 ----- | .6 |
| 1983 ----- | .6 |

The estimated costs for this section are comprised of the difference between the specifically authorized salaries for the members and officers of the CSC and the MSPB. In addition, based on estimates supplied by the CSC, costs for 25 additional persons at an average fiscal year 1978 salary of \$17,500 have been added for investigation of complaints regarding prohibited personnel actions and possible cases of violations of law or mismanagement based on information obtained by employee disclosures. All other personnel are assumed to come from the CSC.

Section 203: Performance appraisal

Each agency is responsible for developing performance policies and regulations for periodic appraisal of job performance of employees. Based on CSC data, it is estimated that costs will be \$3.4 million in aggregate in 1979. It is projected that the administration of the merit pay plan will continue to be an integral part of personnel operations, with costs increasing to \$4.2 million in fiscal year 1983.

Estimated costs—performance appraisal:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$3.4 |
| 1980 ----- | 3.6 |
| 1981 ----- | 3.8 |
| 1982 ----- | 4.0 |
| 1983 ----- | 4.2 |

Section 205: Appeals

The MSPB may require an agency to pay attorney fees incurred by an employee in cases where the Board determines that the agency acted in bad faith, and at all times when the employee is the prevailing party and the decision is based on finding of discrimination. Based on an estimated annual caseload of 4,900, it is projected that there will be approximately 100 cases each year in which the employee prevails and it is also determined that the agency acted in bad faith, and that each year approximately 300 cases of discrimination will result in the employee prevailing. Assuming a cost of \$750 per case (at 1979 cost levels), the estimated costs for payment of attorney fees are as follows:

Estimated costs—Attorney fees

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$0.3 |
| 1980 ----- | .3 |
| 1981 ----- | .3 |
| 1982 ----- | .4 |
| 1983 ----- | .5 |

While this section makes other procedural or definitional changes affecting the appeals process, these are not expected to have a significant cost impact.

Section 301: Volunteer services

This section provides a general authorization to agencies to accept voluntary services performed by students. The volunteers are not to be considered federal employees except for purposes relating to injury compensation and tort claims. Although the government could incur some costs as a result of claims by volunteers, no additional costs of this kind have been included in this estimate.

Section 306: Training

Under this section, federal employees who face separation from an agency and would otherwise be entitled to severance pay would be eligible to be trained for jobs in other agencies. It is likely that training costs would increase as a result of this provision; however, many of these employees would have been eligible for severance pay or unemployment compensation. It is not possible at this time to estimate the net cost or savings that may result from this provision.

Section 308: Retirement

The section allows early retirement for employees whose agencies are undergoing a major reorganization, reduction-in-force, or transfer of function. The total number of eligible employees, as well as the number of those who would elect early retirement, cannot be estimated at this time. However, the potential cost of this provision could be significant.

Section 311: Dual pay for retired members of the uniformed services

This section establishes a new limitation on the salary of retired officers of the armed forces at the rate of pay for level V, currently \$47,500.

Based on personnel data as of June 30, 1975, this provision is estimated to produce a savings of approximately \$9.2 million at fiscal year 1978 salary levels, increasing as the basic federal salaries increase over the projection period.

Estimated savings:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$9.7 |
| 1980 ----- | 10.4 |
| 1981 ----- | 11.2 |
| 1982 ----- | 11.9 |
| 1983 ----- | 12.7 |

Title IV: Senior Executive Service

Title IV, assumed to be implemented on or about January 1, 1979, is to remain in effect until early in 1982 and to be applied to only three agencies. Therefore, the costs shown below for section 403, 405, 406, 407, 409, and 410 reflect only 50 percent of the cost of implementing the provision of title IV in all agencies. These costs could vary substantially, depending on which three agencies are chosen.

Section 403: Examination, certification, and appointment

This section establishes the procedures and requirements for appointment of personnel in the Senior Executive Service (SES). It provides for skill development programs and authorizes up to 11 months leave with pay, plus travel and per diem expenses for training of eligible persons.

Estimated cost—Personnel development:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$1.4 |
| 1980 ----- | 1.9 |
| 1981 ----- | 2.0 |
| 1982 ----- | .7 |
| 1983 ----- | |

Based on information from the CSC, it is assumed that approximately 25 to 30 persons would take the 11 month sabbatical at an average cost of \$50,000 per employee. An additional \$0.5 million is assumed to be spent by the OPM for setting up training programs and establishing the requirements and procedures for SES personnel.

Section 405: Performance rating

Agencies are required to develop senior executive service performance appraisal systems. Costs for developing criteria and ratings for executive performance appraisal have been included in the costs shown for Section 203.

Section 406: Awarding of ranks

It is estimated that approximately 4,600 federal employees will be eligible for the Senior Executive Service (SES) in fiscal year 1979, and that the number of eligible employees, as well as the amount of the stipend, will remain stable throughout the projection period. It is assumed that the maximum of 5 percent of the SES will be designated as meritorious executives each year, and will receive the maximum payment of \$2,500. It is also assumed that the specified maximum of 1 percent of the SES members will be appointed as distinguished executives, which offers a stipend of \$5,000. Estimated costs for these awards are shown below :

Estimated cost—Incentive awards :

| Fiscal year : | <i>Millions</i> |
|---------------|-----------------|
| 1979 ----- | \$0.8 |
| 1980 ----- | .8 |
| 1981 ----- | .8 |
| 1982 ----- | .2 |
| 1983 ----- | |

Section 407: Pay rates and systems

Each member of the SES will receive a base rate of pay not less than the minimum rate for GS-16 of the general schedule (now \$42,423) and not higher than the rate for level IV of the executive schedule (now \$50,000). In addition, up to 50 percent of the executives in an agency may receive performance awards not to exceed 20 percent of the executive's rate of base pay. It is estimated that when fully operational, approximately 2,000 merit pay awards at an average size of \$5,600 will be distributed in fiscal year 1979, with the average size increasing with inflation. The costs of these merit awards would increase if the size of the SES or the average award size were to increase.

The increased cost of merit pay awards will be partially offset by the elimination of the present system of step increases. Assuming that the present \$47,500 pay ceiling is increased with annual comparability adjustments after fiscal year 1979, the estimated savings in normal step increases will be approximately \$0.5 million per year. (If the ceiling were totally removed, this offset would be substantially larger).

As a result of these performance awards, the unfunded liability of the Civil Service Retirement and Disability Fund will increase. The impact of this provision has been estimated based on CSC projections and the following assumptions: an average of 2,000 SES members receiving performance awards each year; an average salary at retirement of \$50,000; the typical executive receiving five performance awards during his career; annuities calculated at 2½ percent of the average employee's three highest years' salaries; and the present value of the added benefits at the time of retirement equal to 12 times the added benefit. The estimated increase in the unfunded liability will be

\$30 million with annual installments derived from annuity tables equal to \$2 million annually.

Estimated net costs:

Performance awards:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$10.7 |
| 1980 ----- | 11.5 |
| 1981 ----- | 12.3 |
| 1982 ----- | 4.4 |
| 1983 ----- | --- |

Retirement costs:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | 0.1 |
| 1980 ----- | 0.1 |
| 1981 ----- | 0.3 |
| 1982 ----- | 0.3 |
| 1983 ----- | 0.5 |

Section 409: Travel, transportation and subsistence

This section authorizes the payment of travel expenses for potential SES candidates who interview with the Federal Government.

Estimated cost—Travel:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$0.1 |
| 1980 ----- | 0.1 |
| 1981 ----- | 0.1 |
| 1982 ----- | --- |
| 1983 ----- | --- |

Based on information obtained from the CSC, it is assumed that travel expenses will be approximately \$70,000 a year (at 1979 cost levels).

Section 410: Leave

This section would remove the current limit of six weeks annual leave carryover for SES personnel, allowing them to accumulate as much leave as they wish. Even though this could result in significant increases in costs when employees leave the federal government, it is not possible to estimate how much additional leave would be accrued.

Section 501: Merit pay

This section establishes a merit pay system for federal employees in grades 13 through 15 of the general schedule, effective October 1, 1981. Within-grade salary increases will be replaced by merit increases, which will be awarded only in recognition of superior performance. The bill specifies that the amount of money available for merit pay will be determined by the OPM, and set so as to equal those estimated amounts which are not being paid through regular step increases. It is assumed, based on CSC data, that the net effect of these changes is neither an increase nor decrease in total personnel compensation, but rather a redistribution of these resources.

Section 601: Research and demonstration projects

Section 601 establishes a program to encourage research and demonstration projects in the area of personnel and public management. It is estimated that approximately four to eight projects, costing approximately \$100,000 to \$300,000 each, will be required to develop these new theories and approaches to personnel management problems.

Estimated cost—Research :

| Fiscal year : | Millions |
|---------------|----------|
| 1979 ----- | \$0.8 |
| 1980 ----- | 1.0 |
| 1981 ----- | 1.2 |
| 1982 ----- | 1.2 |
| 1983 ----- | 1.0 |

Section 603: Amendments to the mobility program

This section authorizes the Federal Government to make up any differences in salary when a Federal employee is assigned to a state or local government, or a State or local employee is assigned to the Federal Government.

Estimated cost—mobility program :

| Fiscal year : | Millions |
|---------------|----------|
| 1979 ----- | \$2.3 |
| 1980 ----- | 2.8 |
| 1981 ----- | 2.6 |
| 1982 ----- | 2.7 |
| 1983 ----- | 2.9 |

There are currently approximately 1,100 people in the mobility program, divided fairly evenly between Federal and State and local employees. The Federal employees would receive approximately \$3,000 from the Federal Government per year in salary as a result of this section, since state and local salaries are generally lower than Federal. Although travel costs are already paid, this pay comparability provision is expected to stimulate the transfer of employees, thereby increasing travel costs, estimated to be approximately \$1,500 per person.

Section 701: Labor-management relations

Under this section, the Federal Labor Relations Authority and an Office of the General Counsel would be established in order to formulate and implement management policies in the field of management-labor relations. The estimated costs for this section are comprised of salaries specifically authorized for the chairman and two members, plus support staff, as well as four technical consultants. This is in addition to existing staff transferred from other agencies to this function. The estimated costs are as follows:

Estimated cost—Labor-management relations:

| Fiscal year : | Millions |
|---------------|----------|
| 1979 ----- | \$0.3 |
| 1980 ----- | .5 |
| 1981 ----- | .6 |
| 1982 ----- | .6 |
| 1983 ----- | .7 |

Section 801: Grade and pay retention

This section of the bill is intended to facilitate a potentially significant number of reclassifications and reductions in the numbers of Federal jobs without, insofar as possible, adversely affecting incumbent employees. The bill provides indefinite grade retention for an incumbent employee whose position is reduced in grade due to reclassification. An individual whose grade is reduced due to a reduction-in-force process is provided indefinite salary retention but receives only

50 percent of comparability pay increases. The provisions of the bill are retroactive to January 1, 1977, and are intended to facilitate reorganization proposals submitted by the President.

It is assumed that (1) individuals affected by downgrading under current law would not remain in the downgraded position for more than 2 years, and (2) employees affected by the grade retention and salary retention benefits of H.R. 11280 would continue to receive Federal benefits for at least 6 years. Since current law provides for 2 years of salary retention for most downgraded Federal employees and since the bill is retroactive to January 1, 1977, the budgetary impact of H.R. 11280 would first appear in January 1979. The critical variables in estimating the 5-year cost impact of H.R. 11280 are the number of individuals affected by the salary retention provisions and the average cost reduction resulting from downgrading or terminating a position. Data necessary for the determination of these variables were provided by the Civil Service Commission at the request of CBO.

Estimated costs:

| Fiscal year: | Millions |
|--------------|----------|
| 1979 ----- | \$8.5 |
| 1980 ----- | 39.0 |
| 1981 ----- | 72.8 |
| 1982 ----- | 109.1 |
| 1983 ----- | 148.0 |

Enactment of H.R. 11280 could eventually result in cost savings if a significant number of reclassifications and reductions occur. Such savings would be realized beyond the projection period of this estimate.

Section 1001: Basic workweek of firefighters

The purpose of this section is to reduce the basic workweek of Federal firefighters. It establishes a 56-hour average workweek for firefighters within 60 days of enactment, and directs that firefighters be paid their basic pay (based on 56 hours) plus premium pay for standby duty at 25 percent of their basic pay. For any additional work over 56 hours firefighters will be paid according to present civil service regulations regarding overtime pay.

[In millions of dollars]

| | Fiscal year— | | | | |
|--|--------------|-------|-------|-------|-------|
| | 1979 | 1980 | 1981 | 1982 | 1983 |
| Estimated cost (new firefighters)..... | 30.5 | 41.8 | 47.0 | 51.6 | 55.1 |
| Estimated salary reduction (current firefighters)..... | -10.3 | -13.6 | -15.0 | -16.5 | -18.2 |
| Net cost..... | 20.2 | 28.2 | 32.0 | 35.1 | 36.9 |

Generally, firefighters work a regularly scheduled administrative workweek of 72 hours. For this tour of duty, they receive a basic rate of pay and premium pay calculated as 25 percent of basic pay. In addition, under the Fair Labor Standards Act of 1975 (FLSA), firefighters are also entitled to overtime compensation for all hours over 54 per week. A decision made by the Comptroller General states that

firefighters should be compensated for this overtime at one-half their regular rate of pay, since they have already been paid the regular overtime rate according to civil service regulations. Presently, there are approximately 11,559 civilian firefighters employed by the federal government. The Department of Defense employs approximately 90 percent of these firefighters, and the remainder are employed at various federal installations. This section does not affect firefighters who are presently working a 40-hour week. It is estimated that 7,714 firefighters will be directly affected by this section. For this estimate, it was assumed that the federal agencies will retain the present level of fire protection. Because of the reduction in average work hours of current firefighters will have to be hired to maintain this level of service. Based on the reduction of hours covered by current firefighters, approximately 2,200 additional firefighters will have to be hired. (Current civilian manpower ceiling projections do not allow for these additional personnel; consequently an increase in the ceiling would be necessary.) Costs associated with this increase in personnel include salaries, benefits payments and administrative overhead. These costs are somewhat mitigated by the reduction in pay to current firefighters due to the reduction in hours. (Costs in fiscal year 1979 reflect the assumption that the bill will be enacted on October 1, and therefore will be in effect for ten months of the year.) Costs are projected to increase in future years due to inflation and expected grade increases of new firefighters.

Other costs

There are a number of sections of this legislation which authorize require the development of rules and regulations, require the submission of various new reports, and require personnel studies but for which no specific costs have been attributed. It has been assumed that these new requirements will cost an additional \$1 million in the first year. Regulation development costs are expected to decrease over the projection period, and reporting costs to remain constant. The actual physical moving costs resulting from the reorganization have been estimated to be \$1 million in fiscal year 1979.

Estimated costs—General :

| Fiscal year : | Millions |
|---------------|----------|
| 1979 ----- | \$2.0 |
| 1980 ----- | 0.4 |
| 1981 ----- | 0.4 |
| 1982 ----- | 0.5 |
| 1983 ----- | 0.5 |

7. Estimate comparison : None.

8. Previous CBO estimate : CBO has prepared a number of cost estimates for bills containing provisions similar to or the same as those in H.R. 11280. These bills include the following: S. 2640, the Civil Service Reform Act of 1978, as reported by the Senate Committee on Governmental Affairs (estimate dated July 11, 1978); H.R. 9279, as ordered reported with amendments by the House Committee on Post Office and Civil Service (estimate dated April 10, 1978); H.R. 10, as reported by the House Committee on Post Office and Civil Service (estimate dated March 10, 1977); and H.R. 3161, as ordered reported by the Senate Committee on Governmental Affairs (estimate dated May 11, 1978).

The estimates for H.R. 9279, H.R. 10, and H.R. 3161 are incorporated without significant change in this estimate for titles VIII, IX, and X respectively. The costs of the remaining titles of the bill are similar to those of S. 2640, except for reductions resulting from the limited, experimental nature of the Senior Executive Service, and from the limitation on the total amount of dual compensation that can be paid to federal employees.

9. Estimate prepared by: Mary Maginniss, Kathy Weiss, Mark Berkman, and Dave Delquadro.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

OVERSIGHT

Under the rules of the House, the Committee on Post Office and Civil Service is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of its hearings and investigations, the committee concluded that there is ample justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause (2)(1)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 11280 will have no inflationary impact on the national economy.

PRESIDENT'S MESSAGE

Set forth below is the President's message on civil service reform which was transmitted to the Congress on March 2, 1978.

MARCH 2, 1978.

THE WHITE HOUSE

To the Congress of the United States:

I am transmitting to the Congress today a comprehensive program to reform the Federal Civil Service system. My proposals are intended to increase the government's efficiency by placing new emphasis on the quality of performance of Federal workers. At the same time, my recommendations will ensure that employees and the public are protected against political abuse of the system.

Nearly a century has passed since enactment of the first Civil Service Act—the Pendleton Act of 1883. That Act established the U.S. Civil Service Commission and the merit system it administers. These institutions have served our Nation well in fostering development of a Federal work force which is basically honest, competent, and dedicated to constitutional ideals and the public interest.

But the system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse

of legitimate employee rights, and mires every personnel action in red tape, delay and confusion.

Civil service reform will be the centerpiece of government reorganization during my term in office.

I have seen at first hand the frustration among those who work within the bureaucracy. No one is more concerned at the inability of government to deliver on its promises than the worker who is trying to do a good job.

Most civil service employees perform with spirit and integrity. Nevertheless, there is still widespread criticism of Federal Government performance. The public suspects that there are too many government workers, that they are underworked, overpaid, and insulated from the consequences of incompetence.

Such sweeping criticisms are unfair to dedicated Federal workers who are conscientiously trying to do their best, but we have to recognize that the only way to restore public confidence in the vast majority who work well is to deal effectively and firmly with the few who do not.

For the past 7 months, a task force of more than 100 career civil servants has analyzed the Civil Service explored its weaknesses and strengths and suggested how it can be improved.

The objectives of the Civil Service reform proposals I am transmitting today are:

- To strengthen the protection of legitimate employee rights;
- To provide incentives and opportunities for managers to improve the efficiency and responsiveness of the Federal Government;
- To reduce the red tape and costly delay in the present personnel system;
- To promote equal employment opportunity;
- To improve labor-management relations.

My specific proposals are these:

1. Replacing the Civil Service Commission with an Office of Personnel Management and a Merit Protection Board

Originally established to conduct Civil Service examinations, the Civil Service Commission has, over the years, assumed additional and inherently conflicting responsibilities. It serves simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy. It is a manager, rulemaker, prosecutor and judge. Consequently, none of these jobs are being done as effectively as they should be.

Acting under my existing reorganization authority, I propose to correct the inherent conflict of interest within the Civil Service Commission by abolishing the Commission and replacing it with a Merit Protection Board and Office of Personnel Management.

The Office of Personnel Management will be the center for personnel administration (including examination, training, and administration of pay and benefits); it will not have any prosecutorial or adjudicative powers against individuals. Its Director will be appointed by the President and confirmed by the Senate. The Director will be the government's management spokesman on Federal employee labor

relations and will coordinate Federal personnel matters, except for Presidential appointments.

The Merit Protection Board will be the adjudicatory arm of the new personnel system. It will be headed by a bipartisan board of three members, appointed for 7 years, serving non-renewable overlapping terms, and removable only for cause. This structure will guarantee independent and impartial protection to employees. I also propose to create a Special Counsel to the Board, appointed by the President and confirmed by the Senate, who will investigate and prosecute political abuses and merit system violations. This will help safeguard the rights of Federal employees who "blow the whistle" on violations of laws or regulations by other employees, including their supervisors.

In addition, these proposals will write into law for the first time the fundamental principles of the merit system and enumerate prohibited personnel practices.

2. *A senior executive service*

A critical factor in determining whether Federal programs succeed or fail is the ability of the senior managers who run them. Throughout the executive branch, these 9,200 top administrators carry responsibilities that are often more challenging than comparable work in private industry. But under the civil service system, they lack the incentives for first-rate performance that managers in private industry have. The civil service system treats top managers just like the 2.1 million employees whose activities they direct. They are equally insulated from the risks of poor performance, and equally deprived of tangible rewards for excellence.

To help solve these problems I am proposing legislation to create a Senior Executive Service affecting managers in grades GS-16 through non-Presidentially appointed Executive Level IV or its equivalent. It would allow:

Transfer of executives among senior positions on the basis of government need;

Authority for agency heads to adjust salaries within a range set by law with the result that top managers would no longer receive automatic pay increases based on longevity;

Annual performance reviews, with inadequate performance resulting in removal from the Senior Executive Service (back to GS-15) without any right of appeal to the Merit Protection Board.

Agency heads would be authorized to distribute bonuses for superior performance to not more than 50 percent of the senior executives each year. These would be allocated according to criteria prescribed by the Office of Personnel Management, and should average less than 5 percent of base salary per year. They would not constitute an increase in salary but rather a one-time payment. The Office of Personnel Management also would be empowered to award an additional stipend directly to a select group of senior executives, approximately 5 percent of the total of the Senior Executive Service, who have especially distinguished themselves in their work. The total of base salary, bonus, and honorary stipend should in no case exceed 95 percent of the salary level for an Executive Level II position.

No one now serving in the "supergrade" managerial positions would be required to join the Senior Executive Service. But all would have the opportunity to join. And the current percentage of non-career supergrade managers—approximately 10 percent—would be written into law for the first time, so that the Office of Personnel Management would not retain the existing authority of the Civil Service Commission to expand the proportion of political appointees.

This new Senior Executive Service will provide a highly qualified corps of top managers with strong incentives and opportunities to improve the management of the Federal Government.

3. Incentive pay for lower level Federal managers and supervisors

The current Federal pay system provides virtually automatic "step" pay increases as well as further increases to keep Federal salaries comparable to those in private business. This may be appropriate for most Federal employees, but performance—not merely endurance—should determine the compensation of Federal managers and supervisors. I am proposing legislation to let the Office of Personnel Management establish an incentive pay system for government managers, starting with those in grades GS-13 through GS-15. Approximately 72,000 managers and supervisors would be affected by such a system which could later be extended by Congress to other managers and supervisors.

These managers and supervisors would no longer receive automatic "step" increases in pay and would receive only 50 percent of their annual comparability pay increase. They would, however, be eligible for "performance" pay increases of up to 12 percent of their existing salary. Such a change would not increase payroll costs, and it should be insulated against improprieties through the use of strong audit and performance reviews by the Office of Personnel Management.

4. A fairer and speedier disciplinary system

The simple concept of a "merit system" has grown into a tangled web of complicated rules and regulations.

Managers are weakened in their ability to reward the best and most talented people—and to fire those few who are unwilling to work.

The sad fact is that it is easier to promote and transfer incompetent employees than to get rid of them.

It may take as long as three years merely to fire someone for just cause, and at the same time the protection of legitimate rights is a costly and time-consuming process for the employee.

A speedier and fairer disciplinary system will create a climate in which managers may discharge nonperforming employees—using due process—with reasonable assurance that their judgment, if valid, will prevail.

At the same time, employees will receive a more rapid hearing for their grievances.

The procedures that exist to protect employee rights are absolutely essential.

But employee appeals must now go through the Civil Service Commission, which has a built-in conflict of interest by serving simultaneously as rulemaker, prosecutor, judge, and employee advocate.

The legislation I am proposing today would give all competitive employees a statutory right of appeal. It would spell out fair and sen-

sible standards for the Merit Protection Board to apply in hearing appeals. Employees would be provided with attorneys' fees if they prevail and the agency's action were found to have been wholly without basis. Both employees and managers would have, for the first time, subpoena power to ensure witness participation and document submission. The subpoena power would expedite the appeals process, as would new provisions for prehearing discovery. One of the three existing appeal levels would be eliminated.

These changes would provide both employees and managers with speedier and fairer judgments on the appeal of disciplinary actions.

5. Improved labor-management relations

In 1962, President John F. Kennedy issued Executive Order 10988, establishing a labor-management relations program in the executive branch. The Executive order has demonstrated its value through five Administrations. However, I believe that the time has come to increase its effectiveness by abolishing the Federal Labor Relations Council created by Executive Order 10988 and transferring its functions, along with related functions of the Assistant Secretary of Labor for Labor Relations, to a newly established Federal Labor Relations Authority. The Authority will be composed of three full-time members appointed by the President with the advice and consent of the Senate.

I have also directed members of my administration to develop, as part of civil service reform, a Labor-Management Relations legislative proposal by working with the appropriate congressional committees, Federal employees and their representatives. The goal of this legislation will be to make executive branch labor relations more comparable to those of private business, while recognizing the special requirements of the Federal Government and the paramount public interest in the effective conduct of the public's business. This will facilitate civil service reform of the managerial and supervisory elements of the executive branch, free of union involvement, and, at the same time, improve the collective bargaining process as an integral part of the personnel system for Federal workers.

It will permit the establishment through collective bargaining of grievance and arbitration systems, the cost of which will be borne largely by the parties to the dispute. Such procedures will largely displace the multiple appeals systems which now exist and which are unanimously perceived as too costly, too cumbersome and ineffective.

6. Decentralized personnel decisionmaking

Examining candidates for jobs in the career service is now done almost exclusively by the Civil Service Commission, which now may take us as long as 6 or 8 months to fill important agency positions.

In addition, many routine personnel management actions must be submitted to the Civil Service Commission for prior approval. Much red tape and delay are generated by these requirements; the public benefits little, if at all. My legislative proposals would authorize the Office of Personnel Management to delegate personnel authority to departments and agencies.

The risk of abuse would be minimized by performance agreements between agencies and the Office of Personnel Management, by requirements for reporting, and by follow-up evaluations.

7. Changes in the veterans preference law

Granting preference in Federal employment to veterans of military service has long been an important and worthwhile national policy. It will remain our policy because of the debt we owe those who have served our Nation. It is especially essential for disabled veterans, and there should be no change in current law which would adversely affect them. But the Veterans Preference Act of 1944 also conferred a lifetime benefit upon the nondisabled veteran, far beyond anything provided by other veterans readjustment laws like the GI bill, the benefits of which are limited to 10 years following discharge from the service. Current law also severely limits agency ability to consider qualified applicants by forbidding consideration of all except the three highest-scoring applicants—the so-called rule of three. As a result of the 5-point lifetime preference and the “rule of three”, women, minorities and other qualified nonveteran candidates often face insuperable obstacles in their quest for Federal jobs.

Similarly, when a manager believes a program would benefit from fewer employees, the veterans preference provides an absolute lifetime benefit to veterans. In any reduction in force, all veterans may “bump” all nonveterans, even those with far greater seniority. Thus women and minorities who have recently acquired middle management positions are more likely to lose their jobs in any cutback.

Therefore I propose:

Limiting the 5-point veterans preference to the 10 year period following their discharge from the service, beginning 2 years after legislation is enacted;

Expanding the number of applicants who may be considered by a hiring agency from three to seven, unless the Office of Personnel Management should determine that another number or category ranking is more appropriate;

Eliminating the veterans preference for retired military officers of field grade rank or above and limiting its availability for other military personnel who have retired after at least 20 years in service to 3 years following their retirement;

Restricting the absolute preference now accorded veterans in reductions in force to their first 3 years of Federal employment, after which time they would be granted 5 extra years of seniority for purposes of determining their rights when reduction in force occurs.

These changes would focus the veterans preference more sharply to help disabled veterans and veterans of the Vietnam conflict. I have already proposed a 2-year extension of the Veterans Readjustment Appointment Authority to give these veterans easier entry into the Federal workforce; I support amendments to waive the educational limitation for disabled veterans and to extend Federal job openings for certain veterans in grades GS-5 to GS-7 under this authority. I propose that veterans with 50 percent or higher disability be eligible for non-competitive appointments.

These changes are intended to let the Federal Government meet the needs of the American people more effectively. At the same time, they would make the Federal work place a better environment for Federal

employees. I ask the Congress to act promptly on Civil Service Reform and the Reorganization Plan which I will shortly submit.

JIMMY CARTER.

THE WHITE HOUSE, *March 2, 1978.*

VIEWS OF THE COMPTROLLER GENERAL

Set forth below is the report of the Comptroller General of the United States on H.R. 11280.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 19, 1978.

B-40342.

FPC-78-85.

HON. ROBERT N. C. NIX,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: We are pleased to respond to your request for our comments on H.R. 11280, the Civil Service Reform Act of 1978.

As a preface to our comments, I believe you will agree that it is appropriate to recognize that as the role of the Federal government increases and affects more and more the lives of all citizens, it is inevitable that attention will be drawn to the level of competency of Federal employees, their compensation, incentives, and other conditions of their employment. Discussion of these issues has gone on for many years and intensified since the growth of the Federal government in the depression days of the 1930's and World War II. Civil Service reforms are necessary but that issue should not cloud the essential point that most civil service employees are able, highly motivated, and dedicated to their work.

We believe that the Civil Service system can be improved. During the past several years we have studied many of the issues with which H.R. 11280 is concerned. We have made a number of specific recommendations and have highlighted conflicting policies and objectives that needed to be addressed. These have included:

The conflicting roles of the Civil Service Commission as policy-maker, prosecutor, judge and employee protector; (June, 1977);

The need for simplifying the appeals systems; (February, 1977);

The adverse impact of veterans' preference on equal employment objectives; (September, 1977);

The need to improve performance appraisals and ratings; (March, 1978);

The need for more flexible hiring procedures; (July, 1974);

The need for a new salary system for federal executives; (February, 1977);

The need to relate pay to performance; (October 1975; March 1978); and

The need for an overall Federal retirement policy. (August, 1977)

H.R. 11280 attempts to deal with the above issues as well as others and we strongly support those objectives.

H.R. 11280 should be considered in conjunction with the proposed Reorganization Plan No. 2 of 1978. The Civil Service Commission (CSC) now serves simultaneously as the protector of employee rights and the promoter of efficient personnel management policy. The reorganization plan divides those two roles between two separate agencies, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM). H.R. 11280 would provide additional legislative authority for those two agencies.

The Reorganization Plan would also create a Federal Labor Relations Authority which would consolidate the third-party function in the Federal labor-management relations program by assuming the functions of the Federal Labor Relations Council and certain responsibilities of the Assistant Secretary of Labor for Labor-Management Relations. In addition, Reorganization Plan No. 1 of 1978, would transfer CSC's current equal employment opportunity and discrimination complaint authority to the Equal Employment Opportunity Commission (EEOC).

Office of Personnel Management

The Office of Personnel Management would be the primary agent advising the President and helping him carry out his responsibilities to manage the Federal work force. It would develop personnel policies, provide personnel leadership to agencies, and administer central personnel programs. It would be headed by a director and a deputy director, both appointed by the President and confirmed by the Senate.

We are aware of the concern which has been expressed that a single director of personnel, serving at the pleasure of the President and replacing a bipartisan commission, could be accused of partisan political motivations in actions which, by their very nature, are controversial. The argument is made that the Merit System Protection Board, important as its role would be, would not be in a position to influence substantially policies, rules and regulations, including positions on legislative matters, in the same manner as a bipartisan commission. On the other hand, a commission form of organization tends to be cumbersome and divides responsibility and accountability. It is of some interest to note that President Roosevelt's Committee on Administrative Management recommended in 1937 a single-headed director of personnel for the Federal Government. While this proposal was not adopted, the idea of a strong Director of Personnel Management has continued to be discussed and proposed and, in fact, has been extensively adopted at the State and local level. On balance, we favor the President's proposal and believe that this part of the reorganization plan should be adopted.

It should be pointed out, however, that under the plan and H.R. 11280 the Director of OPM would be concerned entirely with the civil service and would not have advisory or other responsibilities with respect to other personnel systems within the Federal Government. GAO has repeatedly pointed to the need for a stronger focal point within the executive branch to concern itself with consistent and common policies and procedures which are relevant to all or several of the personnel systems within the Government. This responsibility today is clouded by the lack of certainty with respect to the roles of the Civil Service Commission and the Office of Management and Budget.

To remedy this situation and to strengthen the case for the proposed pay level for the Director of OPM, we believe that the Director should have responsibility for advising, assisting and coordinating with the President with respect to common policies and practices in the personnel management area throughout the executive branch of the Federal Government. He could share the responsibility for pay systems with the Director of the OMB but it seems to us that the President and the Congress need a focal point which can address itself to the common problems and concerns. This responsibility could be dealt with in the legislation, either by developing a specific statutory charter for the Director of the OPM, or a strong statement of intent of the Congress could be developed, leaving to the President the development of a more detailed charter.

Merit Systems Protection Board (MSPB)

The MSPB would have three members appointed by the President for 7-year terms removable only for misconduct, inefficiency, neglect of duty, or malfeasance in office. Not more than two of the members could be from the same political party. One member would be designated Chairman and one member Vice-Chairman. A special Counsel would also be appointed for a 7-year term. The independence and authority of MSPB and its ability to protect the legitimate concerns of employees is the overriding factor on how much flexibility can be provided to managers.

We believe it would be desirable for MSPB to provide both the agencies and employees information on matters that have been resolved by MSPB. We also believe that the special studies to be conducted by MSPB and reported to the President and the Congress should be made available to the public.

Federal Labor Relations Authority

The reorganization plan would establish an independent Federal Labor Relations Authority to assume the third party functions currently fragmented among the Federal Labor Relations Council and Assistant Secretary of Labor for Labor Management Relations. The establishment of the Authority is intended to overcome the criticism of the structure and administration for the existing Federal labor relations program.

The Authority and the labor relations provisions are not now incorporated in the Reform bill. We understand that on April 25, 1978, the Administration informed the cognizant committees of Congress of the decision to incorporate further improvements in the labor relations program as part of the Civil Service reform legislative package.

The concept of an independent labor relations authority or board has been included in proposed legislation, introduced in recent sessions of Congress, to provide a statutory basis for the Federal labor management relations program. In commenting on these legislative proposals on May 24, 1977, GAO supported the establishment of a central labor relations body to consolidate the third party functions in the Federal labor management relations program. We believed then, as we do now, that such a central body is needed and would be perceived by both labor organizations and agency management as a credible and viable third party mechanism.

The proposed reorganization plan provides that decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review. We believe a provision should be added to the legislation to make it clear that the existing right of agency heads and certifying officers to obtain a decision from the Comptroller General of the United States on the propriety of payments from appropriated funds are not modified. Also, we question whether the right to judicial review of the Authority's decision should be prohibited.

Equal Employment Opportunity Commission

EEOC's role is not discussed in either Reorganization Plan No. 2 or H.R. 11280. However, we believe we should address the relationship between EEOC and MSPB in view of the proposed transfer of EEO enforcement and discrimination appeals authority from CSC to EEOC under Reorganization Plan No. 1 of 1978.

Under the Plan all discrimination appeals relating solely to discrimination will be filed directly with EEOC, and processed by it. Under delegation from EEOC, all appeals involving both title V and title VII matters will be filed with and acted upon by MSPB. The decision of MSPB will be final unless the employee requests EEOC to review the elements of the case involving title VII. EEOC may examine the matter on the record, grant a de novo hearing or remand the case to MSPB for further hearings at its option.

A clear distinction between an equal employment and merit principle complaint is difficult, if not impossible, and employees frequently perceive their problems to be both. We believe that placing the adjudication of these complaints in different organizations will invite duplicate or two track appeals on the same issues simultaneously, or sequentially, to EEOC and MSPB. In addition to wasting time, effort and money, this situation poses a very real potential for differing definitions of issues, inconsistent interpretations of laws, regulations and irreconcilable decisions.

An additional problem in having EEOC responsible for receipt and processing appeals is that it establishes the same kind of role conflict that the Civil Service reform proposals seek to correct. EEOC would in effect be the enforcement as well as the adjudicative agency. We are inclined to favor the approach taken in H.R. 11280 which provides:

"Notwithstanding any other provision of law, an employee who has been affected by an action appealable to the Board (Merit System Protection Board) and who alleges that discrimination prohibited by Section 2302(b)(1) of this title was a basis for the action should have both the issue of discrimination and the appealable action decided by the Board in the appeal decision under the Board's appellate procedures."

Additionally, we believe EEOC should be given the authority to intervene, on title VII matters, with all the rights of a party in all the adjudicatory proceedings of MSPB and in any subsequent appeals to the courts. This alternative would avoid many of the problems we have mentioned and save considerable time by having all issues of a complaint decided by the same adjudicative body.

H.R. 11280 proposes changes to: performance appraisals, adverse action appeals, veterans preference, retirement, selection methods, man-

agement and compensation of senior executives, merit pay, and personnel research. We have made recommendations to the Congress and to the executive branch concerning the need for improvement in most of these areas. H.R. 11280 provides the vehicle for making necessary changes and we support that objective. We do have concerns about the specifics of some of the proposals and believe they can be improved upon.

Performance appraisals

We believe the current system of performance appraisals should be improved. We recommended that performance appraisal systems should include four basic principles.

First that work objectives be clearly spelled out at the beginning of the appraisal period so that employees will know what is expected of them.

Second, that employees participate in the process of establishing work objectives thereby taking advantage of their job knowledge as well as re-enforcing the understanding of what is expected, and

Third that there be clear feed back on employee performance against the preset objectives.

Fourth that the results of performance appraisals be linked to such personnel actions as promotion, assignment, reassignment, and to discipline.

The proposed legislation generally conforms to our recommendations.

Adverse actions and employee appeals

One of the major purposes of H.R. 11280 is to make it easier to remove employees for misconduct, inefficiency, and incompetence. It provides for new procedures based on unacceptable performance. In so doing, the bill proposes major changes in the rights now afforded Federal employees. We believe the bill contains many provisions which would improve the present processes by which Federal employees are removed, demoted, and disciplined. However, we have concerns that certain of the proposed changes in adverse action and appellate procedures would not provide a proper balance between the interest of the Federal Government and the rights and protection of Federal employees.

For example, in an appeal, the decision of the agency must be sustained by MSPB unless the employee shows an error in procedure which substantially impairs his or her rights, discrimination, or an arbitrary or capricious decision. We suggest a fourth basis, that is, the absence of substantial evidence in the administrative record to support the decision of the agency.

Veterans' preference

We believe that changes can be made to veterans' preference legislation so that the system for examining and selecting for Federal employment can be improved and employment assistance can be better provided to those veterans who most need it. We believe the administration's proposals are designed to balance the Government's obligation to its veterans for their sacrifices, its obligation to provide equal

employment opportunity, and its commitment to improve Federal staffing operations.

We favor amending the rule-of-three selection requirement of the Veterans' Preference Act of 1944. Examinations are not precise enough to judge the potential job success of persons with identical or nearly the same scores. As a result, the rule-of-three unfairly denies to many applicants who have equal qualifications the opportunity to be considered for Federal employment. We have previously recommended that the Congress amend the rule-of-three requirement similar to the way in which the proposed legislation authorizes OPM to prescribe alternate referral and selection methods.

The present statutory prohibition against passing over a veteran on a list of eligibles to select a nonveteran would be retained under the proposed legislation. In our opinion, the flexibility to be gained by eliminating the rule-of-three and using alternate examining and selection methods will be seriously diminished by retaining this pass-over prohibition.

The bill authorizes agencies to make non-competitive appointments of certain compensably disabled veterans—those with service connected disabilities of 50 percent or more and those who take job-related training prescribed by the Veterans Administration. We believe employment assistance to those veterans with special employment problems—such as disabled and Vietnam-era veterans—is appropriate.

Retention preference

The bill proposes changes to the preference given veterans in retention rights in a reduction-in-force. Only a disabled veteran (or certain relatives of a veteran) would retain permanent retention preference. Other veterans would retain absolute retention preference for a 3 year period. Once the 3-year period has been completed, non-disabled veterans will be entitled to 5 years service credit in computing length of service for retention determinations.

As a general rule, veterans have retention rights over nonveterans regardless of length of service. Since veterans are predominantly male and non-minority, absolute preference works to the disadvantage of women and minorities. The proposed changes should help to remedy this situation.

Retirement

The bill would greatly expand the provisions allowing employees to retire before reaching normal retirement eligibility. Presently, the civil service retirement system generally allows employees to retire at age 55 with 30 years of service. Employees who are separated involuntarily, except for reasons of misconduct or delinquency, may receive an immediate annuity if they are 50 with 20 years of service or at any age with 25 years. Current law allows employees to volunteer for early retirement when their employing agency is undergoing a major reduction-in-force, even if they are not directly affected by the reduction. Under H.R. 11280, the early retirement option would also be made available to employees if their agency is undergoing a major reorganization or a major transfer of function.

We cannot support the liberalization of the early retirement provisions proposed by H.R. 11280. As you are undoubtedly aware, GAO

has long been concerned about the civil service and other Federal retirement systems. As we disclosed in an August 3, 1977, report on retirement matters, the civil service system already costs much more than is being recognized and covered by agency and employee contributions. As of June 30, 1976, the system's unfunded liability was \$107 billion and is estimated to grow to \$169 billion by 1986. Any additional early retirements resulting from H.R. 11280 would add to this tremendous liability.

Senior Executive Service

Some excellent Government managers have been provided by the present system. However, we think that more managers of this calibre would result from a Senior Executive Service.

We agree with the objectives of H.R. 11280 to establish a Senior Executive Service which would cover about 9,000 positions above General Schedule 15 and below Executive Level III. The proposed Senior Executive Service would establish at least five executive salary levels, from the sixth step of GS-15 (\$42,200) to an Executive Level IV salary level \$50,000). Under the proposal executives could increase their compensation through performance awards, to 95 percent of a level II salary, or \$54,625 at the present pay levels.

There is a problem of compression at the senior levels of the General Schedule. Because the salary rate for Level V of the Executive Schedule is the ceiling for salary rates of most other Federal pay systems, all GS-18s and 17s, and some GS-16s now receive the same salary—\$47,500. This creates a situation where many levels of responsibility receive the same pay and is not consistent with basic Federal pay principles of:

Comparability with private enterprise, and

Distinctions in keeping with work and performance levels.

Such a situation creates inequities and can have adverse effects on the recruitment, retention, and incentives for advancement to senior positions throughout the Federal service.

We believe that changes are needed to give management greater flexibility in assigning pay and establishing responsibility levels. In February 1975, we reported on the need for a better system for adjusting salaries on top Federal officials. One of our main concerns at that time, and which still exists, was the compression of salary rates which result in distorted pay relationships in the Federal pay systems. Our recommendation was for the Congress to insure that executive salaries are adjusted annually—either based on the annual change in the cost-of-living index or the average percentage increase in GS salaries. The law now provides for automatic adjustment of Executive Schedule pay rates equal to the average General Schedule increase.

We believe there is a need to establish a new salary system for Federal executives. We do have some concerns, however, that the provisions of the proposed Senior Executive Service do not go far enough in this regard. We are not sure, for example, that the proposed salary range including performance awards—\$42,200 to \$54,625—provides sufficient flexibility. Most of the employees that will be covered are already at the \$47,500 ceiling, and could reach the proposed \$54,625 ceiling by receiving less than the maximum 20 percent pay increase for

performance allowed by the Bill. Therefore, there may not be enough of a pay differential to provide an incentive for executives to join the new Service or for the Service to be successful.

We also question the advisability of limiting incentive awards and ranks, as well as performance pay, to an arbitrarily selected percentage of employees.

Proposals have been made by GAO and others to provide more flexibility in the pay-setting processes for top Federal officials. We favor a salary system with a broad salary band; compensating within this broad band, on the basis of an individual's capability or contributions to the job, with congressional control over the average salary level for the Service, by agency.

In summary, we question whether there is enough pay incentive to make the Senior Executive Service a success. We believe it would be more acceptable to senior executives if the salary ranges were substantially increased or if performance awards were not subject to the proposed \$54,625 ceiling. To do this, however, would require breaking the linkage between executive and congressional salaries. In its December 1975 report, the President's Panel on Federal Compensation pointed out that the "existing linkage between level II of the Executive Schedule and Congressional salaries should not be permitted to continue to distort or improperly depress executive salaries."

Two features of the proposed Service affect the civil service retirement system. An executive who is separated for less than fully successful performance would be entitled to an immediate annuity if he or she is at least 50 years of age with 20 years of service or at any age with 25 years. In addition, each year of service in which an executive receives a performance award will include a retirement factor of 2.5 percent in lieu of the lesser percentage (1.5, 1.75, or 2 percent) that would otherwise be applied. We cannot support either of these provisions. They would add to the system's unfunded liability, and, in our opinion, would be inappropriate uses of the Retirement Program.

Merit Pay

The concept of basing pay increases on employee performance is not new. GAO and other groups have recognized that a need exists to recognize employee performance rather than longevity in awarding within-grade salary increases. In October 1975, we recommended that the Chairman, CSC, in coordination with the Director of OMB develop a method of granting within-grade salary increases which is integrated with a performance appraisal system.

In December 1975, the President's Panel on Federal Compensation, chaired by the Vice President, reviewed within-grade increases as part of its study of Federal compensation issues. The Panel concluded that for employees in occupations which provide significant opportunity for individual initiative and impact on the job, a new procedure was needed to provide a connection between performance and within-grade advancement. The Panel recommended a method of within-grade advancement for these employees that would be based on performance. The Panel noted, however, that the system should take into consideration the experience of the private sector with such plans and that the system should be thoroughly tested prior to implementation. In

its December 1977 final staff report the Personnel Management Project similarly recommended using merit pay to improve and reward performance of managers below the levels included in the Senior Executive Service. That report also noted that the new approach should be carefully tested and evaluated before full scale application.

While we endorse the principle of performance pay incentives, we have some concern over the equity of the proposed system. We believe it would be more equitable if it were limited to within-grade increases, covered employees in other GS grades, and included all employees in affected grades rather than just managers and supervisors.

Personnel Research and Demonstration Projects

The cost of personnel resources in the Federal Government is enormous. In fiscal year 1978, the Government will pay an estimated \$75 billion in direct compensation and personnel benefits to its civilian employees and active-duty military personnel. In view of these expenditures, it is vital that we develop and use the most effective methods and techniques to manage personnel resources. An aggressive personnel research and demonstration program is a key link in doing this. Further, if Government is to effectively deal with the recent decline in productivity growth, it must support a research base directed toward developing and applying new techniques and ways to better manage its human resources.

With this in mind, we support the need for an aggressive personnel research and development program. We do not believe, however, that adequate controls and safeguards are provided in H.R. 11280 to protect the employees affected by the demonstration projects and to assure that the most effective and efficient use is made of research funds. As a minimum, we recommend that Congress be informed of projects which may be inconsistent with existing laws or regulations before they are begun. Congress should have an opportunity to satisfy itself as to the seriousness of such infractions. We also believe that Congress should be informed of research and development actual accomplishments for which it has provided authorization and funding.

Responsibility of the General Accounting Office

One other matter of concern to us is the proposed language concerning GAO's role in auditing personnel practices and policies. The proposed new section 2303 of title 5, U.S.C. may be susceptible of misinterpretation in its present form which is as follows:

"If requested by either House of the Congress (or any Member or committee thereof), or if deemed necessary by the Comptroller General, the General Accounting Office shall conduct, on a continuing basis, audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management."

It should be made clear that the function of GAO is to assist in congressional oversight and that the Executive Branch is not in any way relieved of its responsibility for reviewing, evaluating, and improving personnel management or for investigating and correcting deficiencies therein. As elsewhere, GAO's role is more properly one of

overseeing the working of the program rather than intervening on a case-by-case basis. We suggest that the language be amended to conform, in substance, to that used in the Legislative Reorganization Act of 1970 (84 Stat. 140, 1168), as follows:

“When ordered, by either House of Congress or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses having jurisdiction over Federal personnel programs and activities, the Comptroller General shall conduct audits and reviews to determine compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.”

I trust that this letter and enclosure recommending technical amendments will meet your needs.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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SUPPLEMENTAL VIEWS TO H.R. 11280

As members who have worked to improve both the Federal civil service system in general, and the Federal labor-management relations program in particular, we want to make it clear that, although we support title VIII—the labor-management section of H.R. 11280—that title is deficient in some important areas.

Our record of service on the Committee on Post Office and Civil Service is ample evidence that we share the President's belief that the Federal personnel system is in serious need of reform. We share the President's belief that the Federal personnel system has become overly bureaucratized, inefficient, and complex in the resolution of disputes.

Indeed, it was for these very reasons that we actively supported the provisions of this bill which provide for greater flexibility and responsiveness in the Federal personnel management system—the creation of the Office of Personnel Management, the modifications in the merit pay system, the establishment of a Senior Executive Service, and the authorization to conduct new and innovative demonstration projects.

However, simple justice and equity require the new managerial initiatives which have been introduced in H.R. 11280 must be balanced by affording reasonable protections for the rights of employees. Regrettably, title VII of H.R. 11280 does not fully meet this challenge.

Those of our colleagues who are concerned that this bill will significantly expand the collective bargaining rights of Federal employees need not worry. It does not. Enactment of the committee approved labor-management title will continue to deny to Federal employees most of the collective bargaining rights which their counterparts in the private sector have enjoyed for over 40 years. Among the collective bargaining rights not included in the bill are:

- (1) The right to engage in strikes, work stoppages and slowdowns;
- (2) The right to bargain collectively over pay and money-related fringe benefits such as retirement benefits and life and health insurance; and,
- (3) The right to negotiate an agency shop or to require federal employees to pay membership dues or representational fees to any labor union.

In addition, H.R. 11280 contains an unusually strong management rights clause which removes from the negotiation process terms and conditions of employment which, in the private sector, would be subject to collective bargaining.

Given these constraints upon employee representatives, one might wonder why we support this legislation. Our support is based on the improvements that, notwithstanding its deficiencies, this bill makes in the Federal labor relations program.

These improvements would, first, authorize the negotiations of a grievance procedure, including binding arbitration, for the resolution

of personnel disputes. These procedures will provide for a fairer and more expeditious means for the resolution of personnel disputes than at present.

Second, broaden the scope of bargaining beyond existing practice. Governmentwide regulations are no longer automatically excluded from collective bargaining. Under title VII, only those issues in which the Government has demonstrated a "compelling need" for uniformity are excluded from collective bargaining.

Third, provide for the creation of a truly independent, neutral and full-time Federal Labor Relations Authority (FLRA) to administer the federal labor-management program and subject the decisions and actions of the FLRA to judicial review. Currently, the Federal labor-management program is administered by the part-time, management-oriented Federal Labor Relations Council whose decisions and actions are not subject to judicial review.

Finally, the committee overwhelmingly rejected proposals, sponsored by the administration, which would have—in effect—preserved the status quo in labor-management relations and merely codified the Executive order under which the existing labor-management program has operated. This, despite the fact that extensive public hearings on this legislation produced overwhelming testimony that the current program was overly biased in favor of management, narrow in its scope, and ineffective in meeting the needs of agency managers and employees alike.

We were disappointed, nevertheless, by the action of the committee in weakening two important areas of this bill—scope of bargaining and union security.

The committee narrowed the scope of issues over which Federal employees could bargain to exclude contracting out; work assignment and duties; and, limitations on the use of military, supervisors and other nonbargaining unit employees for work performed by members of the bargaining unit. Having already excluded pay and major money-related fringe benefits from the bargaining table, we feel that the bill limits negotiations to issues of secondary importance.

The committee also deleted the bill's provision for an agency shop if, after election of an exclusive representative, a majority of the employees vote in favor of such an arrangement. We strongly believe that—since an employee organization is required to represent all employees in a bargaining unit—all of those employees should assume some share of the costs involved in this representation. The additional costs involved in binding arbitration for the resolution of grievances—which both the administration and the committee propose—will place an additional financial burden upon employee organizations. Without adequate resources, employee organizations will be hard-pressed to meet their new and expanded representation responsibilities.

Further, title VII was weakened by the committee in narrowing the matters which would be subject to the grievance appeals procedures and by denying employee representatives official time for the processing of employee's grievances and appeals.

In supporting title VII we also recognized the said reality that the issue of collective bargaining for Federal employees has been clouded by an hysterical atmosphere. We realize that many of our colleagues

erroneously associate any increase in collective bargaining rights for Federal employees with an attendant decrease in the efficiency of Federal service. We strongly disagree with that view. Effective labor unions can and do play a positive role in improving productivity in public service. It is our hope that the positive experiences which will result from this bill's modest expansion of collective bargaining rights will assuage the concerns of our colleagues and lead to a more progressive labor-management program in the future.

In the meantime, we ask our colleagues to support the incremental approach which H.R. 11280 takes to labor-management relations and to oppose any further weakening amendments. To do so would seriously undermine the careful balance between management and employee interests that the committee has sought to attain.

WILLIAM L. CLAY.
 WILLIAM D. FORD.
 CECIL HEFTEL.
 MICHAEL O. MYERS.
 PATRICIA SCHROEDER.
 STEPHEN J. SOLARZ.
 CHARLES H. WILSON.

REP. JAMES M. HANLEY'S SUPPLEMENTAL VIEWS ON VETERANS PREFERENCE

I am disturbed that the committee accepted Representative Schroeder's amendment to H.R. 11280, significantly modifying veterans' preference. I believe that this amendment, offered as an administration "compromise," dealt a possibly fatal blow to final passage of this legislation. I am pleased that the President has placed a high priority on revamping our rather antiquated civil service system. However, much of this "reform" is to the detriment of the veteran. This is, at best, a dubious tack for the administration to take.

During full committee consideration of this bill, I offered an amendment that would have essentially retained present veterans preference laws. Unfortunately the administration's views prevailed and my amendment was defeated.

As presently drafted, H.R. 11280 would allow veterans to use their preference rights one time within 15 years following discharge and would limit the retention preference to the first 8 years after appointment to a position in the competitive service.

This bill takes a tremendous step backward from this Government's long-standing commitment to veterans relating to the preference in hiring in the Federal Government.

Congress first addressed this problem in 1865 when it passed legislation giving special consideration to disabled war veterans. In 1944, the Veterans Preference Act passed Congress with one dissenting vote and has since been the basic Federal law regarding veterans preference in Federal employment.

I think that President Franklin Delano Roosevelt best explained the rationale for veterans preference when he stated:

I believe that the federal government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces that when they return special consideration will be given them in their efforts to obtain employment. It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

During the debate on this issue the point was continually raised that veterans preference does great damage to women and minorities seeking Federal employment. This is the kind of argument that is bound to generate instant support for change, and if in fact this were the case. I would be the first to offer such a change. However, the empirical evidence does not support this argument.

I think we must carefully evaluate the General Accounting Office report *Veterans Preference and Apportionment v. Equal Employment*

Opportunity, issued on September 29, 1977. A General Accounting Office official, testifying before the Subcommittee on Civil Service on his agency's recent study of the impact of veterans preference on the hiring of minorities and women, commented as follows:

In eight of the 44 registers we examined, the potential for minority job candidates to be certified increased when preference was excluded. On 15 registers there was a decrease. Twenty-one registers showed no change in minority representation when preference was excluded. In 32 of the registers the change involved only one individual. So, we found it difficult to come to a conclusion about the impact of veterans preference on minority employment.

It is safe to say that after careful examination of registers, the General Accounting Office was unable to support the claim that veterans preference is a significant obstacle to minorities, and in fact shows that veterans preference helps minority candidates twice as often as it harms them.

I am pleased that a provision relating to the disabled veteran, that was included within my amendment and in the administration's amendment was adopted by the committee. This provision would permit a disabled veteran, with a 30 percent compensable service-connected disability to be eligible for a noncompetitive appointment. Presently a disabled veteran would have a disability of 50 percent or more. This will ease the path for many veterans, with significant disabilities who are seeking Federal employment.

However, even with this provision for the disabled veteran, it must be noted that these revisions in veterans preference will have a drastic effect on Vietnam era veterans beginning in 1980.

I am providing the following table which shows a year by year breakdown of the number of nondisabled Vietnam era veterans who would lose all rights to veterans' preference upon enactment of H.R. 11280.

| | Year preference terminates | Number of Vietnam era veterans los- ing pref- erence | Number who served in Vietnam theater |
|--------------------------------------|----------------------------------|--|---|
| Year discharged from service: | | | |
| 1965..... | 1980 | 496,000 | 8,000 |
| 1966..... | 1981 | 550,000 | 48,000 |
| 1967..... | 1982 | 576,000 | 144,000 |
| 1968..... | 1983 | 788,000 | 321,000 |
| 1969..... | 1984 | 972,000 | 485,000 |
| 1970..... | 1985 | 1,043,000 | 560,000 |
| 1971..... | 1986 | 995,000 | 504,000 |
| 1972..... | 1987 | 870,000 | 300,000 |
| Total..... | | 6,290,000 | 2,370,000 |

As you can clearly see, by 1987, 6,290,000 Vietnam era veterans, of whom 2,370,000 served in the Vietnam Combat Theater, will lose all veterans' preference opportunities currently provided in Federal employment. This constitutes 70 percent of all such veterans and approximately 82 percent of those who actually served in the Vietnam Combat Theater.

I would like to call your attention to another dramatic impact of H.R. 11280 on nondisabled Vietnam era veterans who obtain Federal employment. I refer to the limitation of preference in retention during reduction-in-force actions to 8 years from the date of initial appointment. To demonstrate this consequence, let us assume that two individuals graduated from high school in 1970. One individual enters military service and the other obtains Federal employment. Following honorable service in Vietnam, the veteran is discharged in 1972 and returns home and obtains Federal employment in the same agency doing similar work as the other individual. In 1981, due to a reduction-in-force, the nondisabled Vietnam era veteran is not retained because his high school contemporary has 2 years seniority on the job.

Many of these reservations were also brought to my attention by Representative Ray Roberts, Chairman of the House Committee on Veterans' Affairs and by Representative John Paul Hammerschmidt, the ranking minority member. In a letter sent to me on June 7, 1978 they stated:

At a time when we are doing everything possible to bring about more jobs for Vietnam veterans, it is most unwise to now attempt to take away or severely limit the job preference to which they are now entitled. Earlier this year some Members of our Committee submitted statements to the Subcommittee on Civil Service in opposition to the administration's proposed plan to limit veterans preference. We do not favor a change in the current law.

We are in complete support of your effort on behalf of all veterans, especially Vietnam veterans who will be most adversely affected by the proposed amendments to the Veterans Preference Act.

It is also important to note that a similar administration amendment on veterans preference was defeated during Senate Committee consideration of its version of the Civil Service reform bill. The Senate bill, therefore, retains veterans preference as it is now in the law.

In conclusion, I want to emphasize that the committee had the opportunity to uphold the integrity of the government by reaffirming our commitment to give well-qualified veterans a preference in hiring. One cannot deny that this is a volatile issue and I feel that emotions rather than reason prevailed when the full committee considered this issue. We all heard how veterans preference hurt women and minorities, but the hard data to support that claim has yet to be produced. In view of this crucial void of information, I think it would have been far wiser for the committee to have adopted my amendment and retained current veterans preference laws.

JIM HANLEY.

SEPARATE VIEWS OF PAT SCHROEDER ON LABOR MANAGEMENT

It is not often politic for officers in the executive and legislative branches to mention it, but there are millions of workers in the private sector (ranging from \$200 per hour consultants to \$3 per hour custodians) who, but for the Federal Government contracting work out, would be Federal employees. These private employees are, of course, in jobs which have and are being created to perform work the Federal Government needs performed without "creating more bureaucrats."

Nobody talks about the horrible things which would happen if such people were allowed to participate in political activities or engage in full collective bargaining. They already have such opportunities. I have yet to see anyone propose that such opportunities be abolished. Things have not been so horrible.

The executive branch, which claims it needs so much management "flexibility" in labor-management when it comes to its own employees, is perfectly happy day in and day out not only to contract with private companies which don't have such management "flexibility" and face situations in which employees in such companies have opportunities for all sorts of labor actions. The executive branch also enforces through its various agencies this same so called labor-management "inflexibility." So much for the horrors of collective bargaining.

This same executive branch has been known, at times, to deal with more accommodation with companies headed by people active in its own political party than with those with other views and, indeed, to appoint people from firms which contract with the Government to positions in the Government. So much for there not being politics in the executive branch.

So much for equity.

PAT SCHROEDER.

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ADDITIONAL VIEWS TO H.R. 11280

I support and endorse H.R. 11280 as approved by the committee. I voted in support of reporting the bill to the House. I reluctantly accepted certain provisions which weakened the labor-management section of the bill, and—I was constrained to propose the inclusion of a new title IV to the bill reforming the Hatch Act. My colleagues on the committee indicated their support for my views by a roll call vote of 13 to 10.

In my judgment, there is no greater priority for Federal employees than broadening the extent to which they may participate in political activities while strengthening protections to both the public and employees against coercion and improper political activities.

Although both the Committee on Post Office and Civil Service and the House have already approved this legislation, I took this unusual action because it is becoming increasingly unlikely that the other body will act upon this legislation this year. House approval of title IX will thereby insure that Hatch Act reform is at least considered by conferees—should this legislation reach that point.

Many Members of Congress and other interested parties expended considerable energy in meeting the concerns of employee organizations as well as the administration in moving this important legislation through the House last year.

The administration unwisely opposes the inclusion of this title within the context of civil service reform. I believe that the issue of full political participation for Federal employees and protection of the public interest should be addressed here and now.

Inclusion of Hatch Act Reform in civil service reform does not make the federal civil service subject to politicization. This argument was rejected overwhelmingly by the House twice—during the 94th and 95th Congresses.

Inclusion of Hatch Act Reform does not constitute a “burden” on civil service reform legislation. Civil service “reform” and Hatch Act Reform are inextricably interrelated. Each insures that the people’s business—the business of our Government—is conducted in a fair and impartial manner.

Inclusion of Hatch Act reform in this bill is not as untimely as the administration would like the Congress to believe. There can be nothing more “timely” than providing Federal employees with the right to full participation in the political process of our Nation.

I urge my colleagues to demonstrate their support for Hatch Act reform in the context of this legislation as they have on earlier occasions—to strike a blow for justice, equity, and good government—by joining me in resisting the efforts of those who would further deny the unfulfilled dream of first class citizenship to Federal employees. The time for reforming the Hatch Act is now.

WILLIAM L. CLAY.

SUPPLEMENTAL VIEWS BY HON. PATRICIA
SCHROEDER

Our committee has just gone through one of the longest markups in its history in producing H.R. 11280. The administration's plan and dozens of amendments representing the expertise of my colleagues have been considered. Nearly every issue in civil service law has been discussed, if not beaten to death, by us. The bill is well directed and on the right track.

I introduced three amendments which were accepted by the committee and upon which I would like to add comment. These amendments modify veterans preference, enlarge whistleblowing protections, and modify present dual compensation laws.

VETERANS PREFERENCE

My amendment makes three changes in the administration's proposed changes in present veterans preference law. The amendment was approved by a 16 to 9 vote, as a substitute for Congressman Hanley's amendment to retain most of the present law.

My amendment first alters the administration's proposal to reduce present lifetime veterans preference to 10 years following discharge by permitting one time use of veterans preference in successful competition for a permanent job in the 15-year period after discharge. This change will include all veterans discharged since the Vietnam era began (August 5, 1964) under the new veterans preference policy.

Vietnam era veterans will have a better crack at Federal jobs under this amendment. We know for a fact that veterans preference has worked well in assisting veterans in obtaining Federal jobs; 50 percent of the Federal work force, versus 25 percent of the national work force, is veterans. But lifetime veterans preference has not worked well: The 8 million Vietnam era veterans—nearly one-third of the 27 million total veterans—only hold 9.6 percent of the Federal jobs which veterans overall have obtained. This isn't because Vietnam era veterans don't want Federal jobs, it is because, even with preference, they cannot compete with the more experienced, older veteran with lifetime preference of his own.

The one time use aspect of this part of my amendment is an idea that has been adopted by some states, including Colorado, New York, and Oregon, with little repercussion. Only one-third of veterans ever seek to use preference more than once. Moreover, multiple preference can only be used again by a veteran who seeks a job on another register, rather than for promotion in his own agency. This thwarts those who are working their way up the promotion ladder of such agency.

The second part of my amendment replaces the administration proposed protection against layoffs (retention preference)—three years

plus a time equal to length of military service—by a flat 8-year period after beginning a permanent Federal job. Following that period the veteran would have job retention equal to that of non-veteran co-workers: that is, on basis of length of service and quality of performance. Under present law veterans have lifetime retention preference and “bumping rights” over non-veteran employees.

Lifetime veterans preference cuts against younger veterans, too. The older veteran with more time in service always has a higher preference. Young veterans get bumped (although not as fast as non-veterans) in any major reduction in force.

Moreover, a supervisor doing hiring is not going to hire a veteran with a higher amount of preference than himself, if it can at all be helped. For the rest of his career he faces the possibility that he, rather than his subordinate, will be out in the street after a reduction in force.

Present law permits veterans with a 50 percent or more disability eligible for non-competitive appointment to Federal jobs. My amendment reduces this requirement to 30 percent. This doubles this disabled veterans pool to 996,000. Along with the provisions of the administration bill which retain present lifetime 10-point veterans preference for our 2.2 million disabled veterans, and the reduction of numbers of general 5-point veterans pool, far greater opportunities for Federal employment for those who have suffered the most in serving our Nation will be present than are now.

If the intention of veterans preference—to provide readjustment and to provide special assistance to disabled veterans—are to once again thrive, my amendments must stay in this bill.

WHISTLEBLOWING PROTECTION

Right now, a Federal employee who “blows the whistle” (sometimes even to a congressional committee) on activities at his agency which are a violation of law, mismanagement, abuse of authority, waste of funds or a danger to the public may be more likely to be harassed or fired than praised or rewarded. There is no effective means other than drawn out administrative and court proceedings for a whistleblower to set things right. We all lose when reasonable and constructive criticism of agencies by those who know them best is stifled.

My amendment to H.R. 11280 enhances the ability of the Special Counsel at the Merit Systems Protection Board to protect whistleblowers from reprisals by other agency personnel. It also increases the clout the Special Counsel has to assure that proper corrective actions are taken to prevent further reprisals.

My amendment also enlarges the scope of matters which may be disclosed. The administration proposal only permitted public disclosure by a whistleblower of violations of laws or regulations. My amendment permits, with the proviso that all matters of national security or privacy be pursued within Government, that a whistleblower may disclose mismanagement, abuse of authority, waste of funds, and danger to public health or safety. Matters in such categories (for example, an agency's purchase of 10 cent bolts for \$8 a piece) may not violate any laws, but certainly the public should have an opportunity to hear about.

If we in Congress are going to act as effective checks on excesses in the executive branch, we have to hear about such matters.

I want to thank Congressmen Hanley, Lehman, and Gilman for their assistance in its development, and especially thank Congressman Hanley for his amendment to it during committee markup which adds to the effectiveness of the Special Counsel in assuring that in whistleblower situation proper corrective actions are taken by agencies.

DUAL COMPENSATION OF RETIRED MILITARY PERSONNEL WORKING FOR THE
FEDERAL GOVERNMENT

My amendment to limit the total compensation for future retired (non-wartime disabled) military personnel holding Federal jobs to Executive Level V (now, \$47,500 per year) was adopted by the committee by voice vote.

There are now an estimated 2,000 retired military officers working in the Federal Government who draw combinations of military retired pay and Federal salaries amounting to \$50,000 to \$80,000 per year. Such people have created the bad connotation of the term "double dipper", and the vast majority of retired military personnel, with \$200 to \$300 per month pensions, low level civil service jobs, and total incomes at about the U.S. average have suffered by this connotation. Military officers who stay in the military also are affected by those who do not: Those who stay have their pay capped at Executive Level V.

The present dual compensation law, with its exceptions and its distinctions, makes any debate on this matter a burdensome task. The President's Commission on Dual Compensation earlier this year suggested many changes in the present military retirement system. Although these suggestions have yet to be proposed to Congress, when they are, I believe that my amendment, which eliminates many of the problems we have faced reaching the real issues, will help us have the considered debate these issues deserve.

PAT SCHROEDER.

SUPPLEMENTAL VIEWS OF MR. SOLARZ

H.R. 11280 as reported out of the Post Office and Civil Service Committee is a major step toward the enactment of significant civil service reform. The bill is proof that the administration and the Congress are seriously addressing the problem of the public's perception that the Federal Government is being staffed by underworked and overpaid employees who are insulated from the consequences of incompetence. While H.R. 11280 is not perfect, it goes a long way toward addressing this problem. Although I do not agree with every action taken by the committee, there is no flaw in the reported bill which cannot be remedied by a simple floor amendment.

While I realize that some of the minority have attempted to label the committee's action as a gutting of the President's bill, I believe that characterization is motivated more by partisan politics than by responsible analysis. A comparison of the provisions contained in the reported bill, with those found in the administration's bill, will show that the committee has preserved the thrust of the President's proposal and, on most of the major issues, has followed his recommendations. The following discussion of the major provisions of the bill should prove this point.

PRESIDENT'S PROPOSAL

1. Reorganization of the Civil Service Commission

The committee accepted almost all of the President's recommendations on this issue. Like the President's proposal, the committee bill abolishes the Civil Service Commission and replaces it with two Federal agencies. The Office of Personnel Management is to take over the administrative responsibilities of the Commission and the Merit System Protection Board is to assume its adjudicative functions. In addition, the committee bill paralleled the President's proposal in that it establishes the Office of Special Counsel to protect whistleblowers and other employees who may be the victims of prohibited personnel practices. Although the committee vested the Special Counsel with more power than the President proposed, this was done in a spirit of cooperation, and only to further the common aim of restoring complete public confidence in the civil service system.

2. Disciplining and removal of employees

The administration proposal would have shifted the burden of proof on the employee in appeals from suspensions and dismissals and lowered the evidentiary standard needed to sustain an agency action in such an appeal. The committee rejected these proposals on the grounds that they could lead to political abuses and the unjustified dismissals of some employees.

However, the committee did adopt the President's proposal to objectify the standards for dismissal based on incompetence. The committee bill establishes a new performance appraisal system which provides

that an employee whose performance is determined to be unacceptable in a specified critical area of his or her job can be more easily terminated. The committee also agreed with the administration that existing adverse action appeals for "reduction in rank" was too vague a concept to be properly enforced. The committee, therefore, followed the administration's recommendation and eliminated this appeal right which has limited the flexibility of agencies to assign employees to positions and duties for which they are best suited and most needed.

3. Veterans Preference

In this area, which is considered vital by the President, the committee adopted an amendment, sponsored by Congresswoman Schroeder and supported by the administration, which would modify the existing veterans preference to target the benefit on those who need it the most: disabled veterans and Vietnam Veterans. The amendment, which would eliminate the lifetime preference now given to non-disabled veterans and remove one of the major obstacles to the recruitment of women to senior positions in the civil service, passed despite the overwhelming opposition of the minority members of the committee.

4. Merit pay

The committee agreed with the President's proposal but modified it somewhat. The administration bill called for the establishment of a new pay system for employees in grades GS-13 through grades GS-15. Under the administration's proposal, these employees would not be entitled to annual pay comparability increases and would no longer receive automatic step increases based on longevity of service. The committee agreed with the principle behind the President's proposal and eliminated step increases for Federal supervisors and managers and provided that such periodic adjustments be made solely on the basis of performance. However, the committee refused to eliminate the comparability increase for these Federal employees. It was felt that comparability was one of the cornerstones of the Federal pay system and that it should not be tampered with until there was more evidence that merit pay would contribute substantially to the efficient operation of Government.

5. Research and Demonstration

The administration bill would have given the Office of Personnel Management the authority to carry out demonstration projects during which specific Federal laws could be waived. The committee agreed with the administration that more experimentation and research was needed in public management and gave the OPM the powers it wanted to conduct demonstration projects. However, the committee felt that, given the broad powers granted to OPM under the section, there was a need for congressional oversight to protect the rights of employees and the integrity of government. The committee, therefore, amended the proposal so that all plans for demonstration projects be submitted to the Congress and be subject to disapproval by either House of Congress if a resolution of disapproval is adopted by either House within 60 days. Given the fact that the original administration proposal would have permitted the OPM to waive any Federal law, including criminal statutes and those regulating the political activities of Federal employees, the safeguard proposed by the committee is a very moderate one.

6. Labor Management

Although much has been said and written on this issue, the committee bill does not fundamentally differ from the administration proposal. The current major limitations on collective bargaining are maintained. The statutes making it illegal for Federal employees to engage in strikes, work stoppages and slowdowns were left unchanged. The committee bill also continued the existing prohibition against the agency shop and provided that such matters as pay and fringe benefits be excluded from collective bargaining.

The committee did, however, make some significant changes in the President's proposal. It provided that the program be administered by a truly independent Federal Labor Relations Authority (FLRA), whose members could be removed only for cause, and whose decisions would be subject to judicial review. The administration proposed that the members of the FLRA serve at the pleasure of the President and that their decision not be subject to judicial review. In addition, the committee broadened the scope of bargaining to include a limited number of non-compensation items.

Although the changes made by the committee in the President's labor-management proposal were significant, nothing the committee did would drastically change the nature of labor relations for Federal civil service employees. Such employees would still have substantially fewer collective bargaining rights than either Postal Service employees or private sector workers. In the area of labor-management, the committee adopted the President's incremental approach, but added some additional provisions which the President did not want included at this time. As a result, I believe it is fair to say that the administration got 85 percent of what it wanted in this area and that there are no provisions in the committee's labor-management section with which the administration could not live.

7. Senior Executive Service

This is the one Administration which the committee did drastically change. The President's proposal would have established a new Senior Executive Service for managerial positions now classified as GS-16, 17, or 18 of the General Schedule or level IV or V of the Executive Schedule. Members of the Senior Executive Service would have less job security than other Federal employees in that they would have no right to appeal their transfers and would be subject to a review system similar in many ways to the one now used to judge Foreign Service Officers. Individuals who failed to meet the standards of the review system would be reassigned to non-Senior Executive Service positions with no loss of pay. In return for this slight increase in job insecurity, members of the Senior Executive Service would receive greater promotional opportunities and be eligible for professional and monetary awards.

The Senior Executive Service enjoyed substantial support from the majority members of the committee. However, during the consideration of this section of the bill, the committee adopted a crippling amendment offered by Congresswoman Spellman and supported by some members of the majority and all of the minority members voting. Under the Spellman Amendment, the Senior Executive Service program would be converted into a two year experiment to be conducted

in three agencies. If, after the two years, neither House of Congress disapproved the program, the Senior Executive Service would become permanent and governmentwide.

Despite my respect for the Congresswoman from Maryland, I believe the adoption of her amendment was unfortunate action. It is unwise to introduce major government programs as experiments. The extension of this concept to other programs would transform the Federal government into one big social science laboratory more concerned with experiment evaluation than with the delivery of service.

In addition, the introduction of the Senior Executive Service as an experimental program would doom the fate of the program. To a large extent the success of the Senior Executive Service will be determined by the ability of the program to induce Federal executives to voluntarily convert their civil service positions to less secure Senior Executive Service positions. If the insecurity of those positions will be further increased by the possibility that the program will be entirely eliminated in two years, it is extremely doubtful if enough civil servants will join the program to permit its effective implementation.

Furthermore, the main motivation behind the Spellman amendment is the groundless fear that the Senior Executive Service will politicize the civil service. Anyone who reads the provision of the bill establishing the Senior Executive Service will realize that there are sufficient protections in the bill to prevent the Service from becoming a political arm of the President. The President's original proposal provided that no more than 10 percent of all Senior Executive Service positions may be filled by non-career employees. To this provision, the committee added the requirement that the percentage of employees in the Senior Executive Service within an agency may not exceed the higher of 25 percent or the percent of such positions in the agency as of date of enactment of this legislation. Finally, to completely eliminate the possibility of political purges within the Senior Executive Service, the committee agreed to an amendment offered by myself which requires that at least 70 percent of all employees in the Senior Executive Service at any one time must have at least 5 years of Federal service. I am convinced that these provisions combined with continuing congressional oversight will be sufficient to prevent the politicization of the Senior Executive Service.

In summary, it is my belief that the Senior Executive Service is a sound and sensible proposal which carefully balances the need to better enable the democratically elected political leadership of this country to implement its programs and policies while insuring the fair and non-partisan administration of our laws. The Service would increase the flexibility of the President and his appointees in making personnel assignments so as to make sure that their initiatives are not stifled by incompetent or unsympathetic high level personnel. However, while increasing the administrative power of the President, as drafted by the committee bill, the Senior Executive Service would maintain sufficient safeguards to protect the career members of the Service from political coercion or manipulation. It is therefore, my hope that when the bill reaches the floor of the House the Spellman amendment will be deleted and the President's proposal for a Senior Executive Service be reinstated with the few strengthening amendments adopted in committee.

COMMITTEE ADDITIONS

As has been reported extensively in the press, the committee during consideration of the President's proposal attached to the bill the provisions of two bills which had already passed. Although the committee's action has been publicly interpreted in various ways, I do not see the attaching of either the Clay bill to reform the Hatch Act, or the Firefighters bill, as an attempt to embarrass the President. Instead, I believe that both actions should be viewed as part of the time honored legislative strategy of forcing a vote on a controversial issue by attaching it to a bill which is likely to pass.

It is also important to note that as far as the substance of the issue is concerned, the committee has no real differences with the President. The reform provisions which were attached to H.R. 11280 are fully supported by the President who has repeatedly called for their enactment.

The committee's dispute on this issue is with the Senate and not with the President. For over a year the Senate has refused to act on H.R. 10 which passed the House overwhelmingly by a vote of 244-164. In placing the Hatch Act reform provisions in H.R. 11280, the committee is attempting to insure that they will at least be considered by the Senate. If the House sustains the committee's action on this issue, it is my hope that the Senate will at least schedule a vote on this vital legislation. However, if the Senate remains intransigent on this issue, the House is not bound by its position. Rule 28, clause 28(b) of the Rules of the House of Representatives permits the House to instruct its conferees, should they fail to reach an agreement. Thus, even if the House includes the Hatch Act in H.R. 11280, it can later bow to the will of the Senate, over the objections of its conferees, should it choose to do so.

As for the committee's action on the Firefighter's bill, it should be noted that this legislation has passed both the Senate and the House twice. The bill reduces the number of work hours for Federal firefighters to bring them in line with municipal firefighters and reduces their pay by an appropriate amount. I believe the President was mistaken in vetoing this bill and should reconsider his position. However, even if the President remains adamant in his opposition to the bill, I believe he would consider the enactment of this legislation which only affects 11,500 employees to be a small price to pay for comprehensive civil service reform.

In summary, I believe that the committee bill represents a victory for the President. With the exception of the Spellman amendment, which I hope will be deleted on the floor, the President has received substantially most of what he wanted on civil service reform. The committee also attached two bills which it considers priority items to the President's bill, but neither addition need endanger the ultimate passage of the President's proposal. It is, therefore, unfortunate that some members of the minority, in a predictable display of partisanship, have attempted to characterize the committee's action as a defeat for the President. Feigning support for the administration, they have exaggerated disagreements and created the illusion of divisions where none really existed. It is my hope when my colleagues look past the political rhetoric to the substance of the bill, they will realize that they and the President were well served by the committee's actions.

STEPHEN J. SOLARZ.

DISSENTING VIEWS BY MR. HARRIS

H.R. 11280 is a comprehensive bill with a noble objective, to "reform" the civil service system. It presented to the committee and to me a serious challenge which I was prepared to meet when the bill was submitted on March 3, 1978.

Yet I was compelled to vote against the bill because I believe it is fatally flawed: it will open the door to politicization.

Cleaning up and streamlining the operations of the Federal Government is a worthy goal, an effort I support fully. Citizens should not have to wade through layers of bureaucracy to get their questions answered, to track down their social security check, or understand our tax laws. Government should be understandable; Government should be accessible. Government should not be a bureaucratic monolith impossible to cope with. Government should be responsive with decisions based on justice, not on political intrigue or pressure.

Pursuant to the goal of developing a sound bill, I participated in 15 hearings, 12 in the Congress and 3 in Agency headquarters here in Washington, and 10 days of markup. Additionally, I personally held 3 "town meetings" in my district to hear the views and suggestions of the citizens of the Washington area, Federal employees and nonfederal employees, individuals probably most familiar with the operations of the Federal Government.

The most persistent thread in the comments we heard from rank-and-file workers was that various provisions of this bill were a threat to the morale and structure of a nonpartisan, professional civil service system.

On February 27, 1978, I introduced H.R. 11165 which contains several strong provisions that would make innovation possible but insulate the Federal Government against a spoils system. During the committee markup, after discussing these provisions with Civil Service Commission officials and other witnesses during the hearings, I attempted to get the safeguards embodied in my bill into H.R. 11280. Most were rejected.

I am dismayed that this committee has apparently articulated the thesis that politicizing the system is essential, in fact, is the centerpiece of a responsive and revitalized government. In fact, it was said of my amendments to prevent politicization that some would be a "body-blow" to the bill.

I am afraid that in the name of "civil service reform" the House Post Office and Civil Service Committee has developed "civil service chaos." While the bill has some sound provisions, many elements which would have made it a true landmark for good government are lacking. My primary fear is that this bill will begin a slow unraveling of our merit system, a system that insures the impartial administration of our laws. This conclusion is inescapable: this bill opens the door for the politicization of the civil service system.

AN OPEN DOOR FOR POLITICAL MANIPULATION

SENIOR EXECUTIVE SERVICE

The committee's adoption of an amendment to implement the senior executive service in three agencies over a 2-year period is an appropriate go-slow approach. However, the senior executive service, while meritorious in purpose in many ways, will allow too many career jobs to become political because of a fundamental flaw in the way appointments can be made. Currently, there are important safeguards and procedures that keep the designation of career and political positions at the high levels of Government quite distinct. Congress decides which jobs will be filled by political appointees at executive levels. For those GS-16, 17 and 18 pay grade levels, the President can designate which jobs should be political according to clear standards.

I offered a substitute to title IV, the senior executive service, which would have made the SES a career service only. My substitute failed. If the President wished to designate certain jobs at these levels to be filled by political appointees, the duties of the job would have had to meet certain standards prescribed in law, such as engaging in the advocacy of Administration programs or serving as a confidential assistant to a political appointee.

Under this bill, although there is a numerical limit on the number of jobs that can be filled by political appointees, this limit has no relationship to the responsibilities of the job. Thus, the head of a division handling grants, contracts, or tax returns can be a political appointee. By adopting my substitute, Congress would have been exercising clear controls over which positions are filled by career individuals and which by political appointees. And it would have provided that the type of appointment—career or political—would be determined by the responsibilities of the job, not an arbitrary agency—or government-wide “magic” number.

EXCEPTING POSITIONS FROM THE CAREER SERVICE

Similarly, my amendment to provide clear criteria for excepting positions from the career competitive service for all general schedule jobs would have insured against manipulation of jobs. Under the current law, which this bill does not change, the President can put a “competitive service” position in the “excepted service” (individuals not hired by competitive examinations and appointment) by only determining that “conditions of good administration warrant” this action. There are standards in regulations which can be changed any time. My amendment would have firmly fixed strong standards in law.

We have heard too many stories of a “buddy system” and end runs around the merit system, stories of jobs being “moved” from a competitive hiring designation to excepted to accommodate a favored candidate. There is room and there is a need for non-competitive positions in the executive branch, but there should be strong controls. My amendment, which was defeated, would have provided these controls.

POLITICAL INFLUENCES IN PERSONNEL ACTIONS

The section of the bill on merit employment would have been strengthened had the committee adopted my amendment to clearly bar unwarranted political recommendations in hirings, promotions and other personnel actions. Under my amendment, political recommendations from Members of Congress, their staff, White House officials, and political appointees in the executive branch would have been explicitly prohibited. The notion that elected and other political officials ought to "determine who gets what jobs" in the career merit system is simply wrong. Some argue that it is a "fact of life." If so, it is wrong. It is time to stop winking at it. If we are going to have true civil service reform, then we must get politics out—once and for all. It has not been that long since the very foundations of our Government were almost pulled out from under us by inside political manipulation. My amendment would have greatly improved this bill.

The bill allows the new Office of Personnel Management to delegate to agencies various personnel functions, such as examining, hiring and promotions. While allowing agencies to perform personnel functions previously centralized in the Civil Service Commission may speed up these procedures, I am concerned that here again the floodgate may be opened for improper political influences. This is why I offered an amendment to require that every chief personnel official be a career employee. I cannot see any reason why a personnel official, clearly performing an administrative function, should be a political appointee. This was another effort to keep politics out of the merit system; yet the committee rejected the inclusion of this provision.

AN IMPARTIAL MERIT SYSTEM PROTECTION BOARD

The bill establishes a new Merit System Protection Board to handle alleged violations of civil service rules and regulations. I believe the composition of this Board would have been strengthened by the requirement that one member be from the career ranks of the Federal Government as I proposed. As it stands, these three political appointees, can be the former board chairman of a corporation or the former head of a campaign. While the bill rightly insures a political mix, I believe that a career employee could have provided an important career employee perspective in the Board's proceedings.

Similarly, the selection of the chairman of the Board is faulty since the bill provides that "the President shall from time to time designate one of the Board members as the Chairman of the Merit System Protection Board." My amendment, which was defeated, would have required the Board members to elect a chairman every 2 years. Under the bill, the President can choose one chairman, and the next month choose another. This, I believe, is a loophole that can lead to political shuffling and reshuffling.

CLEAR RESPONSIBILITY AT THE TOP FOR THE MERIT SYSTEM

Under the bill submitted by the administration, the delegation of personnel administration caused me great concern. The bill allowed

the President to delegate responsibilities to the Director of the Office of Personnel Management who in turn could delegate to agencies. The General Accounting Office could investigate violations of the merit system if requested by Congress. The special counsel could investigate complaints and the Board could hear them. But the bill was very fuzzy as to who in fact was responsible—where did the buck stop?

I offered several amendments which were accepted that make it clear that the Director of the Office of Personnel Management is the individual responsible for compliance with civil service laws and procedures. Thus, for example, if an agency adopts a hiring procedure that gives favoritism to certain applicants, OPM cannot “get off the hook” by saying the agency was in charge. OPM cannot turn a blind eye. OPM is responsible for seeing that merit system principles are enforced and that corrective action is taken when violations occur.

EMPLOYEE RIGHTS AS PRIVATE CITIZENS

I continue to believe that employees should be able to engage in voluntary political activities as private citizens and I helped draft H.R. 10, which would revise the current Hatch Act prohibitions on those rights. However, I do believe it is wrong to tie those revisions to a legislative vehicle that opens the door to politics within the system. The Hatch Act has never protected employees from on-the-job political pressures; a strong, impartial merit system provides that protection. But this bill severely weakens many of those protections.

OPEN AVENUE OF COMMUNICATION FOR OPM AND THE BOARD

I am pleased that the committee adopted my amendments to allow both the OPM and the Merit System Protection Board to express their views directly to Congress without clearance by another agency. Our committee has too often been frustrated by the Office of Management and Budget's stranglehold on agency statements to Congress. Under my amendment OMB can make its views known; there is no barrier. But these agencies can express their views on policies, answer questions directly, and present testimony to congressional committees without first getting their views cleared and laundered by OMB. This is a most important Government reform.

EMPLOYEE PAY: A MIXED PICTURE

The committee adopted my recommendation that supervisory employees in GS-13-15 grades continue to receive annual comparability adjustments. Keeping Federal pay rates competitive with those of private industry is a sound principle, established by the 1970 Federal Pay Comparability Act. Had we deprived employees in these grades annual comparability, I believe we would have violated the basic principle of our Federal pay system.

However, the committee did not accept my amendment that would have guaranteed true comparability. My amendment would have removed the loophole in the current law that has allowed Presidents of both parties to deviate from true comparability six times since

1970. We understand the President will follow this unfortunate precedent again this year. The concept of comparability is negated if inherent in the law is an escape hatch allowing the President to thwart it.

The new merit pay system, to reward GS-13, 14 and 15 supervisory employees for performance on the job, is a worthy concept. However, it would be a new system and I believe Congress needs to know in the future whether it is actually working, whether it is in fact improving performance. Thus, I am pleased that the committee accepted my amendment to require the Office of Personnel Management to report in 3 years on whether it is working and how. My amendment requires OPM to show us in quantitative terms if it is achieving the purposes set out in this legislation. It is my hope, for example, that we can determine that because of merit pay incentives, social security claims processing has been speeded up or decision-making on grants has been expedited and that such improvements are saving taxpayer dollars. My amendment also requires OPM to recommend changes in the law to improve the new pay system. Instead of letting a program grind on interminably without close scrutiny, this amendment will provide a proper mechanism for a review in 3 years.

CONTROLLING GOVERNMENT GROWTH

I am pleased that the committee has essentially incorporated my bill, H.R. 8332, which begins a process of curbing the growth of top, political appointive positions. There has virtually been no control in the growth of executive level positions in the Federal Government, since Congress has created them sporadically without any sense of overall planning or consistency. In fact, the Civil Service Commission is unsure of the exact number of executive level positions.

Creating a new Assistant Secretary position at executive level III or a Deputy at executive level IV may be justifiable. Yet we have the questionable situation of the Administrator of the National Aeronautics and Space Administration at level II (\$57,500) and the Administrator of the General Services Administration at level III (\$52,500).

Under my bill and the provisions added to H.R. 11280, the number of positions becomes fixed and the President is required to send to Congress a plan in 2 years for bringing some order and coherence to what is presently a hodgepodge.

Similarly, the committee has incorporated certain provisions of H.R. 5054 which will bring some sense to the "supergrade sprawl." This bill reaffirms the concept of a central supergrade pool and repeals the many "extraneous" authorities outside the pool that have been enacted.

Both of these sections represent an attempt to have a Government that is controlled, orderly and rational.

I am concerned and will continue to oppose an amendment adopted on a voice vote to require the Office of Personnel Management to conduct a study of the location of Federal agencies and a review of the possibility of relocating agencies out of the Washington, D.C. area. First, this is an inappropriate mission for the OPM. Second, the amendment does not provide clear direction for the study by speci-

fyng the criteria that should be considered, for example, the effect on employment or unemployment, the need for access to the President and Congress, cost to the taxpayer, environmental considerations, or delivery of services. Third, there is no apparent purpose or demonstrated need for the study. Another useless study will not improve government inefficiency.

Despite these meritorious changes, the bill adds up to a minus—not a plus—for the Federal employee and the American taxpayer. This bill is an unfortunate chapter in the history of an impartial, non-political Federal Government. It may shake the very foundations of our merit system. It suggests that political affiliation is more important than competence. By creating cracks for political influence to seep into the system, it makes the argument more valid that Federal employees should be denied rights of citizenship in order to protect them. Should H.R. 11280 be enacted into law, protections for the employee will be greatly diminished and the merit system will be placed in great jeopardy.

HERBERT E. HARRIS II.

SEPARATE VIEWS ON H.R. 11280

The underlying theme of the Republican members of the committee throughout the hearings and markup on H.R. 11280 has been the recognition that reform of the Federal civil service merit system is a desirable and achievable goal.

In transmitting his civil service reform legislation to the Congress, President Carter correctly pointed out that the system has serious defects. "It has become a bureaucratic maze," he said, "which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in redtape, delay, and confusion."

These are logical reasons for seeking civil service reform. We share the President's concern for he is speaking not only for his own administration but for administrations, both Republicans and Democrat, before him.

If true and honest civil service reform can be written it must be done in a bipartisan manner. Politicization of the Federal merit system is not in the public interest and any such effort under the guise of reform should be resisted and rejected.

We each reserve the right to differ on the various components of this legislation, and these individual comments will be found elsewhere in this report.

EDWARD J. DERWINSKI.

GENE TAYLOR.

TRENT LOTT.

BENJAMIN A. GILMAN.

JOHN H. ROUSSELOT.

JAMES A. S. LEACH.

JAMES M. COLLINS.

TOM CORCORAN.

SUPPLEMENTAL VIEWS ON H.R. 11280

This legislation offers the Members of the House an opportunity to objectively reform and reinvigorate a Federal civil service merit system that, during its 95-year lifespan, has begun to show signs of immunity to effective management.

It needs to be emphasized that civil service reform is a non-partisan issue. Simply stated, civil service reform is good government. Honest civil service reform, however, can only be accomplished by rising above the demands of those who would use this legislation only in their special interest.

Unfortunately, the committee did not follow the right road. The legislation wheeled off track and out of control. What started out as a bipartisan effort to write effective legislation degenerated into a blatant gutting of the bill by a majority of the majority who seemed bent on destroying the legislative centerpiece of their own President.

With studied deliberateness, these fractious Democrats made it clear they would march in stiff cadence to a divide-and-conquer beat. They displayed no interest in participating in reasonable and responsible discussion of the legislation. Evidence of that attitude unfolded when they lined up to oppose a routine motion to permit Civil Service Commission experts to comment and respond to committee questions on highly technical provisions of the bill. Fortunately, the motion to give all of our Committee Members the benefit of expertise utilized by other Committees of the House during the markup sessions carried by a single vote.

Undaunted by that temporary setback, members of the majority laid down a barrage of crippling amendments which placed responsibility for salvaging Civil Service reform squarely on Republican shoulders. It was a responsibility we welcomed.

With clear disregard for the administration's strategy, the provisions of H.R. 10, the Hatch Act emasculation, were grafted to the bill. This power play from the Democratic side to curry the favor of Federal labor union leadership was a test of wills that graphically showed the split between congressional Democrats and the White House.

Continuing to salt the wound, this rebellious band then attached to the bill the provisions of H.R. 3161, reducing the basic workweek of Federal firefighters—a bill which President Carter had vetoed only a month earlier and returned to the Congress with a strong message of rejection.

In a further show of disregard for the administration proposal, the committee Democrats used as the original text for the labor-management relations title not the language offered by the President but a Clay-Ford-Solarz version of labor-management relations tailored to meet the special interest of the union hierarchy.

In this title of the bill, the committee Democrats were just slightly less destructive. While the Republicans were the swing votes in eliminating the agency shop provision from the bill, the prolabor forces again took over.

The administration proposal was to codify the language of the existing Executive order governing labor-management relations in the Federal sector. It has been an effective tool for good management under each administration since President Kennedy. When offered piecemeal during mark up, the President's proposals were trampled in the rush of the committee Democrats to satisfy labor leaders to the detriment of both Federal rank and file employees and management.

Similarly, the title dealing with the senior executive service was diluted to the point where it was left meaningless. There is little incentive or opportunity for the utilization of talented personnel in challenging job assignments when the application of the SES is limited to three agencies for a 2-year period.

The package that finally emerged from committee is a legislative fiasco. But beneath its burden of special interest fat it contains the muscle of sound civil service reform. We believe it can be salvaged if responsible action and leadership is displayed in the House.

Therefore, we urge each Member of the House to approach this legislation objectively and with the public interest in mind.

Whatever is enacted will be administered by both Democratic and Republican Presidents in the future. Shortsighted concessions to the voices of special interest is not serving the public.

The American public, through proposition 13 and a host of other indicators, strongly favors a Government more efficient and responsive to its needs. The taxpayers want Government reform.

EDWARD J. DERWINSKI.
TOM CORCORAN.
JIM LEACH.

ADDITIONAL VIEWS

Criticism of the civil service is nothing new. But today it is growing as more and more Americans become disenchanted with the cost, size, and inefficiency of bureaucracy, whether Federal, state, or municipal. Citizens doubt, with good reason, Government's ability to deal effectively with the issues of inflation, unemployment, housing, energy, and other areas. Increasingly skeptical of government's claims to have the answers and resources to solve the problems facing our country, voters have rejected bond proposals and other initiatives to raise funds for local school systems and water projects, for example. They have strongly indicated a desire for less government, a trimmer bureaucracy, in other words, more value for their tax dollars. Proposition 13, overwhelmingly passed in California, is evidence that government reform is a priority item for the public.

In this atmosphere of widespread support for reform, it should have been possible for the Committee on Post Office and Civil Service to report a civil service bill which would make the system less costly and more responsive. However, the spirit of true reform has apparently not infected the majority of the members of the committee.

The Civil Service Reform Act of 1978 (H.R. 11280) is in shambles. Much of the real reform which existed in the original proposal has been diluted by the committee's actions in three major areas: addition of the Hatch Act repeal legislation, enlargement of union rights, and the serious weakening of veterans preference practices.

President Carter, to his credit, attempted to take one of the government's biggest bulls by the horns when he submitted H.R. 11280 to the Congress. This legislation was a noble effort by the President to fulfill one of his most popular campaign promises—that is, reducing the size and cost of the Federal bureaucracy and introducing some measure of efficient, responsible management to the civil service system.

Republicans on the committee, and in Congress as a whole, endorsed the general thrust of the administration plan:

Increase the Government's efficiency by placing new emphasis on the quality of performance of Federal workers—insure that employees and the public are protected against political abuse of the system.

Unfortunately, the Members of the majority party serving on the Post Office and Civil Service Committee did not see fit to implement the President's proposal. Rather, the majority has chosen to saddle H.R. 11280 with a number of controversial, highly damaging amendments which make continued support by responsible Members difficult, if not impossible.

Certainly no amount of rhetoric can change the simple fact that the President's original purpose is not served by attacking Hatch Act revision and dangerously expanding labor rights from those provided in the existing Executive Order 11491.

The President's message of March 2, 1978, transmitting the legislation to Congress was greeted with cautious expressions of support by Republican Members who have traditionally been advocates of reform of the Federal bureaucracy and the civil service system. The Republican members of the Post Office and Civil Service Committee were assiduously courted by the President and high-ranking administration officials during hearings and markup of H.R. 11280. The campaign to sell civil service reform was convincing and effective. Republican Members actively participated in hearings and often provided quorums for the markup sessions.

However, our cautious endorsement of H.R. 11280 could not withstand the actions of some Committee Democrats in amending the bill to include radical changes in current labor practices in the Federal service and to add the repeal of the Hatch Act.

HATCH ACT REPEAL

The Hatch Act is vital to the protection of the individual liberty and integrity of Federal employees. Since 1939 the Hatch Act has effectively prevented the coercion of Federal employees into participation in partisan political activities under threat of career sanctions.

The potential for conflict between the role of an impartial public servant and that of a politically active private citizen is great. Since 1971, the Congress has recognized this potential and has considered limiting the range of permissible political activities of Federal employees in order to further the objective of a politically neutral civil service. There is little doubt that the public supports the concept of a civil service unfettered by political influence or favoritism.

Under the current Hatch Act, a covered employee retains the right to vote, to express a political opinion, to make political contributions, to engage in nonpartisan activity, and to participate in partisan activity if he lives in an area where a majority of the residents are subject to Hatch Act restrictions. Surely civil servants can operate under these protections without feeling that they are "second-class citizens" totally without political rights or privileges.

Removing the safeguards which are now embodied in the Hatch Act would open the door for a return to the spoils system and the politicization of the civil service. To saddle civil service reform—a worthy goal—with the repeal of the Hatch Act, is to doom the reform effort, if not in the House then in the Senate.

We must examine where the push for the insertion of Hatch Act repeal is coming from and let this determination guide us in our decision not to strip the civil servant of every protection, leaving him bare to the power of the unions and certain political factions which would force the employee into political activity against his wishes—but essential to his survival.

The majority of Federal employees fear political coercion and discrimination far more than they desire the opportunity to run for political office and become involved in partisan political activities. Tying long-awaited Federal service improvements to this blatant attempt to organize civil servants into a partisan political force can only further increase public distrust of Government and its bureaucracy.

LABOR-MANAGEMENT RELATIONS

Title VII of H.R. 11280 would make serious changes in the long-standing policy of Federal labor-management. These are changes which we cannot support.

Commitments to Committee Republicans by the administration that the labor-management title would not go beyond current Federal labor practices as embodied in Executive Order 11491 were not kept. Instead, in an attempt to placate labor loyalists on the Committee, the administration agreed to certain "compromises" which far exceed the scope of Executive Order 11491.

It is, of course, impossible to predict with certainty the ultimate ramifications of a particular piece of legislation or a particular amendment. However, we must nonetheless consider all the possible consequences—unintended as well as those planned by the drafters of the legislation. From this perspective, we must view with alarm certain adverse developments that may well come to pass should title VII of H.R. 11280 become law.

It seems likely, if not certain, that title VII would greatly increase the power of Government employee unions to the detriment of the public interest in the predictable and efficient provision of Government services.

Currently, Federal employees have the right to organize and bargain collectively under Executive Order 11491, as amended. The labor-management provisions of H.R. 11280 dangerously expand the scope of bargaining beyond that established in section 11 of Executive Order 11491—

the obligation to meet and confer does not include matters with respect to the mission of the agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit; the technology of performing its work; or its internal security practices.

Under the committee bill, only agency mission, budget, organization, internal security practices and number of employees are retained as exclusive management rights. Management is also reserved the authority to assign work and make decisions on "contracting out."

The Federal employee unions will now have the right to negotiate such important issues as promotion policy, job classification and reduction-in-force standards and procedures. As a sidelight, there are also provisions for negotiation of grievance and arbitration procedures.

It would be fair to conclude that it is not clear how the committee bill will finally affect the scope of bargaining in the Federal labor sector. It is clear, however, that the provisions of the Executive Order pertaining to bargaining have been effectively jettisoned.

The labor-management title of H.R. 11280 moves Federal labor relations closer to those in the private sector which is not a parallel situation. In our opinion, this is a dangerous step. The competitive marketplace of the private sector is absent in Government employment. Funds from which wages, salaries and benefits are paid or extended to Federal employees come primarily from taxes. Expanding the right to bargain would give Government workers excess power and

leverage which would inequitably subordinate the budgetmaking process to their interest and against the basic interests and well-being of American taxpayers.

In October, 1975, the Sacramento Bee printed an editorial admitting that the paper's earlier support for collective bargaining for public employees was wrong. The editorial went on to state that :

Government is not in a position to successfully bargain collectively. If a private business enterprise is faced with wage demands so unreasonable that it will be forced out of business, the private business can say no, even if it means a strike. But Government is different. Often unreasonable demands cannot be turned down by Government because the public cannot tolerate the loss of essential services.

We recognize the unique position occupied by Federal employees and the responsibility of the Government to provide fair pay, good working conditions, and reasonable job protection. However, title VII represents an abrogation of the duties and constitutional responsibilities of the executive branch and Congress. Title VII must be amended on the floor to incorporate into law the existing Federal employee labor relations program which has served both the public and the Federal employee well through four administrations.

In any legislation dealing with labor-management relations in the Federal service, priority consideration must be given to protecting the interest of the responsible, dedicated employee, the taxpaying public which provides and pays for the jobs, and all citizens in general.

VETERANS' PREFERENCE

It is our position that the current practice of veterans' preference should not be removed or weakened. We feel strongly that the Congress and all Americans made a commitment to the veteran years ago that we must continue to uphold today. Veterans' preference does not give an unfair advantage to veterans seeking Federal employment, but merely facilitates the hiring of well-qualified applicants whose careers have been interrupted or delayed because of military service.

The Federal Government should lead the way in providing job opportunities for men and women who have served our Nation in the Armed Forces, not take them away. H.R. 11280 contains provisions dealing with veterans' preference in Federal employment which are a severe setback to veterans in the civil service and to those seeking jobs.

For our complete views on veterans' preference, we refer you to the additional views of the several Members on this subject.

CONCLUSION

The Federal Government now employs an estimated 2.8 million persons, in addition to the military. As bureaucracy has grown, initiative has been stifled and mediocrity rewarded. Still, there are thousands of competent, dedicated government employees at all levels who are effective in their jobs. These civil servants must be protected as the Congress attempts to evaluate and change the present system. American

taxpayers must also be protected and their interest in good government furthered. This is what true civil service reform should accomplish. The bill reported by the Post Office and Civil Service Committee fails in almost every instance.

It is difficult to make progress in reforming a 94-year-old system in a short period of time and in a single piece of legislation. H.R. 11280, had it been considered in a responsible, nonpartisan manner could have been the first and most important step to making the civil service more responsive and cost-efficient. The committee missed the opportunity for true reform—we hope the House will not make the same mistake.

JOHN H. ROUSSELOT.
JAMES M. COLLINS.
EDWARD J. DERWINSKI.
TRENT LOTT.
GENE TAYLOR.

INDIVIDUAL VIEWS

There is little doubt that during the 1976 Presidential campaign, President Carter successfully gained the image of being the "anti-Washington" candidate. His promises to reorganize the Federal Government were highlighted by frequent reference to the bureaucracy as bloated, wasteful and inefficient; and his message was that if elected President he would reorganize the Federal Government to make it more efficient.

The irony of civil service reform bill reported to the House by the Post Office and Civil Service Committee is that, taken as a whole, it will move the Federal work force in exactly the opposite direction.

There are several areas where the reported bill bears little resemblance to the proposals initially advanced by the Carter administration, including provisions that remove the current Hatch Act ban on political activity of Federal workers, provisions that greatly expand the power of Federal employee unions, and provisions that protect overpaid employees from being reduced in pay or grade.

It is not surprising that the committee greatly altered President Carter's proposed legislation, given the fact that organized labor exerts an inordinate amount of influence—some would say dominant—over some of my colleagues on the committee.

VETERANS' PREFERENCE

Some of the alterations the committee made to the bill, however, did not go far enough. The original Carter administration proposal called for substantial dilution in this nation's longstanding policy of according military veterans preference in examination, appointment and job retention in Federal employment.

The committee's bill offers a so-called "compromise" that reduces veterans' preference to a point where it will be nearly meaningless in the future. I do not believe that veterans' preference laws have hurt the quality of the Federal civil service, nor do I believe that the application of the law has harmed the employment opportunities of other qualified persons.

Despite all the publicity over the supposed adverse impact veterans' preference has for certain other groups, I urge the House not to lose sight of the fact that a veteran must be qualified before he or she receives any appointment preference at all. Veterans' preference has not meant that the Federal Government must appoint a minimally qualified veteran over a well-qualified nonveteran.

Our current veterans' preference laws give veterans an advantage in appointment and retention, although it is not an overwhelming one. The concept of veterans' preference is based on the belief that those men and women who served their country honorably in time of war should have some first consideration in serving their country as civil-

ians from among those with the same relative qualifications. Further, since the vast majority of veterans were civilians whose careers and lives were disrupted by military service, we currently provide some special consideration to them when their civil service careers are again disrupted by layoffs and cutbacks.

The only proper alteration in President Carter's proposal to reduce veterans' preference that the Committee should have made was to reject it. Since the Committee did not reject this part of the overall reform measure, it is now up to the full House to do so.

HATCH ACT REPEAL

As far as I am concerned, the committee's addition of Hatch Act repeal to the civil service reform bill is counterproductive, and will result in the politicizing of the Federal work force.

The proposed overhaul of the civil service system is aimed at making it easier to fire incompetent Federal employees and at making advancement in the career civil service depend a little more on merit than time on the job. This would make for less personal security in the Federal service, especially at the top and middle levels of management.

If removal of the Hatch Act ban on political activity is coupled with the loosening of job protections for key managers, I have little doubt that the potential for abuse of Federal employees through political coercion is even greater than it was just a year ago when the House made the mistake of passing H.R. 10.

The American public expects and deserves a nonpartisan career civil service. They will not have it for long if we undermine the professional integrity of Federal workers and expose them to subtle pressure in such areas as job assignments and promotions.

Employees as well as Government programs will come to be labeled as political, and the appearance of favoritism based on political affiliation will be commonplace, if the Hatch Act revision title is left in the bill. Decisions having preferential or adverse impact on anyone, whether a Federal employee seeking to do a good job or a citizen seeking fair and impartial treatment from his Government, will be perceived as being politically motivated.

PROTECTING OVERPAID EMPLOYEES

According to a June 12, 1977, Gallup poll, 64 percent of the national sample believe that Federal workers are paid more for equivalent work than employees in the private sector.

It is not possible for me to support a provision of the civil service reform bill that will give permanent protection to Federal employees against reductions in salary or grade when their jobs are "downgraded" through re-classification actions.

This concept of continuing to pay higher salaries to Federal employees than their actual job duties warrant, so long as they remain in the job, is not what I think the American public is willing to accept as "reform."

Under existing law, if an employee's position is downgraded through a reclassification action, he is entitled to retain his former rate of pay

for 2 years. This provision is sufficiently liberal, in my view, and at the end of the 2-year period his pay is reduced to the level appropriate for the job.

The pay and grade retention provisions of the reported bill are apparently supported by the Carter administration, but I doubt that Members of the House will hear administration spokesmen proclaim the benefits of continuing to pay employees for work they are not performing.

INCREASED UNION POWER

The committee's bill greatly increases the role of Federal employee unions and goes substantially beyond what the Carter administration originally proposed in the way of a legislated program for Federal labor-management relations. In the area of appeals, however, the committee's bill reflects one change supported by the administration that will have the effect of greatly increasing the chances for a marginal employee in danger of losing his job or being demoted to stay on the payroll.

The bill permits a system through which employees could choose between appealing an adverse action taken against them to the Merit Systems Protection Board or using binding arbitration to decide the outcome of adverse actions.

This provision would, in my view, be a divisive factor in Federal employment because it sharply differentiates between union members and nonmembers concerning dismissals or other disciplinary actions based on poor performance. Although the bill, in its appeals chapter authorizes the Merit Systems Protection Board to adopt alternative methods for workers not represented by unions to settle matters subject to its jurisdiction, I am not reassured that this will offer equal and uniform treatment for all Federal employees.

Other forms of encouraging an expansion of power of Federal employee unions are sprinkled throughout title VII of the committee's bill, all of which go beyond what I understood the Carter administration could support.

Under the guise of "reasonable compromises" between the Carter proposal and a strong prolabor proposal written by a few Members, the committee has sent to the floor a bill that jeopardizes a manager's right to manage by strengthening unions to a point where they could call the shots.

The committee's bill widens the scope of matters subject to collective bargaining in such a way as to include hiring policies of agencies, job classifications, the internal promotion procedures of agencies, and the rights and procedures in job transfers.

One area of the bill in particular that will lead to increased unionization of Federal employees at the expense of the taxpayer is the provision giving the new Federal Labor Relations Authority the ability to grant exclusive recognition status to a union without an election.

Under our current labor-management procedures in Federal Government, an election is always necessary before an agency can grant exclusive recognition status to a union unless it is a situation involving a consolidation of already existing units.

Several other provisions provide outright taxpayer support for labor unions representing Federal employees, such as allowing un-

limited time off with pay for union members negotiating labor contracts or processing grievances and providing a dues check-off system at no cost to the union or its members.

CONCLUSIONS

When the President's effort to change the structure of the Federal civil service personnel system was launched earlier this year, it was hailed far and wide as an attempt to improve the managerial competence of the bureaucracy.

I started out with the idea that I could support responsible reform in those areas where I thought it was needed; and that although I did not agree with every item advanced by the President, I would listen to the administration's case for change.

The administration has not made a strong enough case to convince me that all of its proposed changes are necessary. Moreover, this complex legislation has been altered by the committee to such a degree that it will not, in my view, accomplish what the President outlined as his goals and objectives.

Because I am not encouraged that the House will correct the mistakes of the committee, I have asked myself whether the proposal will make a better Federal civil service—and I have concluded that it will not.

GENE TAYLOR.

INDIVIDUAL VIEWS OF MR. JAMES M. COLLINS, OF TEXAS AND MR. TRENT LOTT, OF MISSISSIPPI

The civil service reform bill (H.R. 11280) was designed to make a bloated Federal bureaucracy more responsive and responsible to the American taxpayer. Unfortunately, those highly desirable and long overdue goals remain largely illusory under the existing provisions of H.R. 11280.

While the term "reform" evokes visions of salutary legislation its present application is a misnomer because of sins of omission and commission.

We share the widely held public view that many of our Federal bureaucrats are over-paid and over-staffed. We are deeply concerned about the size of the Federal bureaucracy.

Under the last two Republican Presidents there was a reduction in the Federal bureaucracy. Under the current administration, expansion is back in vogue. President Carter set the tone for expansion by requesting congressional authority to add 100 employees to the White House staff.

It was stated in committee that open-end hiring was needed to permit a restyled civil service system to react promptly to the problems and needs of existing and new agencies. We believe that when a new agency is created, employment priority should be given to experienced civil service personnel.

The dedicated career civil servants want to be rated on performance rather than political favoritism which would become a way of life under this bill.

There is nothing in this bill which provides for a levelling out of the existing bureaucracy. In committee, an amendment was offered to limit the size of the Federal civilian workforce to its January 1977 level. It was a reasonable and modest approach but it was brushed aside. It will be offered again when the bill is open to amendment on the House floor. It is deserving of bipartisan support.

Some Republican members of the committee also were concerned that H.R. 11280 would not become a vehicle which would substitute political policymaking for administrative decisions. For example, management of the Federal Bureau of Investigation demands persons of high stature, exemplary character and sincere devotion to duty.

It is absolutely essential that we have persons who are dedicated to the maintenance of law and order in the top administrative FBI posts. Yet, under this bill, it would be possible to transfer into the FBI fifth columnists who would undercut, if not decimate the agency's functions and responsibilities.

H.R. 11280 is not reform. It is a conglomeration of legislative sections which give the executive branch of government the power to add, transfer and eliminate on a strictly political basis.

JAMES M. COLLINS.
TRENT LOTT.

(411)

ADDITIONAL VIEWS OF MR. LEACH

I support Civil Service reform. Legislation is clearly necessary to introduce greater management efficiency into the vast Federal bureaucracy. Unfortunately, the original administration bill, which was introduced as a bipartisan initiative, was badly cut up in committee. Provisions to repeal the Hatch Act and expand the power of government unions were unnecessarily tacked on to an otherwise responsible approach. These troublesome provisions are dealt with in other supplemental views and I am confident will be corrected during floor consideration of the bill. Accordingly I would like briefly to touch on five amendments I offered in committee, two of which were accepted and three of which I intend to offer for further consideration on the House floor.

The first deals with the whole issue of decentralization. The committee accepted by unanimous voice vote my amendment mandating a study of the geographical distribution of governmental functions. A suspicious public looks upon Washington, D.C., as the center not only of excessive bureaucratic authority but as the beneficiary of substantial profit from governmental enterprise. Today every major Federal department is headquartered in Washington, D.C. The vast majority of supergrades, choice political appointments, and other highly paid jobs with the greatest policymaking authority are located in this area. Yet those in the regional and local offices of these major departments and agencies are frequently in far greater contact with the daily administration of Federal programs.

I am convinced there is something inherently wrong with the creation of a "single factory town" which lacks a Main Street, which knows no Willie Lomans or Archie Bunkers. A prudent decentralization of services is needed to bring government closer to the people who must bear the cost and share the benefits of Federal programs. Hopefully the forthcoming study, required in this bill, will give us new direction in diminishing the arrogance and unresponsiveness which tends to accompany a concentration of power.

A great concern of all of us who have ever served in the executive branch is the inflexibility of promotion policies. This bill is designed above all to bring greater accountability into the senior executive level. I am convinced a secondary goal should be to develop ways to reward and promote on merit at more junior levels. Accordingly I was pleased the committee accepted my amendment to allow far greater flexibility in promotions than currently exists under the Whitten amendment. First enacted during the Korean war, the Whitten amendment limits the number of promotions which may be made in a single year. Yet one of the problems with an inflexible civil service system is that often competent individuals, particularly women and younger employees, are underutilized by the Federal Government. Qualified individ-

uals may, for a number of reasons, be forced to enter the Federal workforce at levels of responsibility below their capability and the Whitten amendment has been a barrier to the promotion of these individuals. The committee has in my judgment wisely expressed its desire that authority be created for a more flexible application of the Whitten amendment in the future in instances where there is clear evidence of merit and dedication to the career service.

Although I was pleased with committee recognition of the objectives of decentralization and more rapid merit promotion, I was disappointed that the bill continues to miss the mark on three key aspects of government reform.

First, the committee rejected an amendment I offered to limit, for the duration of this administration, the size of the Federal workforce to the number so employed at the outset of the current administration. Statistics issued by the Civil Service Commission indicate that the size of the Federal workforce has grown in the past year and a half by more than 40,000 and I can conceive of no better vehicle to halt further growth in the Federal bureaucracy than the civil service reform bill itself. Something is wrong with any society that becomes top-heavy with bureaucracy and I would hope to obtain bi-partisan support for my amendment to place a cap on Federal employment on the House floor.

Second, I was disappointed that the committee failed to approve a provision clarifying the ethics obligations which the Federal Government should require of its employees at all levels. The rejected amendment would have prohibited Federal employees, or unions representing such individuals, from soliciting gifts, favors, or related items—either for the Federal employee or the employee's family—from any person, corporation or group which may be substantially affected by the performance or nonperformance of the employee's official duties or the official functions of the agency for which the employee is working. Although our committee has approved ethics legislation dealing with Government officials, most of that legislation does not extend to the rank and file membership of the Federal workforce. The majority of the concepts embodied in the rejected amendment are contained in existing Executive Order 11222 and ought, in my judgment, to be incorporated into statute.

Finally, I was distressed that the committee refused to ratify a proposal which, if adopted, would provide for expeditious suspension procedures for federally employed air traffic controllers who deliberately engage in job actions now barred by law or Executive order. To permit a limited number of Federal employees to hold the innocent taxpaying public hostage, by slowing down or stopping air transportation, should not be tolerated, and prompt action should be taken to deal with such action, within reasonable guidelines protecting the employee. To permit such abuses of the public trust to continue is unconscionable.

It is my hope that the full House will give careful consideration to the merit of these amendatory provisions and will take affirmative action to strengthen the bill and thereby enhance the integrity and responsiveness of the Federal bureaucracy.

JIM LEACH.

ADDITIONAL VIEWS

We oppose any dilution of veterans' preference.

The arguments put forth by the proponents of change to current preference eligibility rights are not persuasive. They would have you believe that their amendment to title III would mean a substantial gain in Federal employment for the Vietnam era veterans. Regrettably, that will not be the consequence of the committee's action.

It is contended that Vietnam era veterans would benefit from the Schroeder compromise amendment because it would limit the use of veterans' preference for nondisabled veterans to 15 years following discharge or upon appointment to a permanent civil service position, whichever occurs first. This would, of course, lead you to believe that the number of older veterans competing for jobs against younger veterans would be diminished, thereby affording the more youthful veterans less competition, and correspondingly, more employment. Again, that is not correct.

First, veterans of prior conflicts, the youngest now being in his early forties, would have already exercised their preference eligibility rights, at least those intending to do so, and having successfully sought Federal employment, may not utilize preference eligibility rights to advance their civil service status except for transfers in very limited circumstances. Second, nondisabled veterans whose service commenced on or after October 15, 1976, are not entitled to five-point civil service preference, in accordance with the provisions of Public Law 94-502, the Veterans Education and Employment Act of 1976. Thus, Vietnam era veterans will still be competing for entry level positions in the Federal Government against other Vietnam era veterans and nothing done by this committee will change that. There will still be too few jobs available for the number of veterans applying for them.

With few exceptions, the witnesses appearing before our committee have argued for the retention of veterans' preference, and those who didn't, failed to produce any statistical background or to demonstrate convincingly that preference eligibility discriminates against women or minorities. In fact, the minority groups that have testified before our committee pleaded for the retention of veterans' preference.

What we have learned, however, is that veterans' preference has hurt neither the promotion system nor the quality of the civil service. What faults that do exist in the civil service are inherently the problem of the system itself and the way it is being administered and cannot be laid at the doorstep of preference eligibility rights.

As early as 1865 a law was enacted giving preference in employment to veterans who served in the Civil War. Since then, numerous laws have been approved to assist our Nation's veterans and their families. "In 1944, Congress passed the Veterans' Preference Act which remains today the basic Federal law granting preferences to veterans. This ac-

culminated many years of work by veterans organizations, the Civil Service Commission, and the the committees in both Houses of Congress. Essentially, is pulled together the many separate existing laws and Executive orders giving preference to veterans, and made them national policy."

In 1944, President Roosevelt eloquently justified this Act in terms which are still pertinent:

I believe that the Federal Government functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces, that when they return, special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

What has happened 34 years later, to lessen the impact of these poignant remarks?

Under existing civil service law, disabled and non-disabled veterans receive preference in examination, appointment, and retention. In examination, nondisabled veterans have 5 credit points and disabled veterans have 10 credit points added to their passing scores. It should be noted that veterans must have recorded a passing grade before any credit points are added. Veterans, as with other nonveterans taking civil service examinations, must qualify first.

Certain other disabled veterans go to the top of the list of eligibles, except in competition for professional and scientific positions in grade and GS-9 and above.

Mr. Arch S. Ramsay, Director of the Civil Service Commission's Bureau of Recruiting and Examining testified before our Subcommittee on Civil Service earlier in 1977 and said:

In retention, veterans have the right to be retained over competing non-veterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans preference, performance rating, and length of service. Although this gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade.

Another matter that should be put onto perspective as we consider this issue is how veterans are distributed within the Federal Government, for to say that "veterans comprise 50 percent of the Federal service" may give the impression that that ratio holds true "across the board." In fact, more than 75 percent of the veterans in Federal service are employed by three agencies: the Department of Defense, the United States Postal Service, and the Veterans' Administration. Veterans thus account for only 37 percent of the Federal jobs outside those three agencies. That is a significant figure, but it is considerably lower than the ratio of veterans in the full-time national work force.

As for Chairman Campbell's charges that "veterans account for over 60 percent of those Federal employees in grade 15 and above" and that "the percentage of 5-point veterans grows rapidly as one goes up the grade and pay scale, reaching almost 65 percent of the GS-18's, "he fails to consider factors other than veterans' preference. First, the great majority of those in the upper grade levels have more than 10 years of seniority on the job. Due to various socio-economic factors, there has traditionally been a higher turnover rate among female Federal employees than among males. Only 21 percent of the Federal employees with more than 10 years or more of service are female, and only 18 percent of those with more than 20 years of service are female. Most of the veterans in those positions are World War II and Korean War veterans who have many years of continuous service. Second, more than 60 percent of the Federal employees at the GS-15 level and above hold advanced degrees. Despite progress made by women in recent years, there is still a great disparity between males and females with regard to graduate education: the male-female ratio among those with more than four years of college is 2.51. That ratio is even higher in such government-related fields as law, physical and life sciences, business administration and management, economics, and engineering. As recently as 1974 women earned only 6 percent of the 34,000 advanced degrees awarded in the business and management fields. In 1955 women earned only 3.5 percent of the law degrees conferred, and that ratio had increased to only 8 percent by 1973. The educational disparity between the majority and the minorities is even greater. Third, it should be pointed out that veterans' preference does not apply to promotions.

In all probability, an analysis of the higher levels of most professional groups would show a preponderance of males and veterans. To say that is not to express approval or disapproval of domination of males, and thus veterans, in our society and in the upper echelons of our government, but to point out that it would be simplistic to blame that situation on veterans' preference.

Even the Civil Service Commission has not claimed that veterans' preference had discriminated against women and minorities at the lower levels of Federal service. Minorities, who account for about 15 percent of the nation's population, hold about 20 percent of all Federal jobs. Women hold nearly 35 percent of all Government jobs and more than 40 percent of all General Schedule jobs. That is lower than the ratio of women to the total population, but is significantly above the 20 percent of the full-time, year-round jobs they hold in the civilian work force, which includes Federal employment. In fact, there are presently enough women who are entitled to veterans' preference—some 881,500—to fill nearly all the Federal civil service jobs now held by women. There are some 893,500 jobs in that category.

The danger to veterans' preference eligibility rights posed by the administration's amendment is further compounded when we consider that veterans' preference and the system under which those scoring highest on examinations are to be appointed is today widely evaded. The agencies disregard the registers, job descriptions are rewritten, veterans are passed over, and those jobs supposed to be reserved for vet-

erans under section 3310 of title V as guards, elevator operators, messengers, and custodians have upon the whole been contracted out.

The fundamental thinking behind the Veterans Preference Act and the amendments thereto, was to honor and compensate those men and women who served our nation honorably in time of war by providing them special or preferential treatment in employment. Also, since their lives were disrupted by military service, they should be given further preferential treatment when reductions in force actions are necessary.

This proud national policy on according veterans preference in employment in the Federal Civil Service System is sound and well founded in our Nation's history. To do less for our veterans—men and women and their families—is to turn our backs on their memorable accomplishments and sacrifices which make possible our very existence today.

BENJAMIN A. GILMAN.
E. J. DERWINSKI.
JOHN H. ROUSSELOT.
JAMES M. COLLINS.
GENE TAYLOR.

INDIVIDUAL VIEWS OF HON. BENJAMIN A. GILMAN

Would you buy a used car (H.R. 11280) without questioning why the seller (President Carter) is unloading his vehicle or without subjecting that vehicle to the most painstaking scrutiny (the legislative process) to detect any hidden flaws before you invest your hard-earned capital (the good will and faith of our American public) in its purchase? I think not. The analogy is apt I believe.

On February 2, 1971, President Nixon sent a message to the Congress proposing the creation of a Federal Executive Service. That message and a reprint of the legislation follows:

PROPOSED FEDERAL EXECUTIVE SERVICE—MESSAGE FROM THE
PRESIDENT OF THE UNITED STATES.

(H. Doc. No. 92-41)

To the Congress of the United States:

In my State of the Union message, one of the six great goals that I proposed to the Congress was a renewal of the Federal Government itself through a sweeping reorganization of the executive branch. The structural changes I outlined would enable us to bring greater coherence to the management of Federal programs, and to raise them to a new level of effectiveness. But even the best of structures requires the effective utilization of highly qualified people. The need for the best people and for making the best use of their talents, becomes more vital as we improve the structure and organization of the Federal Government.

It is on our Federal executives—both career and non-career—that the task of translating broad public policy into operational reality rests most heavily. These men and women are among the most valuable resources that we have as a government. We must not use them wastefully. We must not let their talents and their dedication be squandered, and we must constantly seek better ways of attracting into the executive ranks of the Federal services new people with the capacity and the drive to help us meet our national needs.

The time has come, therefore, to take a critical look at the existing Federal system for selecting, training, assigning and rewarding executive manpower, and to see whether it cannot be improved. We have carried out such an examination, and have concluded that it can be significantly improved by incorporating principles of modern personnel management.

For some time now, the Government's executive manpower systems have shown increasing evidence of weakness. The present arrangements have grown up over the years without any comprehensive plan. Disparate systems for the authorization, appointment and assignment of Government executives have prevented adequate planning and provision for constantly changing requirements. The resulting complexities and rigidities have reached a point at which it is now futile to try to patch the present structure further. Too often, the present system serves only to frustrate the conscientious agency head and the dedicated career executive alike.

At my request, the Civil Service Commission has completed a painstaking and systematic analysis of the existing manpower management programs for executives. The Commission has informed me that reforms are essential, reforms that cannot be made within existing law. I agree. Accordingly, I recommend legislative action to establish an entirely new personnel system for upper-level officials of the executive branch, to be called the Federal Executive Service. * * *

* * * The demands upon Government today are great and pressing. I am convinced that the Government has attracted, and will continue to attract, men and women of the highest caliber. But too often we have enmeshed them in a web of rigid and intricate personnel policies which have frustrated their efforts and arrested their professional growth.

We need both dedication and high performance from our Federal executives. Mere competence is not enough. Mere continuity is self-defeating. We must create an environment in the Government service in which excellence and ingenuity can flourish—and in which these qualities are both encouraged and rewarded.

It is to this end that I urge prompt and favorable consideration of this landmark legislation.

RICHARD NIXON.

The White House,
February 2, 1971.

I urge my colleagues to read and compare several parts of President Carter's Message to the Congress of March 3, 1978, transmitting H.R. 11280, as well as his version of the Senior Executive Service, comprising title IV of H.R. 11280:

To the Congress of the United States:

I am transmitting to the Congress today a comprehensive program to reform the Federal Civil Service system. My proposals are intended to increase the government's efficiency by placing new emphasis on the quality of performance of Federal workers. At the same time, my recommendations will ensure that employees and the public are protected against political abuse of the system.

Nearly a century has passed since enactment of the first Civil Service Act—the Pendleton Act of 1883. That Act established the United States Civil Service Commission and the merit system it administers. These institutions have served our Nation well in fostering development of a Federal workforce which is basically honest, competent, and dedicated to constitutional ideals and the public interest.

But the system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in red tape, delay and confusion.

Civil Service reform will be the centerpiece of government reorganization during my term in office.

I have seen at first hand the frustration among those who work within the bureaucracy. No one is more concerned at the inability of government to deliver on its promises than the worker who is trying to do a good job.

Most Civil Service employees perform with spirit and integrity. Nevertheless, there is still widespread criticism of Federal government performance. The public suspects that there are too many government workers, that they are underworked, overpaid, and insulated from the consequences of incompetence.

Such sweeping criticisms are unfair to dedicated Federal workers who are conscientiously trying to do their best, but we have to recognize that the only way to restore public confidence in the vast majority who work well is to deal effectively and firmly with the few who do not.

For the past 7 months, a task force of more than 100 career civil servants has analyzed the Civil Service, explored its weakness and strengths and suggested how it can be improved. . . .

Sound familiar? It should because a number of the gentlemen who were instrumental in the creation of the proposed Federal Executive Service were also intimately involved in the drafting of H.R. 11280 and the Senior Executive Service. More about that later.

H.R. 3807, the proposed Federal Executive Service, introduced in February of 1971, was not accorded a hearing by this committee until well over a year later in April of 1972. And at that, only three hearings were ever held by the Subcommittee on Manpower and Civil Service, and then the bill was tabled. Yet, H.R. 11280, introduced on March 3d of this year, already has been marked up by the committee and is being readied for floor action sometime next month. The contrast in deliberation is clear. But why the urgency? What makes the Senior Executive Service so much more palatable to this committee than the Federal Executive Service, as both pieces of legislation are almost word for word identical. Could it be that the majority wishes to present the President with a much sought after victory on the domestic front before the November elections?

Then too, one wonders why the President's Personnel Management project labored so mightily for over five months just to produce recommendations that are one part, Hoover Commission findings, and the other part, warmed-over Nixon proposals.

Had H.R. 3807 become law by 1974, it would have seriously jeopardized the stability of the American government. For it was in 1974, you recall that the Executive Office of the President was in a state of siege and all the President's men were in disarray. What saved us during that dark period was the career civil service, acting in the highest tradition of public service, that kept the ship of state afloat. Now, a scant 4 years after a President of the United States was forced to resign and a number of the President's closest advisors sent to prison, this Congress is being asked once again to enact into law a bill that would destabilize and politicize the career civil service, the one saving grace of the tragic Watergate affair.

It should come to the surprise of no one that H.R. 11280 is remarkably similar to the infamous "Malek Manual" a blueprint for the Federal Executive Service, and the Nixon administration secret plan to subvert and politicize the federal bureaucracy.

In the March 20, 1978, issue of the Federal Times, the co-author of the "May-Malek Manual" is quoted as saying, "I congratulate President Carter on his proposed civil service reforms. It was exactly to that kind of result that my manual was written. There are many ideas in (this legislation) that resemble the May Manual . . ." Finally, Mr. May told a reporter that, ". . . several members of the Carter administration had contacted him to express interest in the ideas in the 'Malek Manual' and to praise it." Alan May was convicted for his role in politically clearing civil service candidates for positions at the GS-13 level and above.

It should not be forgotten either that the proposed Federal Executive Service, now relabeled the Senior Executive Service, was created during a time of rampant merit abuse, and written by a number of high-ranking officials at the Civil Service Commission who it is alleged, were themselves guilty of perpetrating or fostering merit abuses.

Several of those same Commission officials, it has now been documented, were also intimately involved in the President's reorganization project and the drafting of H.R. 11280. Further, these same top career staff people are now profiled in the Lyle Report, prepared under the aegis of Jule Sugarman, then head of President Carter's Civil Service Commission transition team, and now a Civil Service Commissioner. That report not only contained an evaluation of the U.S. Civil Service Commission's role during that period of widespread merit abuse in government, but also included profiles of the top twenty career civil servants at the Commission, and their participation, if any, in fostering these merit abuses.

Several Members of Congress have formally requested the Lyle Report, as have a number of the members of the press, Federal employees, and private citizens. All such requests have been rebuffed by President Carter. One must ask why? Is it because the White House is afraid of casting doubt on the integrity of individuals who assisted him in the drafting of his reorganization program, thereby reflecting doubt on the true intent and purpose of the legislation itself?

This should not be interpreted as an attack on the integrity of the President or of making any allegation that he would manipulate the vast powers intrusted to him by virtue of H.R. 11280 so as to politi-

cize the Federal bureaucracy. Nevertheless, the potential for harm does exist! And what about future Administrations? Has history never repeated itself?

I ask my colleagues not to accept H.R. 11280 as real reform simply because it is gift wrapped in that manner. I urge you to look beyond the clever packaging of this legislation, the Madison Avenue advertising and the slogans. Instead, let us analyze how this bill will eventually alter the structure of the personnel system of every department and agency in the Executive Branch; how it will impinge on the livelihood of Federal employees of all grades; and, finally, what it will mean in the quality of public service rendered to the American taxpayer.

Permit me to conclude with one more analogy. H.R. 11280 is a jampy on which, unfortunately, the committee has installed several gleaming accessories, i.e., whistleblower protection, Hatch Act reform, saved grade and pay, reduced workweek for federal firefighters, and a new framework for labor management relations. Any one of these proposals, standing on its own, is worthy of passage by this Congress. However, attached as they are to H.R. 11280, they must all bear the same fate, which I fervently hope and believe will be the scrap heap.

Caveat emptor.

BENJAMIN A. GILMAN.

* * * * *



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of America

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No. 126

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Calif.
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Oberstar
Obey
Ottinger
Panetta
Patten
Paterson
Pease
Pepper
Perkins
Pettis
Pickle

Rousselot
Roybal
Runnels
Russo
Ryan
Satterfield
Scheuer
Schroeder
Schulze
Sebelius
Selberling
Sharp
Shuster
Sikes
Simon
Skelton
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spence
St Germain
Staggers
Stangeland
Stanton
Steed
Steiger
Stockman
Stokes
Stratton
Studds
Stump
Taylor
Thompson
Thornton
Traxler
Treen
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Waggonner
Walgren
Walker
Watkins

Shipley
Sisk
Stark
Symms

Teague
Thone
Tsongas
Tucker

Walsh
Wampler
Wiggins
Wydler

Mr. MOORE and Mr. CLAY changed their vote from "no" to "aye."

So the motion was agreed to.

The result of the vote was announced as above recorded.

Mr. CLAY. Mr. Speaker, I move to reconsider the vote by which the motion was agreed to.

Mr. UDALL. Mr. Speaker, I move to lay the motion to reconsider on the table.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CLAY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 327, nays 8, not voting 97, as follows:

[Roll No. 689]

YEAS—327

Abdnor
Addabbo
Akaka
Alexander
Ambro
Ammerman
Anderson,
Calif.

Collins, Tex.
Conable
Conte
Corcoran
Corman
Cornell
Cotter
Coughlin

Goldwater
Gonzalez
Gore
Gradison
Grassley
Green
Gudger
Guyer

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11280) to reform the civil service laws.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CLAY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 340, nays 13, answered “present” 1, not voting 78, as follows:

[Roll No. 688]

YEAS—340

| | | |
|----------------|----------------|-----------------|
| Abdnor | Brown, Mich. | Dickinson |
| Addabbo | Brown, Ohio | Dicks |
| Akaka | Broyhill | Dingell |
| Alexander | Buchanan | Dodd |
| Ammerman | Burgener | Dornan |
| Anderson, | Burke, Fla. | Downey |
| Calif. | Burke, Mass. | Drinan |
| Anderson, Ill. | Burleson, Tex. | Duncan, Oreg. |
| Andrews, N.C. | Burlison, Mo. | Duncan, Tenn. |
| Andrews, | Burton, John | Early |
| N. Dak. | Butler | Eckhardt |
| Annunzio | Byron | Edgar |
| Applegate | Carney | Edwards, Ala. |
| Archer | Carter | Edwards, Calif. |
| Ashbrook | Cavanaugh | Edwards, Okla. |
| Ashley | Cederberg | Ellberg |
| Aspin | Chappell | Emery |
| AuCoin | Chisholm | Erlenborn |
| Badham | Clausen, | Ertel |
| Bafalis | Don H. | Evans, Del. |
| Baldus | Clawson, Del | Evans, Ga. |
| Barnard | Clay | Evans, Ind. |
| Baucus | Cleveland | Fary |
| Bauman | Coleman | Fascell |
| Beard, R.I. | Collins, Ill. | Fenwick |
| Beard, Tenn. | Conable | Findley |
| Bedell | Conte | Fisher |
| Bellenson | Conyers | Fithian |
| Benjamin | Corcoran | Flippo |
| Bennett | Corman | Flood |
| Bevill | Cornell | Florio |
| Biaggi | Cotter | Flowers |
| Bingham | Coughlin | Flynt |
| Blanchard | Crane | Foley |
| Blouin | Cunningham | Ford, Mich. |
| Boland | D'Amours | Ford, Tenn. |
| Bolling | Daniel, R. W. | Forsythe |
| Bonior | Danielson | Fountain |
| Bonker | de la Garza | Frenzel |
| Brademas | Delaney | Fuqua |
| Brinkley | Dellums | Gammage |
| Brodhead | Derrick | Garcia |
| Broomfield | Derwinski | Garcia |
| Brown, Calif. | Devine | Gaydos |

Kostmayer
Krebs
Krueger
LaFalce
Lagomarsino
Leach
Lederer
Lehman
Lent
Levitas
Livingston
Long, Md.
Lundine
McClory
McCloskey
McCormack
McDade
McEwen
McFall
McHugh

Collins, Tex.
Harris
Hawkins
Lloyd, Calif.
Mikulski

Pike
Freyer
Price
Pritchard
Pursell
Quillen
Rahall
Rallsback
Rangel
Rhodes
Rinaldo
Risenhoover
Robinson
Roe
Rogers
Rooney
Rose
Rosenthal
Rostenkowski

NAYS—13

Mitchell, Md.
Quayle
Roberts
Spellman
Steers

ANSWERED “PRESENT”—1

Wirth

NOT VOTING—78

Ambro
Armstrong
Boggs
Bowen
Breaux
Breckinridge
Brooks
Burke, Calif.
Burton, Phillip
Caputo
Carr
Cochran
Cohen
Cornwell
Daniel, Dan
Davis
Dent
Diggs
English
Evans, Colo.
Fowler
Fraser

Frey
Giaino
Gibbons
Harrington
Harsha
Horton
Hubbard
Huckaby
Ireland
Jenrette
Johnson, Colo.
Latta
Le Fante
Leggett
Lloyd, Tenn.
Long, La.
Lott
Lujan
Luken
McDonald
Maguire
Mann

Waxman
Weaver
Wells
Whalen
White
Whitehurst
Whitley
Whitten
Wilson, Tex.
Winn
Wolf
Wright
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

Wilson, Bob
Wilson, C. H.
Young, Tex.

Andrews, N.C.
Andrews,
N. Dak.
Annunzio
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Baldus
Barnard
Baucus
Bauman
Beard, R.I.
Bedell
Bellenson
Benjamin
Bennett
Biaggi
Bingham
Blanchard
Blouin
Boland
Bolling
Bonior
Bowen
Brademas
Brinkley
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cederberg
Chappell
Chisholm
Clausen,
Don H.
Clawson, Del
Cleveland
Coleman

Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Delaney
Derrick
Derwinski
Devine
Dicks
Dingell
Dodd
Dornan
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Ellberg
Emery
English
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fisher
Fithian
Flippo
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Frenzel
Fuqua
Gammage
Garcia
Gephardt
Ginn
Glickman

Hagedorn
Hall
Hamilton
Hammer-
schmidt
Hanley
Danielson
Hansen
Hannafor
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Holtzman
Howard
Hughes
Hyde
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Ireland
Jacobs
Jeffords
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kasten
Kastenmeler
Kazen
Kelly
Kemp
Keys
Kildee
Kostmayer
Krebs
Krueger
LaFalce
Lagomarsino
Leach
Lent
Levitas
Livingston
Lloyd, Calif.
Long, Md.
Lott
Lujan
Lundine

August 11, 1978

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H 8461

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|----------------|--------------|---------------|
| McClory | Panetta | Spellman |
| McCloskey | Patten | Spence |
| McCormack | Patterson | St Germain |
| McDade | Pease | Staggers |
| McFall | Pepper | Stangeland |
| McHugh | Perkins | Stanton |
| McKinney | Pettis | Steed |
| Madigan | Pickle | Steiger |
| Mahon | Pike | Stokes |
| Mann | Preyer | Stratton |
| Markey | Price | Studds |
| Marks | Pritchard | Stump |
| Marlenee | Quillen | Thompson |
| Martin | Rahall | Thornton |
| Mathis | Railsback | Traxler |
| Mattox | Rangel | Treen |
| Mazzoli | Regula | Trible |
| Meeds | Reuss | Tucker |
| Michel | Rhodes | Udall |
| Mikva | Rinaldo | Ullman |
| Miller, Ohio | Risenhoover | Van Deerlin |
| Mineta | Roberts | Vander Jagt |
| Minish | Robinson | Vanik |
| Mitchell, N.Y. | Roe | Volkmer |
| Moakley | Rogers | Waggonner |
| Moffett | Rooney | Waigren |
| Mollohan | Rose | Walker |
| Montgomery | Rosenthal | Watkins |
| Moore | Rostenkowski | Waxman |
| Moorhead, | Rousselot | Weaver |
| Calif. | Roybal | Weiss |
| Moorhead, Pa. | Runnels | Whalen |
| Mottl | Russo | White |
| Murphy, Ill. | Ryan | Whitehurst |
| Murphy, Pa. | Santini | Whitley |
| Murtha | Scheuer | Whitten |
| Myers, Gary | Schroeder | Wilson, Tex. |
| Myers, John | Schulze | Winn |
| Myers, Michael | Sebelius | Wirth |
| Natcher | Seiberling | Wolf |
| Neal | Sharp | Wyllie |
| Nedzi | Shuster | Yates |
| Nix | Simon | Yatron |
| Nowak | Skelton | Young, Alaska |
| O'Brien | Slack | Young, Fla. |
| Oakar | Smith, Iowa | Young, Mo. |
| Oberstar | Smith, Nebr. | Zablocki |
| Obey | Snyder | Zefereetti |
| Ottinger | Solarz | |

NAYS—8

The CHAIRMAN. Is there objection to dispensing with the first reading of the bill?

Mr. BAUMAN. Mr. Chairman, reserving the right to object to dispensing with the first reading of the bill, can the gentleman from Arizona tell the Committee what the schedule for the rest of the afternoon might be?

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Arizona.

Mr. UDALL. As I told the gentleman from Maryland and other colleagues it would be part of my purpose, based on arrangements and discussions with the gentleman from Missouri (Mr. CLAY) and other Members who are concerned with this bill, that we complete general debate in order under the rule and at the conclusion of the general debate, without reaching points of order or amendments, I will move that the Committee do now rise, and we would conclude the bill at another time.

I had promised the leadership to try to get through the bill today and I thought we had some hope of doing that until these events occurred.

There are other conference reports and other matters that are going to be scheduled, but in any event the House will conclude its business by 3 o'clock. But I cannot guarantee that at about 1:30, when we will conclude general debate, we will conclude the day's business. Other matters will be scheduled.

Mr. BAUMAN. Can the gentleman tell

of his major civil service reform, and I object.

The CHAIRMAN. Objection is heard. The Clerk will read.

The Clerk proceeded to read the bill.

Mr. DAVIS (during the reading). Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The Clerk will read.

The Clerk continued to read the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that further first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, could the gentleman from Arizona now inform the Com-

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| Clay | Lederer | Steers |
| Conyers | Mikulski | Wilson, Bob |
| Dickinson | Fursell | |

NOT VOTING—97

| | | |
|-----------------|----------------|---------------|
| Anderson, Ill. | Giaino | Poage |
| Armstrong | Gibbons | Fressler |
| Beard, Tenn. | Gooding | Quayle |
| Bevill | Harrington | Quile |
| Boggs | Harsha | Richmond |
| Bonker | Horton | Rodino |
| Breaux | Hubbard | Roncallo |
| Breckinridge | Huckaby | Rudd |
| Brodhead | Jenrette | Ruppe |
| Brooks | Johnson, Colo. | Sarasin |
| Brown, Calif. | Kindness | Satterfield |
| Brown, Mich. | Latta | Sawyer |
| Burke, Calif. | Le Fante | Shiple |
| Burton, John | Leggett | Sikes |
| Burton, Phillip | Lehman | Slak |
| Caputo | Lloyd, Tenn. | Skubitz |
| Cochran | Long, La. | Stark |
| Cohen | Luken | Stockman |
| Collins, Ill. | McDonald | Symms |
| Cornwell | McEwen | Taylor |
| Dellums | McKay | Teague |
| Dent | Maguire | Thone |
| Diggs | Marriott | Tsongas |
| Downey | Metcalfe | Vento |
| Edgar | Meyner | Walsh |
| Erlenborn | Milford | Wampler |
| Evans, Colo. | Miller, Calif. | Wiggins |
| Forsythe | Mitchell, Md. | Wilson, C. H. |
| Fountain | Moss | Wright |
| Fowler | Murphy, N.Y. | Wydlar |
| Fraser | Nichols | Young, Tex. |
| Frey | Nolan | |
| Gaydos | Pattison | |

So the motion to table was agreed to. The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

us what other matters will be scheduled?

Mr. UDALL. The leadership is looking for some other business, and I cannot say what, but I cannot guarantee there will not be other business.

Mr. BAUMAN. In the absence of information as to the other scheduled matters, and in view of the fact that many Members wish to depart, I will be constrained to object to dispensing with the reading of the bill unless we know precisely what the schedule will be.

Mr. Chairman, I object.

Mr. UDALL. Mr. Chairman, will the gentleman withhold that objection for a moment and will the gentleman yield?

Mr. BAUMAN. I will withhold the objection and I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, in reply to the gentleman's question, I just talked to the Speaker and to the minority leader about 5 minutes ago about the situation, that we could not go beyond the general debate today, and they are conferring with other chairmen about various conference reports and other matters. They will be making an announcement as soon as they can, so I hope the gentleman will withhold for a minute.

The gentleman will have other opportunities to object, and I know he has sufficient parliamentary skill to take advantage of those opportunities, so I hope the gentleman will withhold his objection.

Mr. BAUMAN. Mr. Chairman, there are 138 pages in the original bill that need to be read, and I am sure the President would want us to know the contents

mittee what the program will be?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, the leadership has advised me that following the one hour of general debate on this bill, they will call up for action under previous notice to the House the bill, H.R. 13007, the Electronic Fund Transfer Act, under an open rule, with one hour of debate, but in no event will the House continue legislative debate beyond 3 p.m. this afternoon.

Mr. BAUMAN. So if the electronic fund transfer bill is not concluded by 3 p.m., there will be no vote, I assume?

Mr. UDALL. The gentleman is correct, and I suspect there may not be a disposition to use time or to extend remarks and we may not use our full hour of debate.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, can the gentleman, or somebody from the Democratic leadership, tell us if the gentleman from Illinois (Mr. ANNUNZIO) has been contacted or if the gentleman is prepared to deal with the electronic fund transfer bill? I know the gentleman worked very hard on that bill in the Committee on Banking, Finance and Urban Affairs. Is the gentleman aware the bill was coming up? There were several amendments.

The CHAIRMAN. The Chair will announce that the gentleman from Illinois (Mr. ANNUNZIO) has been contacted and

is expected to be available on or about 1:15 p.m. this afternoon.

Mr. BAUMAN. Mr. Chairman, further reserving the right to object, I would like to ask the gentleman from Arizona one other question. There are a number of bills now in the legislative netherland, such as CETA and foreign aid. Will this bill be consigned to that same ethereal place? Does the gentleman know when this bill will be taken up again?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, some have referred to this bill as an uncooked turkey waiting to be put in the oven.

Mr. BAUMAN. Certainly not the gentleman from Maryland.

Mr. UDALL. We do not consider this bill in that category at all. The leadership has a very heavy schedule, as the gentleman knows. I have asked the Speaker to put it on sometime next week; if not, we go off into limbo until September, as the gentleman knows.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Without objection, the further first reading of the bill will be dispensed with.

There was no objection.

The CHAIRMAN. Under the rule, the gentleman from Arizona (Mr. UDALL) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Members of Congress believe hinder Federal agencies from functioning effectively under the civil service system.

There are delays in the present system in both hiring and firing. The inflexibility in the highest levels of the civil service frustrates any President who is elected by the people to carry out a program. Employees are frequently discriminated against because in good faith they attempt to expose wastes of the taxpayers' money or agency mismanagement. The classic example in recent years is Ernest Fitzgerald, whose efforts to bring to the attention of the people the incredible cost overruns of the C5A transports resulted in a bureaucratic snarl in an effort to silence him or dismiss him. Years ago, Dr. Janet Kelsey, who discovered the tragic effects of thalidomide, was at the same time celebrated as a hero to the people and an enemy within the Food and Drug Administration.

President Carter has proposed legislation to improve the civil service system and to prevent the kinds of abuses illustrated in the Fitzgerald and Kelsey cases.

Title I of H.R. 11280 establishes by law the general policies of the merit system principles which shall prevail throughout the executive branch. This title also lists specific prohibited personnel practices, protects employees from reprisals because of whistle blowing, and generally provides protection for all employees against discrimination, political coercion and other unfair retributory or illegal actions.

rather than a longevity pay system for management employees in grades 13, 14, and 15.

Title VI improves the research and demonstration projects of the executive branch.

Title VII establishes a new labor-management relations program. Rather than enacting into law the skeleton outline of the Executive order on labor-management relations, the committee has approved what we believe is a fair and responsive program. We have attempted to navigate a course which gives Federal employees greater rights in labor relations than they have heretofore enjoyed. At the same time we have preserved the rights of management to run the shop. I believe the time has simply come for Federal employees to enjoy some, if not all, of the same rights which employees in the private sector have had since 1935. We do not permit bargaining over pay and fringe benefits, but on other issues relating to an employee's livelihood, we do permit collective bargaining between Federal employee unions and agency management. To those who claim the Government will simply go up in smoke if this labor provision is adopted, let me refer you to those who said the world would go up in smoke if the Waggoner Act were approved, or the Social Security Act, or the medicare bill, all of which have contributed so much to improve the quality of American life.

Title VIII incorporates the provisions of the Nix bill on downgrading of Federal employees. This legislation has

Mr. UDALL. Mr. Chairman, I yield myself such time as I may consume.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, this is a major bill, and it is one on which the Committee on Post Office and Civil Service has worked long and hard.

Mr. Chairman, the bill we are considering today is the most comprehensive reform of the civil service laws ever presented to the House. It relates to practically every aspect of civil service employment in the U.S. Government—appointment, veterans' preference, pay, classification, labor relations, political rights, the organization of agencies in the executive branch responsible for administering the civil service system, and insuring fairness and equity for employees, and a host of other issues which we have deliberated for the last 5 months.

Chairman Nix introduced the President's proposal on civil service reform on March 3. Following that, our committee conducted 13 days of public hearings in March, April, and May. More than 200 witnesses, representing all facets of public life in this country, testified before our committee. Following those hearings, our committee met for 10 days to mark up this legislation. Some 77 amendments were considered and finally, on July 19, by a vote of 18 to 7, the committee ordered the bill reported with a committee amendment.

This bill is divided into 11 titles. It is designed to resolve some of the major problems which the President and many

Title II establishes by law the Office of Personnel Management and the Merit Systems Protection Board to take over the responsibility now vested in the Civil Service Commission.

Title III principally relates to veterans' preference. The committee recommends that veterans' preference for Vietnam Era veterans be improved by creating more job opportunities in the Federal service. This will be accomplished principally by eliminating appointment preference for retired military officers above the rank of captain, limiting preference to a 3-year period for retired officers and enlisted men below the rank of major, and generally limiting veterans' preference to a period of 15 years following separation from the armed services. The changes will not apply in the case of a disabled veteran.

Title IV establishes the senior executive service, which will include the management positions now generally known as supergrades. It will also include some executive level V and executive level IV positions. This is critically important to effective management of any President's program. Unless greater flexibility is established at the GS-16, 17, and 18 level, no President can carry out the program upon which he was elected in a manner which the people are entitled to expect. The senior executive service fairly protects the rights of employees appointed to these positions, and insures that an employee who retreats from a senior executive service position is guaranteed placement, either in the job he had or in a job of comparable pay.

Title V establishes a merit pay system

already been reported out of our committee, but we believe that because of the lateness of the hour, action by the Senate might not be possible. The administration supports the enactment of title VIII.

Title IX incorporates the provisions of the Hatch Act reform, which previously passed the House and is now pending in the Senate. I am sure there will be others who will address that issue at greater length.

Title X incorporates the provisions of the firefighters' work week bill, which previously passed both Houses but was vetoed by the President.

On both of these issues I think it is fair to say that if the House approves this bill with these provisions intact, there is some doubt that the Senate would be willing to go to conference. I personally supported and voted for both of these bills as separate legislation, and I have nothing but high regard for my colleagues from Missouri and Virginia who are their sponsors, but their inclusion could jeopardize the possibilities for enactment of the civil service reform bill this year.

Title XI includes miscellaneous and technical provisions, including a decentralization of government study proposed by my colleague from Iowa, Mr. LEACH.

Mr. Chairman, I believe the committee has worked out a very good bill. It gives the administration most of what it wants. It gives our friends in labor a positive program to achieve many of the rights which other citizens have enjoyed for decades. It improves the protection

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for employees and it provides for the establishment of a new system of high level management which I believe is necessary.

I urge my colleagues to support the committee amendment.

Mr. DERWINSKI. Mr. Chairman, I yield myself such time as I may consume.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, as we proceed into the critical phase of amending and shaping this legislation I hope Members on both sides of the aisle will keep an objective eye on what should be our ultimate goal—that is, the enactment of honest and unbiased civil service reform.

This legislation offers the Members of the House the opportunity to reinvigorate a Federal civil service merit system that, during its 95-year lifespan, has become immune to effective management.

It is my strong personal opinion that civil service reform is a nonpartisan issue and that reform is good Government. I hope that feeling is shared by my colleagues.

While I voted in committee to report this legislation to the floor, in the interest of promoting a sound concept, there are parts of the committee-reported bill I strongly oppose, and would like to sketch out these areas so that when we get to the amending process we will have a better idea of the key issues.

The most damaging addition to the bill is title IX which contains the lan-

veternans' preference laws should also be rejected.

The fundamental thinking behind the veterernans' preference laws, which date from 1865, is to compensate those who served our Nation honorably in time of war by providing qualified applicants with certain preference in appointment. These laws also grant preference for retention rights during a reduction in force.

The title dealing with the senior executive service was caught in, and became the victim of, one of the many crossfires in committee. To limit the SES to a 2-year experimental program in just three agencies, and the committee amendment does, is to dilute legitimate reform. The senior executive service is a cornerstone of this legislation, and I urge support of an amendment to restore the bill to its original purpose as recommended by the administration.

The labor-management provisions of the bill, in title VII, expand considerably the scope of bargaining beyond that established under Executive Order 11491, the Executive order which presently governs labor-management relations in the Federal sector.

Under the committee bill, Federal employees unions will have the right to negotiate such management-oriented issues as promotion standards, job classification, and reduction-in-force standards and procedures.

I suggest to those who are interested in true reform that it is important to correct title VII so that it essentially

run high on all sides of the issue and it has become difficult to separate the fact from the fiction. To put the matter into perspective, I would like to offer the Members a short history on veterans' preference practices.

The first granting veterans' preference followed the Civil War—1865—and provided that—

Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointment to civil offices, provided they be found to possess the business capacity necessary for the proper discharge of the duties of such offices.

In 1876, the Congress went on to grant veterans' preference in reduction-in-force actions in the Federal service. This law also extended protection to the widows and orphans of deceased soldiers and sailors. For those who are unmoved by this historical affirmation of veterans' preference, I would remind them that George Washington, then a colonel, communicated to the Virginia House of Burgesses in 1754, that "special assurances" should be given to service-connected disabled veterans that they would not be "discharged and turned upon an uncharitable world to beg, steal, or starve. * * * There are few men who would choose to have their lives exposed, without some view or hope of a reward, to the insults of a merciless enemy."

The Veterans' Preference Act of 1944, which is the basis for most of the current practice, granted veterans preferential

guage of H.R. 10, a bill emasculating the Hatch Act and opening the door to politicization of the civil service system. The inclusion of this title is contrary to the concept of reform legislation.

In his message transmitting his civil service reform legislation to the Congress, President Carter declared one of his major objectives was "to strengthen the protection of legitimate employee rights." A fundamental right of employees under the civil service merit system is to be free from and protected against political coercion. Repeal of the Hatch Act, as proposed in title IX destroys that protection. The ability of the civil service to perform in an efficient and unbiased manner would be seriously impaired by title IX.

The administration opposes the inclusion of title IX in this legislation and so I urge all of my colleagues to join in opposing and rejecting title IX, or any modification of it.

My Democratic colleagues should be particularly concerned with the addition of title X to the bill, which is a gratuitous slap at the President. This title contains the provisions of H.R. 3161, a bill reducing the basic workweek of Federal firefighters which President Carter vetoed less than 2 months ago and returned to the Congress with a strong message of rejection.

The firefighters' workweek legislation has nothing to do with civil service reform. It is a bill that cannot stand on its own merit and adding it to this bill is simply a move to complicate House consideration of essential reform legislation.

The language in this bill diluting the

conforms with the Executive order, as originally proposed, and supported by the administration.

One other feature that needs remedial attention is that language covering the Federal Bureau of Investigation into certain titles of the bill. An amendment to grant exclusion to the FBI, because of its special personnel requirements, deserves support.

Mr. Chairman, this legislation clearly needs some major surgery. But I believe that beneath its burden of special interest fat, the bill contains the muscle of sound civil service reform.

Whatever legislation is enacted will be administered by both Democratic and Republican administrations in the future. Shortsighted concessions to the voices of special interest is not service to the public which, as we know through proposition 13 and a host of other indicators, strongly favors a government more efficient and responsive to its needs.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to our distinguished statesman, the gentleman from California (Mr. ROUSSELOT).

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Chairman, I rise in support of the Hanley amendment to title III of H.R. 11280, the Civil Service Reform Act of 1978. As you know, this amendment would preserve veterans' preference in Federal employment as it presently exists.

There is very little new which can be said about veterans' preference. Emotions

treatment in Federal employment. Basically, the law provides:

First. Five point preference added to the minimum passing score (70) received by the veteran;

Second. Ten-point preference for disabled veterans;

Third. Preference for job retention in the event of a reduction in force;

Fourth. Reemployment rights in the event of interruption for military service;

Fifth. Preference in meeting medical/physical requirements;

Sixth. Certain preferences in appeal rights;

Seventh. Absolute preference for certain jobs at lower levels; and

Eighth. Miscellaneous benefits/preferences.

The Schroeder amendment adopted in the Post Office and Civil Service Committee seeks to drastically reduce and damage these preference rights. I strongly oppose the Schroeder amendment and urge my colleagues to examine the arguments presented by the gentleman from Colorado in support of her amendment. The hearing record is clear in its refutation of the charges that veterans' preference has led to discrimination against nonveterans, women, and minorities.

The Honorable RAY ROBERTS, chairman of the Committee on Veterans' Affairs, has stated that he is not convinced by the testimony presented in favor of this dilution of veterans' preference. In a letter to Representative HANLEY, the author of this amendment, Representative ROBERTS asserts that:

Our Subcommittee on Education and Training recently conducted oversight hearings on the Administration's proposal to amend the Veterans' Preference Act. Based on testimony presented by the Chairman of the Civil Service Commission, Mr. Alan Campbell, and the major veterans organizations, many of us are not persuaded that the proposal has merit. The average age of World War II veterans is now 59 years. Obviously, his eligibility for veterans' preference will have no major impact on employment during the next ten years. The Korean veteran, whose average age is 48, is well established in his career. However, many Vietnam veterans are finding it extremely difficult to obtain employment. The rate of unemployment among this group now stands at about ten percent.

The Schroeder amendment, limiting preference to a one-time use within 15 years from the date of discharge will not aid the Vietnam veteran, but will, in fact, eliminate many veterans of that era from the benefit of preference practices.

We, in the Congress, must hold fast to the commitment made to the veteran years ago when we promised readjustment assistance to those who risked their lives in defense of this country. Veterans' preference does not give an unfair advantage to veterans seeking Federal employment, but merely facilitates the hiring of well-qualified applicants whose careers have been interrupted or delayed because of military service.

I urge my colleagues to join me in support of the Hanley amendment and in support of those men and women who served us all without question or reser-

not want to impugn the character of every Member over here who has been attempting to resolve some issues that ought to be resolved and who are prepared to offer some perfecting amendments to this bill.

Mr. ROUSSELOT. Mr. Chairman, if the gentleman from Illinois will yield, does the gentleman from Missouri (Mr. CLAY) think it is necessary to name names?

Mr. CLAY. I do not think the gentleman ought to impugn the motives of every Member.

Mr. ROUSSELOT. I do not want to impugn any Member, and I have admitted I engage in such tactics all the time when I think issues need to be resolved. When we do that, we are stalling for time; that is all we are doing.

I do not think I need to name names, because the record will be very clear tomorrow as to who is engaged in legislative procedural tactics. That is a very natural procedure, and I do it all the time when I am trying to get issues clarified that I think are not being clarified.

Mr. CLAY. But the gentleman is not being "dilatatory"?

Mr. ROUSSELOT. Oh, yes, I think I am dilatary at times.

Mr. DERWINSKI. Mr. Chairman, if I could reclaim my time, I seem to recall that there is a line in Shakespeare that runs something like this: "It takes one to know one."

Mr. ROUSSELOT. Yes, that is right, and I accept that honor.

Mr. DERWINSKI. Mr. Chairman, I

Alan May, coauthor of the infamous "May-Malek Manual" which was to serve as the Nixon administration's plan to politicize the Federal bureaucracy, is quoted as saying:

I congratulate President Carter on his proposed civil service reforms. It was exactly to that kind of result that my manual was written. There are many ideas in (this legislation) that resemble the May Manual.

Mr. May was convicted for his role in politically clearing civil service candidates for positions at the GS-13 level and above.

Two former executive directors of the Civil Service Commission, Bernard Rosen and Nicholas J. Oganovic, are actively opposing this legislation. Surely their opposition, coupled with their expertise, should raise some doubts in the minds of my colleagues about the merits of this bill.

I ask each of my colleagues, as we approach the amendment process, to keep an open mind. Disregard the slogans, the labels, everything but the substance. Instead, I urge my colleagues to please carefully consider the arguments set forth in support of the amendments to be offered to this bill and not be persuaded to oppose an amendment simply because administration spokesmen rise to argue against these amendments with generalities such as this particular amendment being too "restrictive or too burdensome."

I will reserve any further comments that I may have regarding this legislation until such time as we resolve our-

vation.

Mr. ROUSSELOT. Mr. Chairman, I appreciate the comments that have been made by the gentleman from Illinois (Mr. DERWINSKI). I know that the gentleman from Illinois and the gentleman from Arizona (Mr. UDALL) have been very diligent in trying to get this very much needed reform through the Congress. We are surprised at the dilatory tactics of some of our good colleagues who, in an effort to jam almost everything in the book into this bill, have unfortunately confused the issue of true civil service reform.

I do not argue against the ability of those Members today to carry on what has been a legislative procedural filibuster, because I engage in that all the time myself.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. Mr. Chairman, I do not have the time. I will ask our colleague, the gentleman from Illinois (Mr. DERWINSKI), if he wishes to yield to the gentleman.

Mr. DERWINSKI. I will yield to the gentleman from Missouri (Mr. CLAY) so that the gentleman from California and he may have a friendly discussion.

Mr. ROUSSELOT. I assure the gentleman the discussion will be very friendly.

Mr. CLAY. Mr. Chairman, I feel somewhat like Hamilton and Burr or Brutus and Caesar.

I will ask my good friend, the gentleman from California (Mr. ROUSSELOT), if he would care to name those Members who have engaged in dilatory tactics this morning. I am sure the gentleman does

yield 5 minutes to the gentleman from New York (Mr. GILMAN).

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, my opinion of this civil service reform legislation is well known within the Post Office and Civil Service Committee, on which I serve. I hope that my colleagues, who are not on this committee, have had or will have the opportunity to read the committee's report on H.R. 11280, and particularly the additional views of the Members who considered this bill in committee.

There are numerous amendments pending to H.R. 11280 which other Members and I will be offering today in hopes of improving this legislation, for I truly believe that this major proposal must be substantially revised before this bill is transformed into a credible piece of civil service reform legislation.

It is indeed unfortunate that the President has chosen this vehicle to "reform" the civil service system. As I pointed out in my personal views, in the committee report many parts of this legislation and especially the cornerstone of this bill, the senior executive service, is really a rehash of legislation that had been offered in prior Congresses, and which for the most part, has been discredited.

It is not right that the American public, which desires and deserves civil service reform should be misled into believing that H.R. 11280 is such reform. This bill in its present form is far from reform. It is change, but change for the worse, not for the better.

selves into the Committee of the Whole for the purpose of offering amendments.

Mr. HANLEY. Mr. Chairman, I yield myself 3 minutes.

(Mr. HANLEY asked and was given permission to revise and extend his remarks.)

Mr. HANLEY. Mr. Chairman, I do not believe there is a question at all that congressional attention to the civil service system is long overdue. Unfortunately, expediency has been the order of the day, as opposed to responsibility. Earlier, the gentleman from California (Mr. CHARLES H. WILSON)—and I do not see him here at the moment—asked: Is it fair to say that some games have been played?

I would respond to Mr. WILSON in the sense, yes and indeed, virtually every game has been played from three-card Molly right on through a good shell game. Unfortunately, the subject matter has become completely confused, distorted. Early on, I committed myself to civil service reform if done in a responsible way. I urged the President that in recognition of the scope of this undertaking, whereas we are about to turn around the system that has been in order for better than 100 years, let us be a bit more deliberate. Let us, hopefully, effect decent compromises with dissident entities. I urged that we take the remaining months in this Congress and do the spadework, setting a target for early on in the 96th Congress, at which time we would commit ourselves to civil service reform as an absolute priority. At that time, we would have welded together a highly responsible package, something that would have pre-

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vented the occurrence in Chicago this week at the AFGE convention, an upheaval that was totally unnecessary had the executive branch been somewhat more deliberate.

The civil service reform issue just about blew that association apart. As opposed to supporters, the President now has dissenters, and that is most unfortunate.

Mr. Chairman, I will take the remaining moment or two that I have to allude to another subject matter terribly close to my heart, and one that we will be hearing a great deal about as we pursue this subject matter—veterans' preference. I would like to restate at this moment that I have agreed to no compromises whatsoever.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. UDALL. Mr. Chairman, I yield 3 additional minutes to the gentleman from New York.

Mr. HANLEY. I have agreed to no compromises whatsoever. One of the great disappointments to me is the attitude of the executive branch with respect to the traditional veterans' preference from the standpoint of career employment. I am distressed at the editorial which appeared in the Washington Post this morning, which portrays me as an ogre, anti-Vietnam veterans.

I want to assure the Members today that this position is in complete accord with the desires of 95 percent of the Vietnam veterans. That is what it is all about. Our Nation established a principle many

Mr. UDALL. I yield to the gentleman from Texas (Mr. ROBERTS) such time as he may consume.

Mr. ROBERTS. Mr. Chairman, I commend the gentleman from New York for all he has done, in perfecting his amendment. I also will oppose sections of this bill. I would point out that the first persons to be hit under this bill will be the wives of veterans who are missing in action.

I strongly oppose the provisions of this bill that eliminate veterans preference.

Mr. Chairman, I will oppose the passage of H.R. 11280, the civil service reform bill as reported. I cannot support it in its present form. I am opposed for many reasons.

First, the Senior Executive Service proposed in title IV of the bill would create a totally new personnel system encompassing most Government executives in positions above GS-15 and below executive level III, "or their equivalents." Among the "equivalents" which would be covered are approximately 400 managers in the Veterans' Administration's Department of Medicine and Surgery including the Directors and Chiefs of Staff of most of our 172 VA hospitals and Department of Medicine and Surgery executive positions in the central office.

Part and parcel with establishment of the Department of Medicine and Surgery in 1946 was the creation of a consolidated personnel system from key employees in the Department. In establishing the Department of Medicine and Surgery, Congress recognized the need for a separate

would provide five or more basic pay rates ranging from GS-15, step 6 (currently \$42,201), to executive level IV (currently \$50,000). Adding bonuses would boost the pay for SES positions to 95 percent of executive level II (currently \$54,625). Basic pay rates for title 38 managers currently range from \$39,172 to \$50,000, but physicians may receive an additional bonus which now averages \$7,000 a year. Future non-physician hospital directors might recognize pay benefits under the Senior Executive Service. However, most current hospital directors are at or near the \$47,500 salary limitation and since few would qualify for the "top" SES pay level, they are unlikely to recognize any pay benefit from inclusion in the Senior Executive Service. Of greater concern, however, is the loss of pay which would befall chiefs of staff of VA hospitals and central office physicians and dentists if included in the Senior Executive Service. The loss of the "special pay" currently available to these individuals would make acceptance of a managerial position very unattractive to them and is likely to have an adverse effect on recruitment of top-notch physicians and dentists for these key managerial positions.

A minimum and maximum salary for graded positions in the title 38 pay system is now prescribed in the law. The Administrator is authorized to pay at any rate within this range of salaries and to establish pay incentives for special achievements and performance. In

years ago during its periods of hostility, and now that the embers have cooled off and we do not have any hostile actions, we are saying to the men and women who served, "What we told you some years ago when you were members of the various branches of the Armed Services no longer prevails, and we are about to change the ground rules."

I do not accept that, and I am assured that most Members of this body will not accept that on the fundamental basis of principle. I think of the faith and integrity of the U.S. Government. That is the principle at stake here on the matter of veterans' preference.

With regard to minorities and women and career employment, as we get into this matter we will cite the figures of the Department of Labor with respect to the fair treatment given women and minorities through the traditional veterans' preference.

So we will be getting into that. We will be getting into a number of other things.

I recognize the essentiality of providing the President of the United States with the tools which he deems proper and appropriate to manage the store, and, unless there are some amendments adopted that I am unaware of at the present time, I, in all probability, will be supporting this bill. I simply say that I do so reluctantly because had we trod another course, that course would have minimized the margin of error associated with a transition of this degree.

I thank the gentleman for the time.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

authority for employing and paying key personnel. Like the VA system, the Senior Executive Service is designed to promote flexibility in personnel practices. It is not, however, geared to the special requirements of managing a consolidated health care delivery system. Inclusion of title 38 managers in the proposed bill raises the following concerns:

Coverage: While the directors and chiefs of staff at most of VA's hospitals would be included in the proposed Senior Executive Service, individual positions at some of the agency's smaller hospitals and clinics could be excluded by the Office of Personnel Management.

Position authorizations: Position authorizations for the Senior Executive Service are to be based on agency requirements which are tied to program activities and budget requirements. While the need for VA hospital management positions is obvious, more administrative resources would be needed to justify these needs to the Office of Personnel Management biennially, and the Veterans' Administration would lose considerable control since the Office of Personnel Management would have final authority for approving position allocations and could even, at their initiative, withdraw position allocations.

Staffing and appointments: Under the Senior Executive Service, the Office of Personnel Management will approve managerial qualifications of all executives and, therefore, current flexibility in selecting candidates would be lost to VA.

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the case of top managerial positions, particularly in the assignments of hospital directors and chiefs of staff, this flexibility is necessary to meet the current and unique needs of our health care delivery system. The inclusion of such positions in the Senior Executive Service could severely curtail the current VA authorities in pay policies for these employees.

Performance evaluation: The pivot of the Senior Executive Service's system for granting awards and removing executives is the performance evaluation system. This system calls for annual evaluation, based on predetermined performance requirements, of each executive by a performance review board. Under the Senior Executive Service the Veterans' Administration no longer would have primary responsibility for establishing the framework of this system nor for its application in evaluating individuals. This control will have been lost to the Office of Personnel Management and performance review boards whose members may be from outside the Department of Medicine and Surgery. The very real difficulty of achieving and administering an objective, realistic, valid and creditable performance evaluation system to meet the unique needs of the Department of Medicine and Surgery is also of concern to me.

Mr. Chairman, I have also given much thought to the administration's proposed plan to terminate veterans' preference for millions of veterans—and drastically limit the benefit for so many

others under the guise of "helping Vietnam veterans." It is a sad day we find ourselves in.

Is it any wonder veterans are sounding off about the "anti-veteran" attitude of this administration? Never have we witnessed so many actions that seem to slight the man who served his country honorably in time of war. Look at the record. Last year the administration decided to provide full veterans' benefits to veterans who were discharged under conditions other than honorable. You will recall the Congress spent most of the session working out a solution to the problem. The Secretary of Health, Education, and Welfare suggested the administration was thinking of transferring the veterans compensation and pension program from VA to HEW as part of a welfare reform package. We finally resolved that. There was some thought of dismantling the Veterans Administration through a reorganization plan. It took us some time to get a commitment from then OMB director, Bert Lance, that this would not be done.

This year, the administration was determined to close 3,132 VA hospital beds with a reduction of 1,500 employees. Although the House acted to assure this would not happen, it still is not resolved. The administration also proposed to terminate research programs being conducted in about 60 VA hospitals. The House stopped that from happening. The administration's proposed 1979 VA budget was deficient by more than \$1 billion. The House restored the funds in

or naval service of the United States and the widows and orphans of deceased soldiers and sailors.

The act of August 23, 1912 (37 Stat. 413) provided:

That in the event of reductions being made in the force in any of the executive departments, no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped or reduced in rank or salary.

The objective of the Veterans' Readjustment Act of 1944, with reference to the employment of veterans, was to safeguard their preference in employment, both private and public.

In June of 1944, two major pieces of veterans legislation were enacted: The Veterans' Readjustment Act and the Veterans' Preference Act. The legislation was adopted with no adverse comment having been offered by any Member of Congress. To the best of my knowledge, there has never been any controversy, until now, on providing a preference in employment for veterans.

Mr. Chairman, I will have much more to say about this when the amendment is offered by the gentleman from New York, Mr. HANLEY, to strike those provisions of the bill that will adversely affect Vietnam veterans, and I hope my colleagues will pay close attention to the debate at that time and support us in our efforts to fulfill a commitment we made years ago to care for those who have defended our country in time of need.

Mr. UDALL. Mr. Chairman, I yield 1 minute to the gentleman from Missouri (Mr. CLAY).

National Labor Relations Act was enacted in 1935, Federal employees were excluded from its coverage. In 1962, however, the late President John F. Kennedy, in recognition of the growing need, established a formal labor relations program for the Federal work force. That program was refined by President Nixon's Executive Order 11491 which, as amended, has been the foundation of the Federal labor-management relations program.

Executive Order 11491 was a milestone in its time. Today almost 60 percent or 1.2 million of all Federal employees are represented by 86 different employee organizations in over 3,500 bargaining units.

The growth of the Federal work force and changes in our time dictate that labor-management relations in the Federal sector must become more in step with the seventies—recognizing that there are nevertheless difference between the public and the private sector.

During 1977, the Subcommittee on Civil Service which I chair conducted exhaustive public hearings on labor-management relations—receiving testimony from over 40 witnesses in the course of 5 days of public hearings. Testimony was overwhelmingly in support of the thrust of the committee's legislation because the existing program was susceptible to the whims of an incumbent President, limited in its scope, management oriented, and lacking in the opportunity for judicial review of decisions of the Federal labor relations council.

Although the administration belatedly came forth with a statutory labor-man-

its First Budget Resolution.

Now the administration is proposing that we limit the use of the 5-point veterans' preference, which will have a tremendous impact on Vietnam veterans while expanding eligibility for Federal employment for nonveterans through noncompetitive appointments. While this bill would take away veterans preference for a person who served in Vietnam, the President, by Executive order, has made thousands of volunteers for as little as one year of service in the Peace Corps, VISTA, and ACTION eligible for a noncompetitive excepted appointment to a Federal Civil Service job. Think of that. Take away the 5-point preference for honorable military service during a war and, grant instead, a noncompetitive appointment to those who avoided the draft and who selected alternative civilian service instead. What kind of logic is this? What rational explanation can one give for such a policy?

In all of my years in the Congress, I have never known any administration to suggest that veterans' preference is a readjustment benefit and should be terminated after a limited period of time. When first enacted, it was given for life and has remained intact until now. The first mention of veterans' preference in connection with reduction in force (RIF) procedures appeared in an act of August 15, 1876 (19 Stat. 169) which stated:

That in making any reduction in force in any of the executive departments, the head of such department shall retain those persons who may be equally qualified, who have been honorably discharged from the military

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, there has been a great deal of discussion and attention focused on the President's civil service reform bill. Many of us have devoted untold hours to make this legislation a true reform bill. H.R. 11280 which is now before the House is such a bill—it gives the administration the flexibility it has sought for management while at the same time providing certain basic and necessary rights for Federal employees.

The two sections of the bill which I want to address specifically are title VII, providing for a strong Federal labor-management relations program which is long overdue, and title IX, providing for reform of the Hatch Act. These are two basic elements which go hand in hand when we talk about reforming the entire Federal civil service system.

Title VII of H.R. 11280 establishes a statutory labor-management relations program for Federal employees. It provides for the right to collective bargaining for Federal employees, an independent Federal labor relations authority (FLRA), the resolution of disputes by the intervention of neutral, independent, third parties, and judicial review and enforcement of the decisions and orders of the FLRA.

The Post Office and Civil Service Committee with title VII has adopted an evolutionary, balanced approach to the improvement of the Federal labor-management relations program. When the

agement proposal. Their program would have done little more than codify the Executive order. The committee's efforts to reconcile some of the differences between its position and the viewpoint of the administration were exhaustive but—notwithstanding long and involved efforts—the administration's concessions in the committee were so insignificant as to render them virtually meaningless.

Title VII, as approved by the committee, represents a balanced, impartial approach to resolving the principle differences between two points of view, the print, which—in some respects—would adopt in the Federal sector many practices which are prevalent in the private sector and the administration proposal which, for all practical purposes, would simply codify Executive Order 11491 with its confused, management oriented, duplicative, antiquated approach to labor-management relations.

I want to assure my colleagues that title VII takes a middle ground—retaining management rights which are necessary to function with flexibility and effectiveness. On the other hand, the committee bill will not permit agencies to unilaterally remove any issue from bargaining simply by issuing a regulation.

I also want to assure my colleagues that there is nothing in this bill which allows Federal employees the right to strike, to have an agency shop, or to negotiate over pay and money-related fringe benefits.

I urge my colleagues to reject any weakening amendments.

Mr. Chairman, another provision of the bill which the Members will be hear-

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ing a great deal about today is title IX. Title IX, as everybody by now knows, provides for reform of the Hatch Act. Earlier, during the debate on the rule, I addressed why I strongly believe title IX is germane and appropriate. In addition, the committee supported my position by adopting my amendment by a vote of 13 to 10.

Title IX is virtually identical to H.R. 10, the Federal Employees' Political Activities Act of 1977, which passed the House on June 7, 1977, by a vote of 244 to 164. The only major difference is that title IX designates the special counsel of the Merit Systems Protection Board as the enforcing authority and the Board as the adjudicatory authority. This change reflects the fact that H.R. 11280 takes into account that the Civil Service Commission is being superceded by the Merit Systems Protection Board and the Office Personnel Management.

There has been a great deal of speculation and discussion as to why I sought to amend the civil service reform bill to include modification of the Hatch Act. I want to address this issue here and now.

Although both the committee and the House approved this legislation last year, it became increasingly clear to me that the other body would not act on Hatch Act reform this year. In offering the amendment in committee it was my hope it would help to insure that both Houses of Congress have the opportunity to work their will in considering reform of the Hatch Act.

My intention has never been to gut

balance, however, between these increased management prerogatives and flexibility and the legitimate rights of Federal employees, a progressive labor-management program is essential.

In view of this need to achieve a balanced bill and at the urging of the administration, Congressman CLAY, as the chairman of the Subcommittee on Civil Service, and Congressman SOLARZ, as a member of the full committee, joined me in an effort to arrive at a compromise labor-management section to this bill. Title VII of the committee print, which I strongly supported, was the result of those efforts with assistance of the committee's Democratic caucus and would have insured a proper balance between the competing interests of management and flexibility and employee rights. While we made major concessions in the committee print, there was only insignificant movement by the administration from its initial proposal.

Title VII, as approved by the committee, is based upon H.R. 9094, a bill sponsored by Mr. CLAY and myself, for which public hearings were held on September 15, 1977 (serial No. 95-31). Earlier, public hearings were held on related labor-management legislation on April 21, 26, 1977 and May 3, 5, 10, 1977 (serial No. 95-30).

A committee print of title VII was used for markup purposes. That print was similar to H.R. 9094 except that it: First, did not grant agency shop automatically upon election of an exclusive representative; a second election was required for agency shop; second, contained no pro-

Collective bargaining is not new to the Federal Government. Under Executive orders, 58 percent of the work force has been organized into exclusive bargaining units, and agreements have been negotiated covering 89 percent of those organized. Though the Civil Service Commission tells us that the Federal labor movement can be traced back to the 19th century, the modern era began in 1962, when Executive Order 10988 was issued. Since that time, there have been several changes in the order. However, the basic thrust and intent remains the same. The system as it now exists still contains the inherent shortcomings that come from being created, governed, and administered by management alone. To continue to tinker with the Executive order system is to delay the obvious: What is now needed in the Federal Government is a labor-relations program based upon legislation.

I have been quite frankly surprised with the rhetoric and hysteria that has accompanied consideration of title VII. It is not a radical departure from the present system, but is a small, incremental step forward.

As the sponsor of H.R. 1589, the Federal Employees Labor Relation Act of 1977, the predecessor to H.R. 9094, which provided for the negotiation of pay and fringe benefits; the negotiation of all agency regulations; and automatic agency shop; and a limited right to strike (based on Canadian law)—all of which, I might emphasize, have been deleted from title VII—I can assure Members that expansion in the scope of bar-

the civil service reform bill by offering my amendment. I reject the thinking of critics who say that modifying the Hatch Act within the context of civil service reform will inject too much politics into the system. There is no greater priority for Federal employees than broadening the extent to which they may participate in political activities while strengthening protections to both the public and employees against coercion and improper political activities.

Extending constitutional rights of free speech and association to Federal employees is an integral part in the reform of the entire civil service system.

I urge my colleagues to defeat any motion which may be offered during today's debate which seeks to delete title IX from H.R. 11280.

I urge my colleagues to support H.R. 11280, the President's civil service reform bill, as reported out of the House Post Office and Civil Service Committee.

Mr. UDALL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Michigan (Mr. Ford), a member of our committee.

(Mr. Ford of Michigan asked and was given permission to revise and extend his remarks.)

Mr. Ford of Michigan. Mr. Chairman, today, we are considering the President's civil service reform bill. I have supported the administration's efforts to bring more accountability to the management of Government programs through the creation of a senior executive service and by streamlining the appeals process for grievances. In order to maintain a fair

vision for an "alternative labor organization"; third, a management rights clause was added; and fourth, there was no provision for the negotiation of pay and other major money related fringed benefits.

The administration's labor-management proposal was similar to Executive Order 11491, under which the existing labor-management relations program is operated, with two exceptions: First, it established an independent full-time Federal Labor Relations Authority (FLRA) as the successor to the Federal Labor Relations Council; and second, it permitted agencies and unions to negotiate most grievance and arbitration matters which may now be appealed only under statutory procedures.

Title VII, as approved by the committee, represents a balanced, impartial approach to resolving the principal differences between two points of view—the print which, in some respects, would adopt in the Federal sector many practices which are prevalent in the private sector and the administration proposal which, for all practical purposes, would simply codify Executive Order 11491 with its confused, management-oriented, duplicative, antiquated approach to labor-management relations.

The Udall compromise amendments that passed in committee, while modifying title VII even further, are still a step, although a modest step forward in providing protections for legitimate employee rights. Any further cutbacks in title VII, however, would seriously threaten our efforts to achieve this equilibrium.

gaining in title VII has been a very modest, incremental step that comes nowhere near the scope of bargaining that most States permit for public employees or that we permit for postal workers.

In fact, this incremental approach was followed by President Ford in 1975, when he amended the Executive order governing Federal labor-management relations to permit negotiation of agency regulations, unless a compelling need existed. Under this amendment an agency could not take an item, that is otherwise negotiable, off the bargaining table by simply issuing a regulation, unless there was a "compelling need" to do so.

However, higher level agencies, such as the Civil Service Commission (the Office of Personnel Management under this bill), can now issue regulations that remove the ability of agencies to bargain over items, even if they wish to do so. The Udall compromise simply takes the "compelling need" test, and moves it upstairs, applying it to Government-wide regulations of the Office of Personnel Management. Even if there is no compelling need for that regulation, the regulation still stands. All title VII does is to say—if the matter that the regulation is the subject of is otherwise negotiable, labor and management must sit down and talk about it in good faith. They need not necessarily agree.

Much of the criticism directed at the Federal Government concerns the size and unmanageability of the executive branch. This situation is merely aggravated by the existence of a centralized monolithic personnel body imposing uniform standards that cut across every

level and location in the Federal Government. Such a system fails to take into account the divergent working conditions and needs of different agencies and offices around the Nation. The compelling need test in title VII would in no way hamper the ability of these agencies to issue necessary Government-wide regulations. It would insure, however, that employees would not be deprived of their legitimate right to bargain over the terms and conditions of their employment, except where a genuine need to so exists. Local managers then and the democratically elected employee representatives would be given the flexibility to engage in open discussions and to attack their problems at the local level—when it is appropriate to do so—with greater logic and efficiency than the present system allows. This in turn helps to promote better government for all citizens.

Even if there is no “compelling need” for a regulation, the item may not be the subject to negotiation because it has been excluded by the statutory management rights clause in title VII. Title VII’s management rights clause still bars a wide range of subjects from the negotiation process. Management would retain the right to determine the mission, budget, internal security, or personnel necessary to conduct its work; to direct its employees; to assign work, to contract out or take actions necessary in the event of national emergencies. And I might further point out that no matters that are governed by statute (such as pay, money-related fringe benefits, retirement, and

bers at the President’s sole discretion and accepted removal for cause only.

By providing for judicial review of the authority’s decisions, similar to that provided under the National Labor Relations Act, the right of both sides to receive an impartial decision is further strengthened, while making the authority more accountable for its actions. Judicial review is one of the primary benefits of a statutory program over an Executive order, and to limit such review also limits the advantages of codification.

Title VII would permit agencies and unions to negotiate grievance and arbitration procedures to cover most, but not all, matters which may now be appealed only under statutory procedures under the Executive order. Binding arbitration has been permitted for grievances (as opposed to statutory appeals) since President Nixon issued his Executive order in 1969. It has worked well as an expeditious, credible and cost-effective means of dispute resolution. Thus, title VII does not represent a change, but rather an extension of the well-tested provisions of the Executive order. The committee print would simply extend the coverage of arbitration procedures somewhat further than the administration has proposed.

From the management’s point of view, arbitration provides a businesslike approach to grievance and appeals handling. The union, which must decide whether to arbitrate, can serve as an effective screening device in frivolous, costly grievances. Further, the arbitra-

since the Office of Personnel Management, headed up by one politically appointed Director, will replace the Civil Service Commission, which at least in theory is a more neutral body. Fair and unbiased decisions could not be expected to be rendered by one of the parties to the dispute.) Thus, employees would be very skeptical of the decisions rendered by this special interest group.

Title VII would provide for procedural guarantees and eliminate the inherent conflict of interest that now exists. It can afford an employee the right to test the accuracy of their classification through the grievance procedure, just like any other personnel matter, with arbitration as a final step. It is a fair system and one which can keep the faith between management and employees. It is especially important that we bring impartiality into the classification appeal process since we have excluded pay from the negotiation process.

Finally, the administration has already recognized the competency of arbitrators to consider classification issues. Under their proposal when an employee is reduced in grade they can challenge that action as an adverse action through the negotiated grievance procedure. Thus, title VII is not proposing anything which is radically out of the ordinary. It is merely extending the grievance procedure to include grievances concerning upgradings as well as the downgradings which are covered by title VII proposed by this committee and the President.

During committee markup, I offered an

so forth) could be altered by a negotiated agreement.

Statutory management rights clauses are totally alien to the private sector. They are part of the negotiation process. And I suspect that in the Federal sector that management rights clauses even stronger than this statutory one may be negotiated—particularly since Federal unions do not have the bargaining chip, the negotiation table to threaten a “withholding of employment.”

One of the central elements of a fair labor relations program is effective, impartial administration. Title VII provides for the creation of an independent and neutral Federal labor relations authority to administer the Federal labor management program and subjects the decisions of the authority to judicial review. Currently, the Federal labor-management program is administered by the Federal Labor Relations Council which is composed of three administration officials, the Secretary of Labor, the Chairman of the Civil Service Commission, and the Director of the Office of Management and Budget, none of whom can be considered neutral. In addition, the decisions of the Council are not subject to judicial review.

The Federal labor relations authority, patterned after the NLRB, would insure that the administration of this program is free from bias toward either party. Impartiality is guaranteed by protecting authority members from unwarranted “Saturday night” removals. The administration during committee markup eventually changed its position from supporting removal of authority mem-

tion process is more efficient, less time consuming, and less formal than the statutory appeals system. Finally, the costs of arbitration (which tend to average about \$840 per case, excluding attorneys fees) are generally—though not always—shared equally by the union and agencies, rather than by the taxpayer who bears the burden under the statutory appeals process. The more issues we can arbitrate, rather than going through the statutory appeals process, the more money we can save the public.

Classification appeals would also be subject to the negotiated arbitration procedure under title VII. The fact that pay and classification are nonnegotiable makes this provision important, because it would assure that questions relating to classifications are equitably resolved. For a Federal employee, it is his or her classification that determines their grade level and ultimately how much they earn.

The present classification appeal procedure is a unilateral procedure. Title 5, section 5112(b) of the United States Code provides that an employee may appeal to the Civil Service Commission at any time and the Commission will review the appropriateness of the classification. The procedure does not provide for a hearing before the Commission or for any outside third party review.

The failure to provide for these minimal procedural guarantees has placed the credibility of the classification appeal system in doubt. Because pay is a function of classification the Civil Service Commission has a vested interest in holding grades down. (Under the administration's proposal, this will be intensified,

amendment to add a new provision, section 704(c), which is intended to preserve the scope of collective bargaining heretofore enjoyed by certain trade and craft employees. This includes certain trade and craft employees of the Department of the Interior, and those trade and craft employees in units or portions of units, transferred, effective October 1, 1977, from the Department of the Interior to the Department of Energy. This provision is required because of two recent rulings by the Comptroller General which invalidated certain collectively bargained provisions and held that specific legislative authorization is necessary for these employees to continue to negotiate such provisions in accordance with prevailing private industry practice. Decisions Nos. B-189782 (February 3, 1978) and B-191520 (June 6, 1978).

Certainly, we should not now be narrowing the preexisting collective bargaining practices of any group of Federal employees. This provision of the bill would have the effect of overruling the two Comptroller General decisions, and would adopt his own suggestion for specific legislative authorization. The provision would specifically authorize the continuation of prior collective bargaining practices, and would allow these employees, whom Congress already sought to protect in the savings provision of 1972 wage board reform law, to continue to negotiate their terms and conditions of employment in accordance with the prevailing practice principle. I do not intend to expand nor contract the scope of bargaining that existed prior to the Comptroller General decisions. In

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the past, these employees have negotiated wages, pay practices, and other practices in accordance with the prevailing practice principle. This has produced some of the most stable and effective collective bargaining in the history of public employee labor relations. It has enabled the Federal Government to procure and retain qualified craft employees who otherwise might choose employment in private industry, by insuring that they will enjoy comparable terms and conditions of employment.

It is not the intent of this provision to interfere with the current system of providing the employees in question with retirement benefits, life insurance benefits, health insurance benefits, and workmen's compensation. Those benefits would not become negotiable and would continue to be paid to those employees exclusively pursuant to the Federal statutes in effect.

For over 16 years now, Federal public employee organizations have shown themselves to be responsible parties in the Federal government's labor-management program. Even President Ford recognized the maturing of employee organizations, when he amended the Executive order in 1975. The bill reported by the committee also recognizes the progress we have made in labor-management relations in the Federal sector. A close and dispassionate reading of title VII should indicate that it is only a modest, but we feel vitally important step forward.

I ask my colleagues to support the

ington, D.C., as the center not only of excessive bureaucratic authority but as the beneficiary of substantial profit from governmental enterprise. Today every major Federal department is headquartered in Washington, D.C. The vast majority of supergrades, choice political appointments, and other highly paid jobs with the greatest policymaking authority are located in this area. Yet those in the regional and local offices of these major departments and agencies are frequently in far greater contact with the daily administration of Federal programs.

I am convinced there is something inherently wrong with the creation of a "single factory town" which lacks a Main Street, which knows no Willie Lomans or Archie Bunkers. A prudent decentralization of services is needed to bring Government closer to the people who must bear the cost and share the benefits of Federal programs. Hopefully the forthcoming study, required in this bill, will give us new direction in diminishing the arrogance and unresponsiveness which tends to accompany a concentration of power.

A great concern of all of us who have ever served in the executive branch is the inflexibility of promotion policies. This bill is designed above all to bring greater accountability into the senior executive level. I am convinced a secondary goal should be to develop ways to reward and promote on merit at more junior levels. Accordingly, I was pleased the committee accepted my amendment

eral bureaucracy than the civil service reform bill itself. Something is wrong with any society that becomes topheavy with bureaucracy and I would hope to obtain bipartisan support for my amendment to place a cap on Federal employment on the House Floor.

Second, I was disappointed that the committee failed to approve a provision clarifying the ethics obligations which the Federal Government should require of its employees at all levels. The rejected amendment would have prohibited Federal employees, or unions representing such individuals, from soliciting gifts, favors or related items—either for the Federal employee or the employee's family—from any person, corporation or group which may be substantially affected by the performance or nonperformance of the employee's official duties or the official functions of the agency for which the employee is working. Although our committee has approved ethics legislation dealing with Government officials, most of that legislation does not extend to the rank and file membership of the Federal work force. The majority of the concepts embodied in the rejected amendment are contained in existing Executive Order 11222 and ought, in my judgment, to be incorporated into statute.

Finally, I was distressed that the committee refused to ratify a proposal which, if adopted, would provide for expeditious suspension procedures for federally employed air traffic controllers who deliberately engage in job actions now barred

progressive, but responsible approach the committee has produced in title VII.

Mr. DERWINSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa (Mr. LEACH).

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Chairman, I would like to compliment the gentleman from Pennsylvania (Mr. NIX) for his even-handed leadership of the committee. This will be a fitting cap to a fine career in this body.

I would also like to compliment the gentleman from Arizona (Mr. UDALL) who with great statesmanship has supported positions he has not always agreed with, and the gentleman from Illinois (Mr. DERWINSKI) (who has continued to support Executive flexibility during an administration not controlled by his party.

The bill before us is in essence bipartisan. The approach of the Carter administration follows broadly the efforts of the last two Republican administrations. But the fact that the House is now able for the first time to consider the measure reflects above all on the legislative leadership of Mr. UDALL and Mr. DERWINSKI. Their achievement in getting this bill to the House floor cannot be underestimated.

Mr. Chairman, I would like briefly to touch on five amendments I offered in committee, two of which were accepted and three of which I intend to offer for further consideration on the House floor.

The first deals with the issue of decentralization.

A suspicious public looks upon Wash-

to allow far greater flexibility in promotions than currently exists under the Whitten amendment. First enacted during the Korean war, the Whitten amendment limits the number of promotions which may be made in a single year. Yet one of the problems with an inflexible civil service system is that often competent individuals, particularly women and younger employees, are underutilized by the Federal Government. Qualified individuals may, for a number of reasons, be forced to enter the Federal workforce at levels of responsibility below their capability and the Whitten amendment has been a barrier to the promotion of these individuals. The committee has in my judgment wisely expressed its desire that authority be created for a more flexible application of the Whitten amendment in the future in instances where there is clear evidence of merit and dedication to the career service.

Although I was pleased with committee recognition of the objectives of decentralization and more rapid merit promotion, I was disappointed that the bill continue to miss the mark on three-key aspects of Government reform.

First, the committee rejected an amendment I offered to limit, for the duration of this administration, the size of the Federal work force to the number so employed at the outset of the current administration. Statistics issued by the Civil Service Commission indicate that the size of the Federal work force, exclusive of the U.S. Postal Service, has grown in the past year and a half by more than 112,000 and I can conceive of no better vehicle to halt further growth in the Fed-

by law or executive order. To permit a limited number of Federal employees to hold the innocent taxpaying public hostage, by slowing down or stopping air transportation, should not be tolerated, and prompt action should be taken to deal with such action, within reasonable guidelines protecting the employee. To permit such abuses of the public trust to continue is unconscionable.

It is my hope that the full House will give careful consideration to the merit of these mandatory provisions and will take affirmative action to strengthen the bill and thereby enhance the integrity and responsiveness of the Federal bureaucracy.

Mr. QUAYLE. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to my colleague, the gentleman from Indiana (Mr. QUAYLE).

(Mr. QUAYLE asked and was given permission to revise and extend his remarks.)

Mr. QUAYLE. Mr. Chairman, I thank my colleague, the gentleman from Iowa (Mr. LEACH) for yielding to me.

Mr. Chairman, I take this opportunity to express my support for civil service reform as a first step to making Government more responsive and effective. During the course of this debate I hope that we can make improvements in this bill, H.R. 11280, that will help bring bureaucracy under control and give the executive branch the tools it needs to carry out its mandate from the people.

Through the adoption of Reorganization Plan No. 2 by a vote of 381 to 19 on Wednesday, the House has gone on

record in support of the President in his pledge to reform and reorganize the civil service. The reorganization plans create the mechanism through which reform can be achieved. Now we must face the challenging task of giving the new Office of Personnel Management, the Merit System Protection Board, and the Federal Labor Relations Authority the necessary tools to accomplish real reform.

Under our present civil service system, the Federal bureaucracy has grown unresponsive and now consumes 22 percent of the gross national product. It threatens our economic strength and productivity.

Since 1930, the Federal payroll has increased dramatically by 462 percent while during the same time span the entire population of the United States increased by only 71 percent.

We have an opportunity through civil service reform to harness this bureaucracy by rewriting the archaic laws which were originally drafted to protect against the political spoils system.

Today we are threatened by an even greater spoils system which through its hiring and firing policies virtually guarantees a job to anyone who passes a year's probation.

The sluggish civil service appeals system can take 6 to 18 months. As one veteran bureaucrat explained it:

Firing anyone is a practical impossibility. The standard procedure is to promote them out of your department if the worker is disruptive or incompetent.

In 1976, only 0.004 percent of all Fed-

But we cannot honestly blame the Presidents. None of the Presidents to date have had much control over the growth of this sector—each President's appointment powers have been severely limited. President Carter could appoint only 2,200 of the nearly 3 million Federal workers.

This figure includes 500 personal White House staff and one-third of the remainder are private secretaries and confidential aides.

At the burgeoning Department of Health, Education, and Welfare, the President can appoint less than 150 of the 153,000 employees. Throughout Government his entire list of appointees amounts to less than 1 percent of all Federal appointees. Thus these workers are not in any way responsible to the American people who elect the President. They are part of a system that began long before the current administration and will continue long after President Carter has left Pennsylvania Avenue.

But we need to put a stop to this spoils system.

The civil service system must be revised to give the President more authority over the makeup of the Federal agencies. First, a greater portion of the Federal employees should be appointed by the President.

Second, Congress must develop a system to insure that the same merit incentives which operate in the private sector also operate in the Federal Government. Federal employees should know that a fine job will be rewarded, but inferior work will result in a hearing and

service principles. The rigorous and dangerous duties performed by the Bureau's employees do not lend themselves to many aspects of bureaucratic regulations.

Mr. Chairman, there are going to be many important amendments coming up. I think the one to place a civil service ceiling by the gentleman from Iowa (Mr. LEACH) is one of the key amendments. We are certainly wise today in giving the entire body an opportunity to study the amendments and review the entire bill.

Mr. DERWINSKI. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland (Mr. STEERS).

(Mr. STEERS asked and was given permission to revise and extend his remarks.)

Mr. STEERS. Mr. Chairman, I rise in opposition to this so-called civil service reform bill, and I will give reasons in greater detail at a later date.

However, I do want to bring out briefly at this time the fundamental problem with this bill. We have talked here a lot about amendments. I say that it is not only the amendments to the bill which are making it questionable; it is the heart of the bill, the senior executive service, which makes it pernicious, regardless of amendment.

I remind the Members that we now have a schedule C which was created under the administration of President Eisenhower, a Republican President. I think that was a step backward, a step toward the spoils system. Now we propose

eral workers were fired. Most of the terminations were first-year employees. So their supervisors found less than one four-thousandths of 1 percent of all Federal employees remiss in their duties.

Yet the files in my office and other congressional offices would indicate this is an inaccurate figure. I get letters from Federal agencies sometimes weeks or even months after my initial request. When the letters finally arrive, they contain factual errors or they are impossible to understand due to the bureaucratic jibberish which we have all come to expect.

Mediocrity tends to be equated with competence since both are rewarded essentially to the same degree. While persons employed in the private sector are expected to attain a certain performance level in order to receive a pay increase, civil servants are not.

In 1976, only 835 of the classified employees in the Government eligible for pay increases were denied a step advance in pay. This is well below 1 percent.

In order to confront the problem of the bureaucracy we must deal with the bureaucrats themselves, who seem to multiply regardless of our reform or reorganizational efforts.

Every President since Herbert Hoover has pledged to reduce the size of the Federal bureaucracy, but to no avail. At the end of each administration the number of employees has swelled from the previous one. Where the population of the United States has increased 60 times since the founding of the Republic, the size of the bureaucracy has increased more than 8,000 times.

dismissal.

Third, we should begin to study immediately to develop a mandatory program of rotation for key bureaucrats in policymaking positions both in Washington and in regional offices throughout the country. We need fresh new ideas, not retreads from year to year and administration to administration.

There have been promises of reform and Government reorganization since before I was born. I would hope that we who stand here today would finally begin to act to develop genuine civil service reform.

Mr. DERWINSKI. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. COLLINS).

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I am glad that, through the wisdom of the leadership, we have decided to postpone this bill for a week or until September. I think that with more time, we will be able to come up with a much stronger bill.

Mr. Chairman, I would like to say at this time that I plan to introduce amendments regarding the FBI which will cover three titles, title I, IV, and VI, and I hope the amendments will all be considered en bloc.

What the amendments ask for, and what I think is a most reasonable request, is that the FBI be excluded from the direct application of the bill's civil

to more than double the number of employees of the Federal Government who will be lackies to the top people in each future administration.

We often talk about the political machinations of President Nixon, and I am a severe critic of those machinations and of that President. We talk also about Mr. Carter not being that sort of man, and we sort of skip over the problem of his successor. But I point out to this body that, even with this President, the selection of proper Government servants is not just a matter of improprieties, scandals, and illegalities; it is also what Mr. Carter was talking about over there in Fairfax the other night, when he spoke so earnestly about weeding out incompetents.

I do not agree with what the American Federation of Government Employees said about President Carter. They accused him of "blatant lies" to the American people. I have no reason to endorse that word "blatant."

There is an old adage about which one we would choose for President: An honest blunderer or a clever knave. Some people have accused President Nixon of being a clever knave, and I do not want to accuse Mr. Carter of being an honest blunderer; but when he talks about weeding out incompetents, I point out that many people have challenged his competence. Has Mr. Carter given us reason to believe that he would pick competent people. Have Mr. Carter and his White House pals been running the country effectively? I wonder whether we should double their power to pick

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friends, cronies, political helpers, and general hangers-on.

The Senior Executive Service strikes at the heart of the merit principle. It restores the spoils system we got rid of nearly a hundred years ago.

It is my observation that there are bad apples in private barrels, as well as in the Federal public service barrel, and the ratio in the two sectors, public and private, is about the same. The great bulk of Federal servants consists of honest, diligent, intelligent, loyal and expert people, and I know this from direct observation during the years I served as a Government bureaucrat.

This bill, and its clear return to the spoils system, subjects our Federal workforce to twin evils in the office of the Chief Executive: A clever knave or an honest blunderer. We have had incumbents of both kinds in the past, and the last thing we should do is more than double the damage, a future incumbent, or this incumbent, can inflict on good government by passing this bill.

Mr. UDALL. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. HARRIS). (Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Chairman, H.R. 11280 is a comprehensive bill with a noble objective, to "reform" the civil service system. It presented to the committee and to me a serious challenge which I was prepared to meet when the bill was submitted on March 3, 1978.

Yet I was compelled to vote against

the committee markup, after discussing these provisions with Civil Service Commission officials and other witnesses during the hearings, I attempted to get the safeguards embodied in my bill into H.R. 11280. Most were rejected.

I am dismayed that this committee has apparently articulated the thesis that politicizing the system is essential, in fact, is the centerpiece of a responsive and revitalized government. In fact, it was said of my amendments to prevent politicization that some would be a "bodyblow" to the bill.

I am afraid that in the name of "civil service reform" the House Post Office and Civil Service Committee has developed "civil service chaos." While the bill has some sound provisions, many elements which would have made it a true landmark for good government are lacking. My primary fear is that this bill will begin a slow unraveling of our merit system, a system that insures the impartial administration of our laws. This conclusion is inescapable: This bill opens the door for the politicization of the civil service system.

AN OPEN DOOR FOR POLITICAL MANIPULATION
SENIOR EXECUTIVE SERVICE

The committee's adoption of an amendment to implement the Senior Executive Service in three agencies over a 2-year period is an appropriate go-slow approach. However, the Senior Executive Service, while meritorious in purpose in many ways, will allow too many career jobs to become political because of a fundamental flaw in the way

EXCEPTING POSITIONS FROM THE CAREER
SERVICE

Similarly, my amendment to provide clear criteria for excepting positions from the career competitive service for all general schedule jobs would have insured against manipulation of jobs. Under the current law, which this bill does not change, the President can put a "competitive service" position in the "excepted service"—individuals not hired by competitive examinations and appointment—by only determining that "conditions of good administration warrant" this action. There are standards in regulations which can be changed any time. My amendment would have firmly fixed strong standards in law.

We have heard too many stories of a "buddy system" and end runs around the merit system, stories of jobs being "moved" from a competitive hiring designation to "excepted" to accommodate a favored candidate. There is room and there is a need for noncompetitive positions in the executive branch, but there should be strong controls. My amendment, which was defeated, would have provided these controls.

POLITICAL INFLUENCES IN PERSONNEL ACTIONS

The section of the bill on merit employment would have been strengthened had the committee adopted my amendment to clearly bar unwarranted political recommendations in hirings, promotions, and other personnel actions. Under my amendment, political recommendations from Members of Congress, their staff, White House officials, and

the bill because I believe it is fatally flawed: It will open the door to politization.

Cleaning up and streamlining the operations of the Federal Government is a worthy goal, an effort I support fully. Citizens should not have to wade through layers of bureaucracy to get their questions answered, to track down their social security check, or understand our tax laws. Government should be understandable; Government should be accessible. Government should not be a bureaucratic monolith impossible to cope with. Government should be responsive with decisions based on justice, not on political intrigue or pressure.

Pursuant to the goal of developing a sound bill, I participated in 15 hearings, 12 in the Congress and 3 in agency headquarters here in Washington, and 10 days of markup. Additionally, I personally held three "town meetings" in my district to hear the views and suggestions of the citizens of the Washington area, Federal employees and non-Federal employees, individuals probably most familiar with the operations of the Federal Government.

The most persistent thread in the comments we heard from rank-and-file workers was that various provisions of this bill were a threat to the morale and structure of a nonpartisan, professional civil service system.

On February 27, 1978, I introduced H.R. 11365 which contains several strong provisions that would make innovation possible but insulate the Federal Government against a spoils system. During

appointments can be made. Currently, there are important safeguards and procedures that keep the designation of career and political positions at the high levels of government quite distinct. Congress decides which jobs will be filled by political appointees at executive levels. For those GS-16, 17, and 18 pay grade levels, the President can designate which jobs should be political according to clear standards.

I offered a substitute to title IV, the Senior Executive Service, which would have made the SES a career service only. My substitute failed. If the President wished to designate certain jobs at these levels to be filled by political appointees, the duties of the job would have had to meet certain standards prescribed in law, such as engaging in the advocacy of administration programs or serving as a confidential assistant to a political appointee.

Under this bill, although there is a numerical limit on the number of jobs that can be filled by political appointees, this limit has no relationship to the responsibilities of the job. Thus, the head of a division handling grants, contracts, or tax returns can be a political appointee. By adopting my substitute, Congress would have been exercising clear controls over which positions are filled by career individuals and which by political appointees. And it would have provided that the type of appointment—career or political—would be determined by the responsibilities of the job, not an arbitrary agency- or Government-wide "magic" number.

political appointees in the executive branch would have been explicitly prohibited. The notion that elected and other political officials ought to "determine who gets what jobs" in the career merit system is simply wrong. Some argue that it is a "fact of life." If so, it is wrong. It is time to stop winking at it. If we are going to have true civil service reform, then we must get politics out—once and for all. It has not been that long since the very foundations of our Government were almost pulled out from under us by inside political manipulation. My amendment would have greatly improved this bill.

The bill allows the new Office of Personnel Management to delegate to agencies various personnel functions, such as examining, hiring, and promotions. While allowing agencies to perform personnel functions previously centralized in the Civil Service Commission may speed up these procedures, I am concerned that here again the floodgate may be opened for improper political influences. This is why I offered an amendment to require that every chief personnel official be a career employee. I cannot see any reason why a personnel official, clearly performing an administrative function, should be a political appointee. This was another effort to keep politics out of the merit system; yet the committee rejected the inclusion of this provision.

AN IMPARTIAL MERIT SYSTEM PROTECTION
BOARD

The bill establishes a new Merit System Protection Board to handle alleged

violations of civil service rules and regulations. I believe the composition of this board would have been strengthened by the requirement that one member be from the career ranks of the Federal Government as I proposed. As it stands, these three political appointees, can be the former board chairman of a corporation or the former head of a campaign. While the bill rightly insures a political mix, I believe that a career employee could have provided an important career employee perspective in the Board's proceedings.

Similarly, the selection of the Chairman of the Board is faulty since the bill provides that "the President shall from time to time designate one of the Board members as the Chairman of the Merit System Protection Board." My amendment, which was defeated, would have required the Board members to elect a chairman every 2 years. Under the bill, the President can choose one Chairman, and the next month choose another. This, I believe, is a loophole than can lead to political shuffling and reshuffling.

CLEAR RESPONSIBILITY AT THE TOP FOR THE MERIT SYSTEM

Under the bill submitted by the administration, the delegation of personnel administration caused me great concern. The bill allowed the President to delegate responsibilities to the Director of the Office of Personnel Management who in turn could delegate to agencies. The General Accounting Office could investigate violations of the merit system

to Congress without clearance by another agency. Our committee has too often been frustrated by the Office of Management and Budget's stranglehold on agency statements to Congress. Under my amendment OMB can make its views known; there is no barrier. But these agencies can express their views on policies, answer questions directly, and present testimony to congressional committees without first getting their views cleared and laundered by OMB. This is a most important Government reform.

EMPLOYEE PAY: A MIXED PICTURE

The committee adopted my recommendation that supervisory employees in GS-13-15 grades continue to receive annual comparability adjustments. Keeping Federal pay rates competitive with those of private industry is a sound principle, established by the 1970 Federal Pay Comparability Act. Had we deprived employees in these grades annual comparability, I believe we would have violated the basic principle of our Federal pay system.

However, the committee did not accept my amendment that would have guaranteed true comparability. My amendment would have removed the loophole in the current law that has allowed Presidents of both parties to deviate from true comparability six times since 1970. We understand the President will follow this unfortunate precedent again this year. The concept of comparability is negated if inherent in the law is an escape hatch allowing the President to thwart it.

Creating a new Assistant Secretary position at executive level III or a deputy at executive level IV may be justifiable. Yet we have the questionable situation of the Administrator of the National Aeronautics and Space Administration at level II—\$57,500—and the Administrator of the General Services Administration at level III—\$52,500.

Under my bill and the provisions added to H.R. 11280, the number of positions becomes fixed and the President is required to send to Congress a plan in 2 years for bringing some order and coherence to what is presently a hodgepodge.

Similarly, the committee has incorporated certain provisions of H.R. 5054 which will bring some sense to the "supergrade sprawl." This bill reaffirms the concept of a central supergrade pool and repeals the many "extraneous" authorities outside the pool that have been enacted.

Both of these sections represent an attempt to have a government that is controlled, orderly and rational.

I am concerned and will continue to oppose an amendment adopted on a voice vote to require the Office of Personnel Management to conduct a study of the location of federal agencies and a review of the possibility of relocating agencies out of the Washington, D.C., area. First, this is an inappropriate mission for the OPM. Second, the amendment does not provide clear direction for the study by specifying the criteria that should be considered, for example, the effect on employment or unemployment, the need

if requested by Congress. The Special Counsel could investigate complaints and the Board could hear them. But the bill was very fuzzy as to who in fact was responsible—where did the buck stop?

I offered several amendments which were accepted that make it clear that the Director of the Office of Personnel Management is the individual responsible for compliance with civil service laws and procedures. Thus, for example, if an agency adopts a hiring procedure that gives favoritism to certain applicants, OPM cannot "get off the hook" by saying the agency was in charge. OPM cannot turn a blind eye. OPM is responsible for seeing that merit system principles are enforced and that corrective action is taken when violations occur.

EMPLOYEE RIGHTS AS PRIVATE CITIZENS

I continue to believe that employees should be able to engage in voluntary political activities as private citizens and I helped draft H.R. 10, which would revise the current Hatch Act prohibitions on those rights. However, I do believe it is wrong to tie those revisions to a legislative vehicle that opens the door to politics within the system. The Hatch Act has never protected employees from on-the-job political pressures; a strong, impartial merit system provides that protection. But this bill severely weakens many of those protections.

OPEN AVENUE OF COMMUNICATION FOR OPM AND THE BOARD

I am pleased that the committee adopted my amendments to allow both the OPM and the Merit System Protection Board to express their views directly

The new merit pay system, to reward GS-13, 14, and 15 supervisory employees for performance on the job, is a worthy concept. However, it would be a new system and I believe Congress needs to know in the future whether it is actually working, whether it is in fact improving performance. Thus, I am pleased that the committee accepted my amendment to require the Office of Personnel Management to report in 3 years on whether it is working and how. My amendment requires OPM to show us in quantitative terms if it is achieving the purposes set out in this legislation. It is my hope, for example, that we can determine that because of merit pay incentives, social security claims processing has been speeded up or decisionmaking on grants has been expedited and that such improvements are saving taxpayer dollars. My amendment also requires OPM to recommend changes in the law to improve the new pay system. Instead of letting a program grind on interminably without close scrutiny, this amendment will provide a proper mechanism for a review in 3 years.

CONTROLLING GOVERNMENT GROWTH

I am pleased that the committee has essentially incorporated my bill, H.R. 8332, which begins a process of curbing the growth of top, political appointive positions. There has virtually been no control in the growth of executive level positions in the Federal Government, since Congress has created them sporadically without any sense of overall planning or consistency. In fact, the Civil Service Commission is unsure of the exact number of executive level positions.

for access to the President and Congress, cost to the taxpayer, environmental considerations, or delivery of services. Third, there is no apparent purpose or demonstrated need for the study. Another useless study will not improve Government efficiency.

Despite these meritorious changes, the bill adds up to a minus—not a plus—for the Federal employee and the American taxpayer. This bill is an unfortunate chapter in the history of an impartial, nonpolitical Federal Government. It may shake the very foundations of our merit system. It suggests that political affiliation is more important than competence. By creating cracks for political influences to seep into the system, it makes the argument more valid that Federal employees should be denied rights of citizenship in order to protect them. Should H.R. 11280 be enacted into law, protections for the employee will be greatly diminished and the merit system will be placed in great jeopardy.

Mr. DERWINSKI. Mr. Chairman, I yield myself 30 seconds just to say—and I would like my friend, the gentleman from Virginia (Mr. HARRIS) to listen—that I have a solution to this minifluster we ran into.

I have been accused of being a friend of the White House. Therefore, I am going to ask the President to threaten to make personal appearances for the gentleman from Virginia (Mr. HARRIS), for the gentlewoman from Colorado (Mrs. SCHROEDER), for the gentleman from Missouri (Mr. CLAY), for the gentleman from Michigan (Mr. FORD), and for the gentlewoman from Maryland

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(Mrs. SPELLMAN), unless they cease their filibuster against the bill.

Mr. UDALL. Mr. Chairman, I yield such time as she may consume to the distinguished gentlewoman from Colorado (Mrs. SCHROEDER).

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, I rise in support of H.R. 11280, the Civil Service Reform Act of 1978. In producing this bill, the Committee on Post Office and Civil Service has gone through one of the longest markups in its history. Nary an issue of civil service law was omitted from this discussion or absent from the administration's proposal or the amendments offered to it.

I believe this bill represents a fine example of the kind of give-and-take which should, and must, go on between Congress and an administration in order to create acceptable legislation which has such scope and impact. Everything in this bill is not acceptable to all concerned, but there are more pluses than minuses for all.

Before I discuss my own amendments to the bill, I want to make a couple of general comments about provisions in the bill.

One of the reasons this bill was presented to Congress was to loosen alleged restrictions on firing incompetent Government employees. This motivation was all blamed upon the laws in force. As a one-time executive branch civil servant myself, I must say that I have

the private sector, I say look at the private sector.

Mr. Chairman, the second point I want to discuss in general is the firefighters' hours legislation which was attached to the bill. I was taken aback when the President vetoed the bill, H.R. 3161. As chairwoman of the Subcommittee on Employee Ethics and Utilization I was, I assure you, under the impression that the President's promise that he would sign this legislation was in effect. Others were also. We passed the bill by a substantial margin and the Senate passed it by unanimous consent. Never, although I asked them, did the Civil Service Commission propose alternatives to the bill which they would find acceptable. Never, before the President's veto message, had the administration cited the figures on its costs in that message, figures which were twice as high as our own Budget Office compiled. I have yet to find the horrors in the bill which the President discovered at the last minute. I urge my colleagues to vote to retain this amendment if a move is made to remove it.

I introduced three amendments which were accepted by the committee and upon which I would like to add comment. These amendments modify veterans preference, enlarge whistleblowing protections, and modify present dual compensation laws.

VETERANS PREFERENCE

My amendment makes three changes in the administration's proposed changes

ence can only be used again by a veteran who seeks a job on another register, rather than for promotion in his own agency. This thwarts those who are working their way up the promotion ladder of such agency.

The second part my amendment replaces the administration proposed protection against layoffs, retention preference—3 years plus a time equal to length of military service—by a flat 8-year period after beginning a permanent Federal job. Following that period the veteran would have job retention equal to that of nonveteran coworkers: that is, on basis of length of service and quality of performance. Under present law veterans have lifetime retention preference and "bumping rights" over nonveteran employees.

Lifetime veterans preference cuts against younger veterans, too. The older veteran with more time in service always has a higher preference. Young veterans get bumped—although not as fast as nonveterans—in any major reduction in force.

Moreover, a supervisor doing hiring is not going to hire a veteran with a higher amount of preference than himself, if it can at all be helped. For the rest of his career he faces the possibility that he, rather than his subordinate, will be out in the street after a reduction in force.

Present law permits veterans with a 50 percent or more disability eligible for noncompetitive appointment to Federal jobs. My amendment reduces this requirement to 30 percent. This doubles

personally witnessed these difficulties. However, I cannot place all the blame on the laws. I want to point out a couple of other factors which I believe play a more major part.

First, few managers like to fire people. As Mr. SOLARZ pointed out in our committee debate, the firing rate in large private sector corporations is not that much greater than in the Government. How often do we read in the business pages of a formerly powerful industrial manager who has been "promoted" to be Vice President of Nothing? What do we say about the private firms which are springing up which are hired by other private companies to do their firing? Consumers pay for the expenses of keeping these employees on and paying for their easing out, just as taxpayers pay for those Government workers who are not doing their jobs.

Second, Government managers are directed by politicians. The 750 or so high-level jobs a new administration fills are not staffed, in general, by people who have been in the business of firing anyone but by people who have done their best not to offend, at least directly, any registered voter.

Mr. Chairman, these are two factors of the human condition applied to the executive branch which I believe override the ease or difficulty of the law itself. To the many, many competent Federal employees who are concerned that this bill will mean mass dismissal, I say that in years to come they will have to put up with colleagues who do not pull the load. To those who claim this bill will make the Government as efficient as

in present veterans preference law. The amendment was approved by a 16 to 9 vote, as a substitute for Congressman HANLEY's amendment to retain most of the present law.

My amendment first alters the administration's proposal to reduce present lifetime veterans preference to 10 years following discharge by permitting one time use of veterans preference in successful competition for a permanent job in the 15-year period after discharge. This change will include all veterans discharged since the Vietnam era began—August 5, 1964—under the new veterans preference policy.

Vietnam era veterans will have a better crack at Federal jobs under this amendment. We know for a fact that veterans preference has worked well in assisting veterans in obtaining Federal jobs; 50 percent of the Federal work force, versus 25 percent of the national work force, is veterans. But lifetime veterans preference has not worked well: The 8 million Vietnam era veterans—nearly one-third of the 27 million total veterans—only hold 9.6 percent of the Federal jobs which veterans overall have obtained. This is not because Vietnam era veterans do not want Federal jobs, it is because, even with preference, they cannot compete with the more experienced, older veteran with lifetime preference of his own.

The one time use aspect of this part of my amendment is an idea that has been adopted by some States, including Colorado, New York, and Oregon, with little repercussion. Only one-third of veterans ever seek to use preference more than once. Moreover, multiple prefer-

this disabled veterans pool to 996,000. Along with the provisions of the administration bill which retain present lifetime 10-point veterans preference for our 2.2 million disabled veterans, and the reduction of numbers of general 5-point veterans pool, far greater opportunities for Federal employment for those who have suffered most in serving our Nation will be present than are now.

Mr. Chairman, I want to let my colleagues know that since the committee reported H.R. 11280, Congressman BONIOR, chairman of the Vietnam veterans in Congress, has come forth with a very reasonable amendment to my amendment to make absolutely sure that all Vietnam veterans are covered by its intentions. This combination will assure that the intention of veterans preference—to provide readjustment and to provide special assistance to disabled veterans—will thrive.

WHISTLEBLOWING PROTECTION

Right now, a Federal employee who "blows the whistle"—sometimes even to a congressional committee—on activities at his agency which are a violation of law, mismanagement, abuse of authority, waste of funds or a danger to the public may be more likely to be harassed or fired than praised or rewarded. There is no effective means other than drawn out administrative and court proceedings for a whistleblower to set things right. We all lose when reasonable and constructive criticism of agencies by those who know them best is stifled.

My amendment to H.R. 11280 enhances the ability of the Special Counsel at the Merit Systems Protection Board

to protect whistleblowers from reprisals by other agency personnel. It also increases the clout the Special Counsel has to assure that proper corrective actions are taken to prevent further reprisals.

My amendment also enlarges the scope of matters which may be disclosed. The administration proposal only permitted public disclosure by a whistleblower of violations of laws or regulations. My amendment permits, with the proviso that all matters of national security or privacy be pursued within Government, that a whistleblower may disclose mismanagement, abuse of authority, waste of funds, and danger to public health or safety. Matters in such categories—for example, an agency's purchase of 10 cent bolts for \$8 a piece—may not violate any laws, but certainly the public should have an opportunity to hear about. If we in Congress are going to act as effective checks on excesses in the executive branch, we have to hear about such matters.

I want to thank Congressmen HANLEY, LEHMAN, and GILMAN for their assistance in its development, and especially thank Congressman HANLEY for his amendment to it during committee markup which adds to the effectiveness of the Special Counsel in assuring that in whistleblower situation proper corrective actions are taken by agencies.

DUAL COMPENSATION OF RETIRED MILITARY PERSONNEL WORKING FOR THE FEDERAL GOVERNMENT

My amendment to limit the total compensation for future retired—non war-

● Mr. PANETTA. Mr. Chairman, it is always easy to say that any bill is the most important piece of legislation we will consider this year. Perhaps it is true of H.R. 11280, the Civil Service Reform Act of 1978, but I am concerned that by using such sweeping language we will lose sight of what is really important about this bill.

First, it is fair to say that every single piece of legislation this House passes from now on will be affected by the proposals contained in this bill. Each time a bill leaves the Congress and goes on to the bureaucracy, its very success is dependent upon the management talent of our civil service. By giving that talent an opportunity to use modern management tools to improve efficiency and effectiveness, we will be improving every single piece of legislation we pass here.

Second, it is also fair to say that while the President has justifiably stressed reorganization of the Government, all of these proposals will be meaningless and worthless unless we regain control of the processes within the bureaucracy. The time, thought and effort put into reorganization both by the President and the Congress deserves the benefit of the improvements H.R. 11280 will bring to the civil service.

And third, we must remember that the expression of taxpayer dissatisfaction symbolized by proposition 13 in California was not merely a call to cut back government. It was a statement of frustration with the operation of government and with its unresponsiveness to

support the changes in this bill regarding veterans preference because I truly believe it will help those veterans America has been trying to forget. I am talking about those veterans who served in Vietnam. That war is an experience we as a Nation, prefer to overlook—and in the process we have also overlooked those who served our country there—a tremendous number of whom did not have the resources to avoid the draft or to leave the country. A great many of these came from communities such as my own. I see them today—and they are still hurting.

I believe the modification in the preference will help the Vietnam veterans because they will no longer have to compete with veterans of previous wars, whose score for a Federal civil service job is the result of many years of work experience as well as the 5-point preference. I am a veteran of the Korean war and I am ready to put aside my own self interests, and the self interests of those who served with me and before me, so that we may achieve a more equitable situation for those served in Vietnam.

I urge my colleagues to join me in defending the rights of our disenfranchised veterans, who have been the victims of America's actions several times over.

● Mr. GOLDWATER. Mr. Chairman, it has come to my attention that during consideration of House Resolution 11280, the Civil Service Reform Act, there has been discussion as to whether the Federal Bureau of Investi-

time disabled—military personnel holding Federal jobs to executive level V—now, \$47,500 per year—was adopted by the committee by voice vote.

There are now an estimated 2,000 retired military officers working in the Federal Government who draw combinations of military retired pay and Federal salaries amounting to \$50,000 to \$80,000 per year. Such people have created the bad connotation of the term "double dipper", and the vast majority of retired military personnel, with \$200 to \$300 per month pensions, low level civil service jobs, and total incomes at about the U.S. average have suffered by this connotation. Military officers who stay in the military also are affected by those who do not: Those who stay have their pay capped at executive level V.

The present dual compensation law, with its exceptions and its distinctions, makes any debate on this matter a burdensome task. The President's Commission on Dual Compensation earlier this year suggested many changes in the present military retirement system. Although these suggestions have yet to be proposed to Congress, when they are, I believe that my amendment, which eliminates many of the problems we have faced reaching the real issues, will help us have the considered debate these issues deserve.

Mr. UDALL. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. PANETTA).

(Mr. PANETTA asked and was given permission to revise and extend his remarks.)

the people. This bill, again, gives us the opportunity to respond to the feelings symbolized by proposition 13 in a significant and responsible fashion.

By showing the people that we do understand, care about, and share their concern about how our Government works, we can play an important role in helping people regain trust and confidence in Government, in democracy. This, indeed, is an important part of why we are here as Representatives of the people.

While there are legitimate concerns about aspects of this long and complex bill, I hope Members will make good faith efforts to resolve those disputes amicably and positively. While some of us may argue that energy is more important than civil service reform or that tax reform is more important, I believe that these worthwhile measures will not receive the support they deserve from the people unless and until the people see their Government working for them again. The best way to do this is to implement the broad principles contained in H.R. 11280. In so doing, we will quite possibly be acting on the bill that is most important of all to the people themselves.

Mr. UDALL. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. GARCIA), a member of our committee.

(Mr. GARCIA asked and was given permission to revise and extend his remarks.)

Mr. GARCIA. Mr. Chairman, I rise in support of the provision in this bill which will limit a veteran's preference for employment in the Federal civil service. I

gation should be excluded from participation in certain provisions of the measure. It is in conjunction with this possible exclusion that a question has been brought to my attention that so excluding the FBI would mean that it would not be under the "whistleblower" clauses of that act. The concern expressed has been that without such "whistleblower" protections, there would not exist the capability for FBI employees to bring to the attention of proper authorities instances of excess, impropriety, mismanagement and the like. I would like to state for the record that it is my understanding that there are, indeed mechanisms available to FBI employees to report such activities, should they exist. Such mechanisms exist both within the FBI itself and the Department of Justice, of which it is a part.

There are two bodies within the FBI which report directly to the Director—the Office of Legal Counsel and the Planning and Inspection Division. The Office of Legal Counsel is charged with advising the Director on the propriety, legality and correctness of any action, actual or contemplated. The Planning and Inspection Division is responsible for conducting a continuing program of inspection of all FBI operations at both the Headquarters and field level. During these inspections employee participation is actively solicited and any allegation may be received which would bear upon matters which might be termed "whistleblowing." All allegations receive a vigorous investigation, the results of which are reported to the Director for whatever action he deems appropriate.

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Further, within the Planning and Inspection Division there is an Office of Professional Responsibility which investigates more serious allegations of misconduct or possible criminality. The results of these investigations are provided the Director and the Department of Justice. Allegations may be brought to the attention of this Office by any employee at any time. In addition, there is within the Department of Justice a separate Office of Professional Responsibility which investigates similar allegations, to include those made by or against FBI personnel. The investigations may be conducted with or without the assistance of the FBI, as the situation dictates.

I would also note that beyond this level of protection the FBI also receives active oversight from six committees of Congress—the House Judiciary, Intelligence, and Appropriations Committees, and their counterparts in the Senate.

It is possible that some might question whether, even with the existence of such internal bodies clearly evidenced, it might not be possible that retribution could be visited upon an employee who chose to exercise "whistleblower" rights and responsibilities. I would note that should an unlikely event occur there still resides with the Attorney General the ability to audit and correct any personnel action taken by the Director of the FBI. These provisions are set forth in title 28,

Code of Federal Regulations, subpart X, section 0.137.●

Mr. UDALL. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

The CHAIRMAN. All time for general debate has expired.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that the Committee, having had under consideration the bill H.R. 11280, to reform the civil service laws, had come to no resolution thereon.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the bill just debated, H.R. 11280.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11280) to reform the civil service laws.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 307, nays 10, answered "present" 1, not voting 114, as follows:

[Roll No. 738]

YEAS—307

| | | | | | |
|------------------|-----------------|--------------|----------------|-----------------|----------------|
| Akaka | Derwinski | Jones, Okla. | Bedell | Fascell | Long, Md. |
| Alexander | Devine | Jones, Tenn. | Benjamin | Fenwick | Lott |
| Anderson, Calif. | Dicks | Kastenmeyer | Bennett | Findley | Lujan |
| Andrews, N.C. | Dodd | Kazen | Bevill | Fish | Luken |
| Andrews, N. Dak. | Dornan | Kelly | Biaggi | Fisher | Lundine |
| Annunzio | Duncan, Tenn. | Keys | Bingham | Fithian | McClary |
| Applegate | Edgar | Kildee | Bianchard | Flippo | McCloskey |
| Ashbrook | Edwards, Ala. | Kostmayer | Blouin | Flood | McCormack |
| Aspin | Edwards, Calif. | Krebs | Boggs | Florio | McDade |
| Bafalis | Edwards, Okla. | LaFalce | Bolling | Flynt | McDonald |
| Baldus | Elberg | Lagomarsino | Bonior | Foley | McEwen |
| Barnard | Emery | Latta | Brademas | Ford, Mich. | McFall |
| Baucus | English | Le Fante | Breaux | Ford, Tenn. | McHugh |
| Bauman | Erlenborn | Lesch | Breckinridge | Fountain | McKay |
| Beard, R.I. | Ertel | Lederer | Brinkley | Fowler | McKinney |
| Beard, Tenn. | Evans, Del. | Levitas | Brodhead | Frenzel | Madigan |
| | Evans, Ga. | Lloyd, Tenn. | Brooks | Gammage | Maguire |
| | Evans, Ind. | Long, La. | Broomfield | Garcia | Mahon |
| | | | Brown, Mich. | Gephardt | Mann |
| | | | Brown, Ohio | Giulmo | Markey |
| | | | Broyhill | Gilman | Marks |
| | | | Buchanan | Ginn | Marrlott |
| | | | Burgener | Glickman | Martin |
| | | | Burke, Mass. | Goldwater | Mattox |
| | | | Burleson, Tex. | Gonzalez | Mazzoli |
| | | | Butler | Goodling | Meeds |
| | | | Carr | Gore | Meyner |
| | | | Carter | Gradison | Michel |
| | | | Cavanaugh | Grassley | Mikulski |
| | | | Cederberg | Green | Miller, Ohio |
| | | | Chappell | Gudger | Mineta |
| | | | Chisholm | Hamilton | Minish |
| | | | Classen | Hammer- | Mitchell, N.Y. |
| | | | Don E. | schmidt | Moffett |
| | | | Clay | Hanley | Mollohan |
| | | | Cleveland | Hannaford | Montgomery |
| | | | Cohen | Harkin | Moore |
| | | | Coleman | Harsha | Moorhead, |
| | | | Collins, Ill. | Hefner | Calif. |
| | | | Collins, Tex. | Heftel | Moorhead, Pa. |
| | | | Conable | Hightower | Mottl |
| | | | Conte | Hillis | Murphy, Ill. |
| | | | Conyers | Holt | Murphy, N.Y. |
| | | | Corcoran | Holtzman | Murphy, Pa. |
| | | | Corman | Horton | Murtha |
| | | | Cornell | Howard | Myers, Gary |
| | | | Coughlin | Hubbard | Myers, John |
| | | | Cunningham | Hughes | Myers, Michael |
| | | | D'Amours | Hyde | Natcher |
| | | | Daniel, R. W. | Ireland | Neal |
| | | | Danielson | Jacobs | Nedzi |
| | | | Davis | Jeffords | Nichols |
| | | | de la Garza | Jenkins | Nix |
| | | | Delaney | Jenrette | Nolan |
| | | | Dellums | Johnson, Calif. | Nowak |
| | | | Derrick | Jones, N.C. | O'Brien |

| | | |
|--------------|--------------|-------------|
| Oakar | Runnels | Studds |
| Oberstar | Russo | Taylor |
| Obey | Ryan | Thompson |
| Ottinger | Santini | Traxler |
| Panetta | Sawyer | Trible |
| Patten | Scheuer | Tucker |
| Patterson | Schroeder | Udall |
| Pattison | Schulze | Ullman |
| Pease | Sebelius | Van Deerlin |
| Pepper | Seiberling | Vander Jagt |
| Perkins | Sharp | Vank |
| Poage | Shuster | Vento |
| Preyer | Simon | Walgren |
| Price | Skelton | Walker |
| Pritchard | Skubitz | Walsh |
| Pursell | Slack | Wampler |
| Rahall | Smith, Iowa | Watkins |
| Rallsback | Smith, Nebr. | Weaver |
| Regula | Solarz | Weiss |
| Reuss | Spence | Whalen |
| Rinaldo | St Germain | White |
| Risenhoover | Staggers | Whitehurst |
| Robinson | Stangeland | Whitley |
| Roe | Stanton | Winn |
| Rose | Stark | Wirth |
| Rosenthal | Steed | Wolf |
| Rostenkowski | Steiger | Wylie |
| Rousselot | Stockman | Yates |
| Roybal | Stokes | Young, Mo. |
| Rudd | Stratton | Zablocki |

NAYS—10

| | | |
|---------------|---------------|---------------|
| Dickinson | Mitchell, Md. | Wilson, C. H. |
| Harris | Spellman | Wydler |
| Heckler | Steers | |
| Lloyd, Calif. | Wilson, Bob | |

ANSWERED "PRESENT"—1

Gaydos

NOT VOTING—114

| | | |
|----------------|----------|----------|
| Abdnor | Fary | Pressler |
| Addabbo | Flowers | Quayle |
| Ambro | Forsythe | Quie |
| Ammerman | Fraser | Quillen |
| Anderson, Ill. | Frey | Rangel |
| Archer | Fuqua | Rhodes |
| Armstrong | Gibbons | Richmond |
| Ashley | Guyer | Roberts |
| AuCoin | Hagedorn | Rodino |

present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 296, nays 18, not voting 118, as follows:

[Roll No. 739]

YEAS—296

| | | |
|------------------|-------------|----------------|
| Akaka | Ellberg | Maguire |
| Alexander | Emery | Mahon |
| Ambro | English | Markey |
| Anderson, Calif. | Ertel | Marks |
| Anderson, Ill. | Evans, Del. | Marlenee |
| Andrews, N.C. | Evans, Ga. | Marriott |
| Andrews, | Evans, Ind. | Martin |
| N. Dak. | Fascell | Mattox |
| Annunzio | Fenwick | Mazzoli |
| Applegate | Findley | Meeds |
| Archer | Fish | Michel |
| Ashbrook | Fisher | Miller, Ohio |
| Aspin | Fithian | Mineta |
| Bafalis | Flood | Minish |
| Baldus | Florio | Mitchell, Md. |
| Barnard | Flynt | Mitchell, N.Y. |
| Baucus | Foley | Moffett |
| Bauman | Ford, Tenn. | Mollohan |
| Beard, R.I. | Fountain | Moore |
| Beard, Tenn. | Frenzel | Moorhead, |
| Bedell | Gammage | Calif. |
| Benjamin | Garcia | Moorhead, Pa. |
| Bennett | Gaydos | Mottl |
| Bevill | Gephardt | Murphy, Ill. |
| Biaggi | Giammo | Murphy, N.Y. |
| Bingham | Ginn | Murphy, Pa. |
| Blanchard | Glickman | Murtha |
| Blouin | Goldwater | Myers, Gary |
| Boggs | Gonzalez | Myers, John |
| Boland | Goodling | Myers, Michael |
| Bolling | Gore | Natcher |
| Bondior | Gradison | Neal |
| Brademas | Grassley | Nedzi |
| | Green | Nichols |

Stanton
Stark
Steed
Stockman
Stratton
Studds
Taylor
Traxler
Treen
Trible
Tucker
Udall
Ullman

Van Deerlin
Vander Jagt
Vank
Vento
Volkmer
Walgren
Walker
Walsh
Wampler
Weaver
Weiss
Whalen
White

Whitehurst
Whitley
Winn
Wirth
Wolf
Wright
Wydler
Wylie
Yates
Young, Mo.
Zablocki

NAYS—18

Broomfield
Clay
Collins, Ill.
Davis
Gilman
Harris

Holt
Leggett
Metcalfe
Mikulski
Quayle
Spellman

Staggers
Steers
Stokes
Wilson, Bob
Wilson, C. H.
Young, Fla.

NOT VOTING—118

Abdnor
Addabbo
Ammerman
Armstrong
Ashley
AuCoin
Badham
Beilenson
Bonker
Bowen
Breax
Breckinridge
Brown, Calif.
Buchanan
Burke, Calif.
Burke, Fla.
Burton, John
Burton, Phillip
Byron
Caputo
Clawson, Del
Cochran
Cotter
Coughlin
Crane
Dent

Fuqua
Gibbons
Guyer
Hagedorn
Hansen
Harrington
Harsha
Hawkins
Holland
Hollenbeck
Howard
Huckaby
Jacobs
Jenkins
Jenrette
Johnson, Colo.
Jones, N.C.
Jordan
Kasten
Kazen
Kemp
Keys
Kindness
Krueger
Lehman
Lent

Pressler
Pritchard
Pursell
Quie
Quillen
Rangel
Rhodes
Richmond
Roberts
Rodino
Roe
Rogers
Rooney
Ruppe
Sarasin
Scheuer
Shipley
Sikes
Sisk
Snyder
Steiger
Stump
Symms
Teague
Thompson
Thone

| | | |
|-----------------|----------------|---------------|
| Badham | Hall | Rogers |
| Bellenson | Hansen | Roncalio |
| Boland | Harrington | Rooney |
| Bonker | Hawkins | Ruppe |
| Bowen | Holland | Sarasin |
| Brown, Calif. | Hollenbeck | Satterfield |
| Burke, Calif. | Huckaby | Shiple |
| Burke, Fla. | Ichord | Sikes |
| Burlison, Mo. | Johnson, Colo. | Sisk |
| Burton, John | Jordan | Snyder |
| Burton, Phillip | Kasten | Stump |
| Byron | Kemp | Symms |
| Caputo | Kindness | Teague |
| Carney | Krueger | Thone |
| Clawson, Del | Leggett | Thornton |
| Cochran | Lehman | Tresen |
| Cornwell | Lent | Tsongas |
| Cotter | Livingston | Volkmer |
| Crane | Marienee | Waggonner |
| Daniel, Dan | Mathis | Waxman |
| Dent | Metcalf | Whitten |
| Diggs | Mikva | Wiggins |
| Dingell | Millford | Wilson, Tex. |
| Downey | Miller, Calif. | Wright |
| Drinan | Moakley | Yatron |
| Duncan, Oreg. | Moss | Young, Alaska |
| Early | Pettis | Young, Fla. |
| Eckhardt | Pickle | Young, Tex. |
| Evans, Colo. | Pike | Zefaretti |

So the motion was agreed to.

The result of the vote was announced as above recorded.

Mr. CLAY, Mr. Speaker, I move to reconsider the vote pursuant to which the motion that the House resolve itself into the Committee of the Whole House on the State of the Union was agreed to.

Mr. UDALL, Mr. Speaker, I move to table the motion offered by the gentleman from Missouri (Mr. CLAY).

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CLAY, Mr. Speaker, I object to the vote on the ground that a quorum is not

| | |
|-----------------|-----------------|
| Brinkley | Gudger |
| Brodhead | Hall |
| Brooks | Hamilton |
| Brown, Mich. | Hammer- |
| Brown, Ohio | schmidt |
| Broyhill | Hanley |
| Burgener | Hannaford |
| Burke, Mass. | Harkin |
| Burlison, Tex. | Heckler |
| Burlison, Mo. | Hefner |
| Butler | Heftel |
| Carney | Hightower |
| Carr | Hillis |
| Carter | Holtzman |
| Cavanaugh | Horton |
| Cederberg | Hubbard |
| Chappell | Hughes |
| Chisholm | Hyde |
| Clausen, | Ichord |
| Don E. | Ireland |
| Cleveland | Jeffords |
| Cohen | Johnson, Calif. |
| Coleman | Jones, Okla. |
| Collins, Tex. | Jones, Tenn. |
| Conable | Kastenmeier |
| Conte | Kelly |
| Conyers | Kildee |
| Corcoran | Kostmayer |
| Corman | Krebs |
| Cornell | LaFalce |
| Cornwell | Lagomarsino |
| Cunningham | Latta |
| D'Amours | Le Fant |
| Daniel, Dan | Leach |
| Daniel, R. W. | Lederer |
| Danielson | Levitas |
| de la Garza | Livingston |
| DeLahey | Lloyd, Tenn. |
| Dellums | Long, La. |
| Derrick | Long, Md. |
| Derwinski | Lott |
| Devine | Lujan |
| Dickinson | Lukens |
| Dicks | Lundine |
| Dodd | McClary |
| Dornan | McCloskey |
| Downey | McCormack |
| Duncan, Tenn. | McDade |
| Early | McDonald |
| Eckhardt | McEwen |
| Edgar | McFall |
| Edwards, Ala. | McHugh |
| Edwards, Calif. | McKay |
| Edwards, Okla. | Madigan |

| | | |
|--------------|----------------|---------------|
| Nix | Lloyd, Calif. | Thornton |
| Nolan | McKinney | Tsongas |
| Nowak | Mann | Waggonner |
| O'Brien | Mathis | Watkins |
| Oaker | Meyner | Waxman |
| Oberstar | Mikva | Whitten |
| Obey | Millford | Wiggins |
| Otinger | Miller, Calif. | Wilson, Tex. |
| Panetta | Moakley | Yatron |
| Patten | Montgomery | Young, Alaska |
| Patterson | Moss | Young, Tex. |
| Pattison | Pettis | Zefaretti |
| Pease | Pickle | |
| Pepper | Pike | |
| Perkins | | |
| Poage | | |
| Preyer | | |
| Price | | |
| Rahall | | |
| Rallsback | | |
| Regula | | |
| Reuss | | |
| Rinaldo | | |
| Risenhoover | | |
| Robinson | | |
| Roncalio | | |
| Rose | | |
| Rosenthal | | |
| Rostenkowski | | |
| Rousselot | | |
| Roybal | | |
| Rudd | | |
| Runnels | | |
| Russo | | |
| Ryan | | |
| Santini | | |
| Satterfield | | |
| Sawyer | | |
| Schroeder | | |
| Schulze | | |
| Sebelius | | |
| Seiberling | | |
| Sharp | | |
| Shuster | | |
| Simon | | |
| Skelton | | |
| Skubitz | | |
| Slack | | |
| Smith, Iowa | | |
| Smith, Nebr. | | |
| Solara | | |
| Spence | | |
| St Germain | | |
| Stangeland | | |

Mr. LIVINGSTON changed his vote from "nay" to "yea."

So the motion to table was agreed to. The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on August 11, 1978, all time for general debate on the bill had expired.

Pursuant to the rule, the Clerk will now read by titles the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk proceeded to read the bill.

POINT OF ORDER

Mr. MEEDS, Mr. Chairman, I make a point of order against titles IX and X, based on their violation of clause 7, rule XVI, in that they are nongermane to the bill before us.

Title IX deals with two groups of em-

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ployees not covered in the original bill. It includes postal workers and District of Columbia employees. There is much precedent which indicates that we have classes of subjects not covered by the basic proposition before us, which renders the new material nongermane. That is precisely what title IX does by adding two new subjects.

Title X, on the other hand, introduces new subject matter, the pay of firefighters that is not covered in the original bill. Title X deals exclusively with hours of work and wages of firefighters, while the original bill deals with the institution of the merit system within the system. Where hours or wages are included, it is only incidental to the basic of these titles should be stricken in the proposition of the merit system, so both above reason, and for the added reason that neither proposition amends the original bill. Rather, both seek to amend existing and basic law.

The CHAIRMAN. The gentleman from Washington (Mr. MEEDS) makes a point of order against titles IX and X.

Mr. CLAY. Mr. Chairman, I rise in opposition to this point of order.

For the life of me, I cannot understand how and why title IX should be treated in this discriminatory manner.

The facts are fairly obvious—and the connections between Hatch Act reform and the rest of H.R. 11280 are quite strong—

First, the bill, in section 2302 (on page 138, beginning on line 24) defines improper political activities as a prohibited

to parallel those established in H.R. 11280.

Although both the committee and the House approved this legislation in the last two Congresses by overwhelming margins, it has become increasingly clear to me that the other body will not act on Hatch Act reform this year. I offered my amendment in committee in order to insure that both Houses of Congress have the opportunity to work their will in considering reform of the Hatch Act. Many of us have worked long and hard in pressing for passage of this and other legislation in recent years only to see it languish and die in the other body.

Mr. Chairman, the issue of full political participation for Federal employees and protection of the public interest should be addressed here and now.

Finally, inclusion of Hatch Act reform does not constitute a "burden" on civil service reform. Civil service reform and Hatch Act reform are inextricably interrelated. Each insures that the people's business—the business of our Government—is conducted in a fair and impartial manner.

Inclusion of Hatch Act reform in this bill is not "untimely" as the administration would like the public to believe. There can be nothing more "timely" than providing Federal employees with the right to full participation in the political process of our Nation.

Mr. Chairman, it is inconceivable to me that this bill, which touches on virtually every aspect of civil service, should have political activities and fire-

bill is brought; therefore, it passes that jurisdictional test as far as the case is concerned.

I would point out further that the firefighter bill was actually reported out of this committee and came before this House; it passed by almost a 2-to-1 margin. Again, it reaches the fundamental purpose test.

The bill itself is for the reform of the civil service system by title. This bill is for the reform of the working conditions of the firefighters, a part of the civil service system by title. The fundamental purpose of both bills are exactly the same, that is, reform of the system.

All the titles are not across-the-board application in this bill. I refer the Chair specifically to title IV, which deals with a very small segment of the civil service system, that is the senior executives. This title deals only with 9,000 senior executives of the civil service. The firefighters bill deals with 11,000 civil service employees. If in fact we would hold that the firefighters failed the germaneness test, because it dealt with a smaller group than an across-the-board structure, we would certainly have to argue that on title IV. Title IV deals with a subgroup. Title X deals with a subgroup. It deals with a particular application.

I can cite precedents to indicate that when a bill deals with several particulars, one particular may be held to be germane.

In fact, this class is the same as the other titles of the bill. A bill may be amended by a specific proposition of the

personnel practice. Title IX of the bill states exactly what these improper political activities are.

Second, the bill charges the special counsel of the Merit System Protection Board (MSPB) with responsibility for not only investigating prohibited personnel activities in general but improper political activities in particular. (See page 160, beginning on line 24.) Title IX of the bill defines more fully these activities which apply to Federal civilian as well as postal employees.

Mr. Chairman, it is inconceivable to me that this bill—which touches on virtually every aspect of civil service—should have political activities and firefighters singled out for this kind of shabby treatment.

Title IX is virtually identical to H.R. 10, the Federal Employees' Political Activities Act of 1977, which passed the House on June 7, 1977, by a vote of 244 to 164. The only major differences between title IX and H.R. 10 is that title IX designates the special counsel of the Merit Systems Protection Board as the enforcing authority and the Board as the adjudicatory authority. H.R. 10 designated the general counsel of the Civil Service Commission as the enforcing authority while the Commission would have been the adjudicatory authority. These changes assume that the Civil Service Commission will be superceded by the Office of Personnel Management (OPM) and the Merit Systems Protection Board established under reorganization plan No. 2 of 1978. The investigative procedures of H.R. 10 were deleted

fighters singled out for this kind of shabby treatment. Title IX is virtually identical to H.R. 10, the Federal Employees Political Activities Act of 1977, which passed this House on June 7 of last year by a vote of 264 to 164.

Mr. Chairman, I think that it is unfortunate that the kind of heavy-handed activity and pressure is taking place to combine both title IX and title X into the same point of order as permitted by the rule. Personally, I resent that kind of heavy-handed activity on the part of the leadership of this House and on the part of the administration of this Nation.

Mr. Chairman, I urge that the point of order not be sustained.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, the point of order under the rule applies to titles IX and X, and comes before this House in a most unusual, and indeed a peculiar, way that the Chair perhaps would have to rule against the germaneness of one title that will be germane, because it is connected in the rule to another title that the Chair may consider non-germane.

I think it is unfortunate that the House must consider the matter in that fashion. I would point out to the Chair with regard to this point of order that title X, in fact, does pass the jurisdictional test. It was in fact with the same jurisdiction committee, the Committee on Post Office and Civil Service, as this

same class.

I would be happy to quote to the Chair about a dozen precedents that make this point.

If in fact we were to deal with the whole civil service system, dealing with a particular part of that system, that is the firefighters and their work rules is a particular matter within that system. Therefore, I would urge the Chair to overrule the point of order and hold title X as germane.

The CHAIRMAN. The gentleman from Washington makes a point of order against titles IX and X of the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service, on the grounds that those titles would not have been germane if offered as an amendment to the bill H.R. 11280, as introduced.

As indicated by the gentleman from Washington, the special order providing for consideration of this measure, House Resolution 1307, allows the Chair to entertain a point of order on the basis stated by the gentleman, that titles IX and X would not have been germane as a separate amendment to H.R. 11280 in its introduced form.

The bill as introduced and referred to the Committee on Post Office and Civil Service, although broad in its coverage of reform proposals within the competitive service and in the executive branch of the Government, is limited to merit system principles and personnel management within the civil service of the U.S. Government. Title IX of the

committee amendment is designed to characterize and to protect appropriate political activities of employees of the District of Columbia and Postal Service as well as civil service employees, by amending the Hatch Act. The Chair agrees with the argument of the gentleman from Washington that the amendment would add an entirely new class of employees to that covered by the bill, and for that reason is not germane.

Accordingly the Chair sustains the point of order.

Pursuant to the rule the Clerk will now read by titles the substitute committee amendment without titles IX and X, recommended by the Committee on Post Office and Civil Service, now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of section 2, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of section

lines. He must be getting tired, but he is beginning to go a little fast over some of these lines. I think that all of the lines should be read.

The CHAIRMAN. The Chair will state that the Chair observes that the Clerk is proceeding in regular order.

The Clerk will read.

The Clerk continued to read.

Mr. DERWINSKI (during the reading). Mr. Chairman, I have been impressed by the attention of the House, so therefore, I would ask unanimous consent that the remainder of the title be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, right up to now I have been very impressed with the principles of this bill, and it sounds pretty good so far, but I have to have the rest of it read, I will say to the gentleman from Illinois (Mr. DERWINSKI), because there may be something in here that is going to change my opinion about it. I think right up to now it sounds beautiful, but I will have to object.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding. Is it not possible for

are aware of the people's concerns, and we are aware that there are many people in this country in government employment who would rather not have this bill see the light of day. We are exercising whatever legitimate tactic is made available to us through parliamentary procedure. To impugn the conduct that is procedural and proper, in my judgment, is strictly out of order, and I think it is unfortunate.

Mrs. FENWICK. I resent very much the fact that the gentleman from New York suggests that I impugn anything. I merely asked if we could not proceed in a more orderly manner.

The CHAIRMAN. All Members will suspend. The gentleman from New York (Mr. BIAGGI) will suspend, and all other Members will suspend.

The Chair will state that the time is under the control of the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. Mr. Chairman, still reserving the right to object, I would like to say to the gentlewoman from New Jersey (Mrs. FENWICK) that she is absolutely correct in any observation that she makes. That does not offend me at all at this point.

Mr. Chairman, I object.

The CHAIRMAN. Objection is heard. The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California (during the reading). Mr. Chairman, I again make a point of order.

3; and that it be printed in the Record and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Reserving the right to object, Mr. Chairman, this is an extremely important bill that some Members are trying to pass through in this Congress. I think it is extremely important that those of us who are here on the floor know what is in this bill.

There have been many agreements made in connection with parts of the bill with members of the committee who are extremely concerned about labor provisions and about other provisions affecting this new section by which they are going to destroy the civil service system which we have known for so many years.

Mr. Chairman, I do not think that this is something we should take so lightly. That is the reason I am asking that the bill be read. I think it is important enough to every member of this committee that we do have this bill read and that we understand what is in it.

Therefore, Mr. Chairman, I am going to have to continue to object.

The CHAIRMAN. Objection is heard. The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I know the Clerk is not deliberately skipping some of these

the gentleman to read by himself?

Mr. CHARLES H. WILSON of California. The gentlewoman is certainly correct. I think the gentlewoman understands what is going on here.

Mrs. FENWICK. If the gentleman will yield, I honestly do not.

Mr. CHARLES H. WILSON of California. I object to the legislation, and I am using the rights that are guaranteed to me as a Member of this body to exercise my opposition to the legislation. It has been done on the gentlewoman's side; it has been done on our side.

Mrs. FENWICK. If the gentleman will yield further, I know. Will the gentleman, though, consider that the people's time is involved here. Our time is short until we are supposed to adjourn, and we are not unpaid volunteers; we are paid public servants.

Mr. CHARLES H. WILSON of California. I realize that.

Mrs. FENWICK. I think we should be using our time in the most effective way for the public benefit.

Mr. CHARLES H. WILSON of California. If the Speaker will pull this bill off the calendar, we can proceed with the important business of the Congress. I do not think this bill is so important that it has to be passed in this Congress.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

I would like to comment in response to the gentlewoman from New Jersey. We are aware of our responsibilities, and we

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I think the Clerk forgot to read line 6 on page 142. I recognize the burden placed upon him; however, I must have all of the lines read, if I can.

The CHAIRMAN. The Clerk will read line 6 on page 142, commencing with line 6, "through affirmative action * * *"

The Clerk concluded the reading of title I.

The text of title I reads as follows:

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

SHORT TITLE

SECTION 1. This Act may be cited as the as the "Civil Service Reform Act of 1978".

Sec. 2. The table of contents is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

Sec. 201. Office of Personnel Management.

Sec. 202. Merit Systems Protection Board and Special Counsel.

Sec. 203. Performance appraisals.

Sec. 204. Adverse actions.

Sec. 205. Appeals.

TITLE III—STAFFING

Sec. 301. Volunteer services.

Sec. 302. Definitions relating to preference eligibles.

Sec. 303. Noncompetitive appointment of certain disabled veterans.

- Sec. 304. Examination, certification, and appointment of preference eligibles.
 Sec. 305. Retention preference.
 Sec. 306. Training.
 Sec. 307. Travel, transportation, and subsistence.
 Sec. 308. Retirement.
 Sec. 309. Extension of veterans readjustment appointment authority.
 Sec. 310. Notification of vacancies in the civil service.
 Sec. 311. Dual pay for members of the uniformed services.
 Sec. 312. Minority recruitment program.
 Sec. 313. Effective date.

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. General provisions.
 Sec. 402. Authority for employment.
 Sec. 403. Examination, certification, and appointment.
 Sec. 404. Retention preference.
 Sec. 405. Performance rating.
 Sec. 406. Awarding of ranks.
 Sec. 407. Pay rates and systems.
 Sec. 408. Pay administration.
 Sec. 409. Travel, transportation, and subsistence.
 Sec. 410. Leave.
 Sec. 411. Disciplinary actions.
 Sec. 412. Retirement.
 Sec. 413. Conversion to the Senior Executive Service.
 Sec. 414. Limitations on executive positions.
 Sec. 415. Effective date; experimental application.

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.
 Sec. 502. Technical and conforming amendments.
 Sec. 503. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

- Sec. 601. Research programs and demonstra-

ance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Council should be increased so that the Special Council may investigate prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information and may file complaints, against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified managers needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(6) in appropriate instances, pay increases should be based on quality of performance rather than length of services;

fied individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance; inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which education and training would result in better organizational and individual performance.

"(8) Employees should be—

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or

- tion projects.
 Sec. 602. Intergovernmental Personnel Act amendments.
 Sec. 603. Amendments to the mobility program.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

- Sec. 701. Federal service labor-management relations.
 Sec. 702. Backpay in case of unfair labor practices and grievances.
 Sec. 703. Technical and conforming amendments.
 Sec. 704. Miscellaneous provisions.

TITLE VIII—GRADE AND PAY RETENTION

- Sec. 801. Grade and pay retention.

TITLE IX—POLITICAL ACTIVITIES

- Sec. 901. Federal employees' political activities.
 Sec. 902. State and local employees' political activities.
 Sec. 903. Effective date.
 Sec. 904. Study concerning political participation by Federal employees.

TITLE X—FIREFIGHTERS

- Sec. 1001. Basic workweek of firefighters.
 Sec. 1002. Effective date.

TITLE XI—MISCELLANEOUS

- Sec. 1101. Study on decentralization of governmental functions.
 Sec. 1102. Savings provisions.
 Sec. 1103. Authorization of appropriations.
 Sec. 1104. Powers of President unaffected except by express provisions.
 Sec. 1105. Technical and conforming amendments.
 Sec. 1106. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guid-

(7) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional review, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public; and

(8) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess.

TITLE I—MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

Chapter 23—MERIT SYSTEM PRINCIPLES

"Sec.

"2301. Merit system principles.

"2302. Prohibited personnel practices.

"2303. Responsibility of the General Accounting Office.

"2304. Coordination with certain other provisions of law.

"§ 2301. Merit system principles

"(a) This section shall apply to—

(1) an Executive agency;

(2) the Administrative Office of the United States Courts; and

(3) the Government Printing Office.

"(b) It is the policy of the Congress that in order to provide the people of the United States with a highly competent, honest, and productive Federal workforce reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistently with the merit system principles.

"(c) The merit system principles are as follows:

"(1) Recruitment should be from qual-

a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

"(A) a violation of law, rule, or regulation,
 "(B) mismanagement, a waste of funds, or an abuse of authority, or

"(C) a substantial and specific danger to public health or safety.

"(d) The President shall take actions, including the issuance of rules, regulations, or directives, as the President determines are necessary to carry out the policy set forth in subsection (b) of this section.

"§ 2302. Prohibited personnel practices

"(a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

"(2) For the purpose of this section—

"(A) "personnel action" means—

"(i) an appointment;

"(ii) a promotion;

"(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

"(iv) a detail, transfer, or reassignment;

"(v) a reinstatement;

"(vi) a restoration;

"(vii) a reemployment;

"(viii) a performance evaluation under chapter 43 of this title;

"(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this paragraph; and

"(x) a substantial change in duties or responsibilities which may reasonably be expected to result in a reduction in pay or grade;

with respect to an employee in, or applicant for, a position in the competitive service in an agency or a position in the excepted service in an agency (other than a position which is excepted from the competitive service be-

cause of its confidential, policy-determining, or policy advocating character), or to a career appointee in the Senior Executive Service in an agency.

"(B) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(1) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office.

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

"(1) discriminate for or against any employee or applicant for employment—

"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

"(C) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);

"(D) on the basis of marital status or political affiliation, as prohibited under this title; or

"(E) on any basis prohibited under the provisions of any other law, rule, or regulation;

"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action

employee or applicant which the employee or applicant reasonably believes evidences—

"(1) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

If such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

"(1) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a waste of funds, or an abuse of authority, or a substantial and specific danger to public health or safety;

"(3) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the exercise of any right of appeal granted by law, rule, or regulation;

"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime of violence or moral turpitude under the laws of any State, of the District of Columbia, or of the United States; or

"(11) take or fail to take any personnel action on the basis of personal favoritism.

effectiveness and soundness of Federal personnel management.

"§ 2304. Coordination with certain other provisions of law

"No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), Public Law 86-36 (73 Stat. 63; 50 U.S.C. 402), and Public Law 88-290 (78 Stat. 168; 50 U.S.C. 831-835)."

"(b) (1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

"23. Merit system principles----- 2301."

(2) Section 7203 of title 5, United States Code (as redesignated in section 703(1) of this Act) is amended—

(A) by striking out "Physical handicap" in the section heading and inserting in lieu thereof "Handicapping condition"; and

(B) by striking out "physical handicap" each place it appears in the text and inserting in lieu thereof "handicapping condition".

AMENDMENTS OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HARRIS: Page 136, line 4, after "(b)" insert "or (c)".

Page 138, strike out paragraph (2) beginning on line 13 and ending on line 23 and redesignate the following paragraphs accordingly.

Page 141, after line 19 insert the following:
 "(c) (1) No employee may accept or consider, or influence or direct, or attempt to

unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

“(A) an evaluation of the work performance, ability, aptitude, or general qualifications of the individual; or

“(B) an evaluation of the character, loyalty, or suitability of the individual;

“(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

“(4) deceive or obstruct any person with respect to the person's right to compete for Federal employment;

“(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

“(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any person for Federal employment;

“(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position, any individual who is a relative (as defined in section 3110(a)(3) of this title) of an employee if the position is in the agency in which the employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which the employee exercises jurisdiction or control as a public official (as defined in section 3110(a)(2) of this title);

“(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

“(A) a disclosure of information by an

“(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, the compliance with and enforcement of applicable civil service laws, rules, and regulations and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

“(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

“(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

“(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

“(3) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition;

“(4) the provisions of this title, and rules and regulations thereunder, prohibiting discrimination on the basis of marital status or political affiliation; or

“(5) the provisions of any other law, rule, or regulation prohibiting discrimination on any such basis.

“§ 2303. Responsibility of the General Accounting Office

“If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the ef-

influence or direct any other employee to accept or consider, with respect to any personnel action, any recommendation unless—

“(A) the recommendation is furnished pursuant to a request made by an authorized representative of the United States solely to determine whether the individual involved in the personnel action meets the loyalty, suitability, and character requirements for employment; or

“(B) the recommendation—

“(1) is furnished pursuant to a request of an employee who is responsible for taking (or directing others to take), recommending, processing, or approving the personnel action; and

“(ii) consists solely of an evaluation of the work performance, ability, aptitude, character, or general qualifications of the individual involved in the personnel action.

“(2) Any employee who receives a written recommendation prohibited by paragraph (1) of this subsection shall return such recommendation to the person who provided it, with an appropriate indication that the acceptance or consideration of such recommendation would be in violation of this subsection.

“(3) Any employee who receives an oral recommendation which is prohibited by paragraph (1) of this subsection shall advise, in an appropriate manner, the person providing such recommendation that the acceptance or consideration of such recommendation would be in violation of this subsection.

“(4) For the purpose of this subsection—

“(A) ‘recommendation’ means any communication, oral or written, made directly or indirectly by—

“(1) a Member of Congress or a candidate for such office;

“(ii) a Congressional employee, as defined in section 2107 of this title (determined without regard to whether or not the employee's pay is paid by the Secretary of the Senate or the Clerk of the House of Representatives);

"(iii) an employee appointed by the President; or

"(iv) an employee in a position which is exempted from the competitive service because of its confidential or policymaking character;

"(B) 'recommendation' does not include an inquiry which is limited solely to a request—

"(i) for a statement on the status of any personnel action; or

"(ii) for an explanation of the basis on which a personnel action has been taken.

Page 141, line 20, strike out "(c)" and insert in lieu thereof "(d)".

Page 142, line 4, strike out "(d)" and insert in lieu thereof "(e)".

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this is an amendment to this very important bill which would make sure that we eliminated all unwarranted political influence in the civil service personnel matters. I think the important matter that civil service reform is designed to assure or should be designed to assure is that the merit system is not influenced by political recommendations or political pressures but is operated on the basis of merit and handled on the basis of a competitive service as it should be. This can be strengthened by the adoption of this amendment to clearly eliminate unwarranted political recommendations in hir-

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I will be happy to yield to my good friend and colleague, the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Chairman, I would ask the gentleman from Virginia (Mr. HARRIS) if this is the amendment that we defeated in the committee rather overwhelmingly?

Mr. HARRIS. As I recall—and I am not sure whom my colleague refers to as "we."

Mr. ROUSSELOT. Well, I am still on the committee, I am part of the committee.

Mr. HARRIS. I do not think it was a partisan effort at all. The amendment was offered in the committee and was not adopted in the committee.

Mr. ROUSSELOT. It was defeated?

Mr. HARRIS. Yes. And if I may continue, I thought that my amendment was defeated more by proxies than it was by people in the committee and I wanted to give the full house a chance to vote on it where proxies may not have the full effect on it as they do in the committee.

Mr. ROUSSELOT. I think the gentleman is right, proxies do not work here.

But it was defeated in the committee, is that right?

Mr. HARRIS. My colleague is correct, or I would not be offering it here on the floor, I might point out to my colleague.

Mr. ROUSSELOT. I thank the gentleman.

Mr. DERWINSKI. Mr. Chairman, I

there is no doubt about it, my colleague has the charm.

Mr. DERWINSKI. Mr. Chairman, I think I will put that statement in my campaign literature.

But, here is the point. Under the gentleman's amendment, it would prohibit Members of Congress and Presidential appointees from submitting a recommendation on the application of any person for Federal career employment. Note, it only says Members of Congress and Presidential appointees. It would not prohibit national committeemen or party chairmen, ward committeemen, or local political leaders. Or, to use the gentleman from Virginia's term, politicians should not influence career appointments. What he is saying is that we, as Members of Congress, are politicians. Presidential appointees are politicians, but a Chicago ward committeeman is not a politician.

I do not know if the gentleman has studied politics across the country, but a Chicago ward committeeman is a noble kind of politician. He is a powerful politician, and to say in this amendment, as you do, that a ward committeeman of the city of Chicago could recommend someone for Federal employment, but our distinguished majority leader, the gentleman from Illinois (Mr. ROSTENKOWSKI) could not, is a denial of practical politics.

So, as much as this amendment may have some unique appeal in the suburban areas surrounding Washington, D.C., it does not really square with the facts of life across the country.

ing and promotions and other personnel actions.

Under my amendment the political recommendations from Members of Congress or staff or White House officials and political appointees in the executive branch would be explicitly prohibited. The notion that elected political officers ought to determine who gets what job in the career merit system is simply wrong.

Some argue that it is a fact of life. If so, that fact of life is wrong. It is time to stop working on that system. I think we should be making it clear to people that the hiring and promotion and firing is on the basis of merit, on the basis of competence and job performance, and not on the basis of whom one knows or who makes a recommendation for one.

If in fact we are going to make a case here that we are going to have a merit system that is not influenced by politics or political pressure, then we ought to have the clear language in this bill which says, as this amendment will make it clear, that such a recommendation may not be accepted. I think we should tell to every American that he can be considered for a merit system job if he has the competence and will enter the competitive examination and is qualified, and therefore the recommendation of a politician, an elected official or one appointed in the executive branch will have no bearing on his job application.

If we are really serious about civil service reform, we will put this language in very clearly and precisely, as my amendment does. I cannot imagine having any objection, but I offer it as an amendment and urge that it be adopted.

rise reluctantly, of course, to oppose the amendment offered by the gentleman from Virginia (Mr. HARRIS).

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I would also like to use this amendment to emphasize the seriousness of this measure, the importance of this measure to the well-being of this country and its citizenry and the absolute need for this Congress to pass this civil service reform which our noble President has so properly, legitimately and heroically requested.

I would first point out to my dear friend, the gentleman from Virginia (Mr. HARRIS) that I believe he used some weak logic in supporting his amendment. He first stated that it was a fact of life he was trying to correct. You do not correct facts of life, they are there.

Secondly, the gentleman referred to the fact that he lost the amendment in committee because proxies were in other people's hands. That sounds to me as if he is admitting that certain other Members had more charm and were able to exercise the use of proxies because often the person handling the proxies is the one you have the greatest confidence in, the one whose judgment you respect.

Mr. HARRIS. Mr. Chairman, will my colleague yield on that point?

Mr. DERWINSKI. Certainly.

Mr. HARRIS. I want to make it clear to this body, and to my colleague, that there is no question of a contest on charm between my colleague and me,

There is nothing wrong with a dedicated Presidential appointee or a dedicated Congressman legitimately recommending someone for Federal employment.

I am not aware that there have been particular abuses in this field. I do not think Members of Congress should be denied that responsibility.

In summing up my point of view, may I point out that we will have hundreds of amendments, gosh knows how many days we will be on this bill, but we must not forget the noble goal ahead of us. That noble goal is to give the President of the United States a legitimate reform of the civil service. But I suggest that this amendment does not square with the overall concept of reform.

It is unneeded, it is unworkable. It actually discriminates against Members of Congress and Presidential appointees.

Mr. Chairman, I suggest a very effective rejection of the amendment.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from California, my distinguished friend.

Mr. CHARLES H. WILSON of California. Mr. Chairman, the gentleman has been the principal advocate within the committee for the administration on this legislation, he and the gentleman from Arizona (Mr. UDALL).

Is this one of the amendments which has to be defeated in order to retain the solid support of the Republicans for this legislation?

Mr. DERWINSKI. The Republicans are

not politically motivated by this legislation other than in recognizing the nobility of the Presidential request. The Republicans have risen above partisanship on this issue. We are totally nonpartisan. We want the President of the United States to have a good civil service reform bill.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Unfortunately, we must oppose this amendment, and I would not want the Members left with the impression that, in fact, it was the Republican members of the committee who made up the majority which defeated the amendment in committee. The vote in committee was 16 to 5 against the amendment when it was considered in committee.

Mr. Chairman, what should be borne in mind is that it was not considered in a vacuum as an alternative to no control on the recommendations of the employees to the civil service versus the Harris amendment. What he seeks to do in his amendment is substitute his restriction for the one which we carefully worked out in the bill.

Mr. Chairman, if the Members will look at lines 13 through 23 on page 138, they will see that we already restrict the people who would be covered by the Harris amendment to making a recommendation solely on the basis of their personal knowledge or record. In other words, if one of your employees is seek-

recommendations by the Members of Congress and their employees far beyond that restraint or restriction that is put on any other political officeholder.

Mr. Chairman, I would urge the Members to support the committee and reject the Harris amendment.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, my colleague and I tried to have most of my amendment read so that our colleagues would understand it.

My colleague, the gentleman from Michigan (Mr. FORD) may oppose my amendment; but I wish that he would not oppose it for a provision which is not in there.

Mr. Chairman, I read to my colleague the body of the amendment, which says that the recommendation may be considered if it is furnished pursuant to a request of an employee who is responsible for taking—or directing others to take—recommending, processing, or approving the personnel action; and consists solely of an evaluation of the work performance, ability, aptitude, character, or general qualifications of the individual involved in the personnel action.

I am sure my colleague, Mr. Chairman, will now admit that the amendment as drafted will permit any Member of Congress or staff member of Congress to make a recommendation with regard to merit system employment if it did in fact

There is broad support for this bill. I do not think there is any question in anybody's mind that if we took a vote on final passage at this time, it would pass by a very large margin, possibly 2 to 1 or better. It has broad support among labor management people and business groups. It will give perhaps a little bit of ability to manage.

A group of us met with the Vice President today, and he told us about the President going off to Bonn to the Economic Summit. One of the things he could do, he could do administratively, and the frustration of all Presidents was there. He asked one of the bureaus—and I will not name which one—to give him a report in 60 days where he could get a fight going on inflation. When he asked for it, their response was, we are not ready yet. The President wrote a handwritten note to the director of that agency and said, "I am going to Bonn and want to take this with me. Will you have it ready when I come back?" The report came back from the bureau saying, "You don't really need it, and we probably won't be able to do what you want us to do." That type of thing has frustrated Presidents from time immemorial.

The American people are angry at the inexpressiveness of the Federal Government, and we are trying to give the President the tools with which to make this executive branch work.

Here we are with two eminent colleagues—and I love them both—the

ing a civil service position and puts you down as a recommendation, you can, in fact, say in the recommendation that the employee performed the duty of a legislative assistant and worked on certain kinds of legislation, that the employee came to work on time, and that the employee had good character and good work habits.

However, one could only say those things which he knew about the person, based on his personal knowledge and the records of his office.

Mr. Chairman, the Harris amendment would not only prohibit one from answering such an inquiry, but it would prohibit any other employee, not only of our individual offices, but an employee of a committee could not answer an inquiry from a Federal agency about a job applicant who had previously been employed in that agency.

Further, Mr. Chairman, I point to the fact that the kind of recommendation that congressional employees and Presidential appointees would be permitted to make under the committee bill as it comes to us is limited further to an evaluation of the work performance, ability, aptitude, or general qualifications of the individual.

Again, we are putting a greater restriction on Members of Congress and their employees and Presidential appointees than we put on the Chicago ward heeler or ward committeeman—that is a kinder word—or the chairman of either political party; but we recognize the very special nature of the relationship of the Congress and its employees to the civil service; and the committee bill already restrains and restricts

consist of an evaluation of the work performance of the Member of Congress or staff member.

Mr. FORD of Michigan. I think the gentleman is making a comparison. If the Members will look at lines 22 and 23 on page 138, they will see that the committee bill will permit an evaluation of the character, loyalty, or suitability of the individual, all of which are specifically excluded by the gentleman. It is just an unsatisfactory last-minute attempt to further narrow the position worked out by the committee, and it should be defeated.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, under the direction of the leadership in just a few minutes I am going to try to get an agreement on limitation of time and vote on this simple and uncomplicated amendment. Before we do that, I want to kind of advise my colleagues where I think we are going on this legislation and what I see as being at stake. The clock is running on all of us. The elections are not too many weeks away, and adjournment time is coming rapidly upon us. We have got a whole load of the public's business to dispose of—tax legislation, energy, all the rest.

I chatted with the Speaker a moment or two today. The load is horrendous. I think it is incumbent upon all of us to make this a proud time of the House and act with dispatch on important legislation between now and the time we adjourn.

gentleman from California (Mr. CHARLES H. WILSON), and the gentleman from Missouri (Mr. CLAY) on the committee who do not want a bill. They are sincere about it. They do not want a bill this year. They are using procedures in the House rules and threatening to continue to use them. But I want the Members of the House to know what is at stake here.

We heard a charge here by the gentleman from California that we are acting hastily. Let me give you some of the history. The bill was introduced on March 3, had 13 long days of hearings. We heard from every segment all over this country. It was suggested by some that the Democratic members of the committee ought to get our act together. We met day after day and night after night, haggling over every section of the bill, and came up with the consensus of our party. The committee went to markup day after day, in night sessions, over a period of from June 21 to July 19. We finally got a bill. It was voted out by a big bipartisan consensus. The gentleman from Illinois (Mr. DERWINSKI), and a lot of good people on the other side helped bring it out by a vote of 18 to 7. There was general debate on August 11. Everybody has had time to study the amendments. Dozens of them are printed in the RECORD now. This is our President's major domestic bill, a bill our Speaker and the majority leader have given high priority to before the House. It is not going to go away. There is another body down at the other end of this building whose members can talk and decide what priorities and legislative schedules we will have, but this bill is going to be acted on in this session.

One of our options in scheduling is to

go tomorrow, quit at 3:30. The other option that will give the Members an idea of the importance of this legislation is that all suspensions are going to be knocked off on Monday. We will work on this bill all day Monday. We will stay Monday night to finish it. A lot of people are going to get hurt by having suspensions taken off of the calendar on Monday. I have some business on the Suspension Calendar. I think everybody has a stake in processing those important bills before we leave here. Some of them require conferences with the Senate.

So I would simply appeal to my colleagues who have strong feelings about this bill to work with us and let the legislative process work.

We are not going to shut off any Member. We have serious amendments to consider. There are a lot of amendments pending, and we want to give full consideration to them and then either vote them up or down.

Let me say to the Members, particularly my friends on this side, let us not go home having to say that the President and the Democratic Congress cannot even act in 6 or 8 months on this major piece of legislation to give us some flexibility and some management direction in the executive branch. This is a fine thing that we could take home to our constituents as one accomplishment of this Congress.

Mr. Chairman, I ask unanimous consent that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, will the gentleman from Arizona (Mr. UDALL) tell us what the program will be for tomorrow, since he has already indicated what might happen?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, if we have some expression of cooperation, I think we might finish this bill tomorrow. We will come in at 10, and we could be out of here by 3 o'clock. Unless I have those assurances, I am going to accept the offer of the leadership to put the bill off until Monday.

In that event, the suspension calendar is going to be bumped, and then we will be in here on Monday and go as late as need be to finish this bill on Monday. That is our option.

Mr. Chairman, I would prefer to proceed tomorrow in an expeditious kind of way and decide these things on their merits. But if we are going to be forced to read every line and every section of a 300-page bill, considerable time will be taken.

Mr. BAUMAN. Mr. Chairman, let me assure the gentleman that I will be glad to cooperate with him.

Mr. UDALL. The gentleman from Maryland (Mr. BAUMAN) is always cooperative.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to

the request of the gentleman from Arizona?

Mr. HARRIS. Mr. Chairman, reserving the right to object, I listened carefully to my colleague, the distinguished vice chairman of the committee, when he made his comments, and I wondered if my colleague would be kind enough to tell me this: The gentleman did not mention the amendment, and I was wondering if he is for it or against it.

Mr. Chairman, may the RECORD show that my colleague, the gentleman from Arizona (Mr. UDALL), put his thumb down toward the floor in a gesture meaning that he opposes the amendment, I assume.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, I told the Member that was my position, for the reasons stated by my friend, the gentleman from Michigan (Mr. FORD), and for those stated by that great Hart, Schaffner and Derwinski clothing firm.

Mr. HARRIS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and on a division (demanded by Mr. HARRIS) there were—ayes 11, noes 57.

So the amendment was rejected.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.

PARLIAMENTARY INQUIRY

(Mr. CHARLES H. WILSON of California asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. CHARLES H. WILSON of California. Mr. Speaker, I was a little disappointed to hear my good friend, the gentleman from Arizona (Mr. UDALL), state what his plans would be in the event those of us who oppose the civil service reform legislation continue to

utilize the House rules to take advantage of whatever we have to do to hold up the legislation.

The gentleman made an implied threat that if we do not let him go ahead tomorrow with the bill, he will arrange to have all the suspensions removed from the calendar on Monday, and then we will work until some unlimited time on Monday night.

I would like to know, Mr. Speaker, what the calendar is for tomorrow and what the program is, and I think the Members of the House are entitled to know.

The SPEAKER. Is the gentleman making a parliamentary inquiry?

Mr. CHARLES H. WILSON of California. Mr. Speaker, I make such a parliamentary inquiry, yes.

The SPEAKER. The Chair will advise the gentleman at the present time that the bill that we have before us, the civil service reform bill, will be postponed until Monday, and we will go forward with the schedule as scheduled for Friday.

Mr. CHARLES H. WILSON of California. I thank the Speaker.

**CIVIL SERVICE REFORM ACT
OF 1978**

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11280) to reform the civil service laws.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 318, nays 4, answered "present" 2, not voting 108, as follows:

| | | |
|--------------|----------------|---------------|
| Jones, N.C. | Murphy, Pa. | Skelton |
| Jones, Okla. | Murtha | Slack |
| Kastenmeier | Myers, Gary | Smith, Iowa |
| Kazen | Myers, John | Smith, Nebr. |
| Keys | Myers, Michael | Snyder |
| Kildee | Natcher | Solarz |
| Kindness | Nedzi | Spellman |
| Kostmayer | Nichols | Spence |
| Krebs | Nix | Stangeland |
| Lagomarsino | Nolan | Stanton |
| Le Pante | O'Brien | Stark |
| Leach | Oberstar | Steed |
| Lederer | Obey | Steers |
| Leggett | Ottinger | Stockman |
| Lent | Patterson | Stokes |
| Levitas | Pattison | Studds |
| Livingston | Perkins | Symms |
| Lloyd, Tenn. | Pike | Taylor |
| Long, La. | Poage | Thompson |
| Long, Md. | Pressler | Thone |
| Lott | Preyer | Treen |
| Luken | Price | Trible |
| Lundine | Pritchard | Tucker |
| McClory | Quillen | Udall |
| McCormack | Rallsback | Ullman |
| McDade | Rangel | Van Deerin |
| McDonald | Regula | Vento |
| McEwen | Reuss | Volkmer |
| McFall | Rhodes | Waggonner |
| McKinney | Rinaldo | Walgren |
| Madigan | Risenhoover | Walker |
| Maguire | Roberts | Walsh |
| Mahon | Robinson | Wampler |
| Markey | Roe | Watkins |
| Marks | Rogers | Waxman |
| Marriott | Rooney | Weaver |
| Martin | Rose | Weiss |
| Mathis | Rosenthal | Whalen |
| Mattox | Rostenkowski | White |
| Mazzoli | Roybal | Whitehurst |
| Meeds | Runnels | Whitley |
| Metcalfe | Ruppe | Whitten |
| Meyner | Russo | Wilson, C. H. |
| Michel | Ryan | Wilson, Tex. |
| Mikulski | Santini | Winn |
| Mikva | Satterfield | Wirth |
| Miller, Ohio | Sawyer | Wolf |
| Mineta | Scheuer | Wright |
| Minish | Schroeder | Wyder |

[Roll No. 744]

YEAS—318

| | | |
|-----------------|-----------------|-----------------|
| Abdnor | Cavanaugh | Findley |
| Addabbo | Cederberg | Fisher |
| Akaka | Clausen, | Fithian |
| Alexander | Don H. | Fippo |
| Ambro | Clay | Florio |
| Anderson, | Cleveland | Flynt |
| Calif. | Coleman | Foley |
| Anderson, Ill. | Collins, Ill. | Ford, Mich. |
| Andrews, N.C. | Collins, Tex. | Forsythe |
| Andrews, | Conable | Fountain |
| N. Dak. | Conte | Fowler |
| Annunzio | Corcoran | Frenzel |
| Archer | Corman | Gammage |
| Ashbrook | Cornell | Gaydos |
| Ashley | Cornwell | Glaimo |
| AuCoin | Coughlin | Gilman |
| Badham | Crane | Ginn |
| Bafalls | Cunningham | Glickman |
| Baldus | D'Amours | Gore |
| Barnard | Daniel, Dan | Gradison |
| Baucus | Daniel, E. W. | Grassley |
| Bauman | Danielson | Green |
| Beard, Tenn. | Davis | Gudger |
| Bedell | de la Garza | Guyer |
| Benjamin | Dellums | Hall |
| Bennett | Derrick | Hamilton |
| Bevill | Derwinski | Hammer- |
| Bingham | Devine | schmidt |
| Blanchard | Dickinson | Hanley |
| Blouin | Dicks | Hannaford |
| Boggs | Dingell | Harkin |
| Bolling | Dornan | Harrington |
| Bondor | Downey | Harris |
| Bowen | Drinan | Harsha |
| Brademas | Duncan, Oreg. | Hawkins |
| Breckinridge | Duncan, Tenn. | Heckler |
| Brinkley | Early | Hefner |
| Brodhead | Edgar | Heftel |
| Brooks | Edwards, Ala. | Hightower |
| Broomfield | Edwards, Calif. | Hillis |
| Brown, Calif. | Edwards, Okla. | Holland |
| Broyhill | Emery | Hollenbeck |
| Buchanan | English | Holt |
| Burke, Mass. | Erlenborn | Horton |
| Burleson, Tex. | Ertel | Hubbard |
| Burlison, Mo. | Evans, Colo. | Hughes |
| Burton, John | Evans, Del. | Hyde |
| Burton, Phillip | Evans, Ga. | Ichord |
| Carney | Evans, Ind. | Jacobs |
| Carr | Fascall | Jeffords |
| Carter | Fenwick | Johnson, Calif. |

| | | |
|----------------|------------|-------------|
| Mitchell, N.Y. | Schulze | Wylie |
| Moakley | Sebellus | Yates |
| Mollohan | Seiberling | Yatron |
| Montgomery | Sharp | Young, Fla. |
| Moore | Shuster | Young, Mo. |
| Moss | Sikes | Zablocki |
| Motti | Simon | |
| Murphy, N.Y. | Sisk | |

NAYS—4

| | | |
|---------------|---------------|--------|
| Lloyd, Calif. | Mitchell, Md. | Quayle |
| Marlenee | | |

ANSWERED "PRESENT"—2

| | |
|----------|--------|
| Goodling | Fatten |
|----------|--------|

NOT VOTING—108

| | | |
|---------------|----------------|---------------|
| Ammerman | Frey | Neal |
| Applegate | Fuqua | Nowak |
| Armstrong | Garcia, | Oakar |
| Aspin | Gephardt | Panetta |
| Beard, E.I. | Gibbons | Pease |
| Beilenson | Goldwater | Pepper |
| Biaggi | Gonzalez | Pettis |
| Boland | Hagedorn | Pickle |
| Bonker | Hansen | Pursell |
| Breaux | Holtzman | Quie |
| Brown, Mich. | Howard | Rahall |
| Brown, Ohio | Huckaby | Richmond |
| Burgener | Ireland | Rodino |
| Burke, Calif. | Jenkins | Roncalio |
| Burke, Fla. | Jenrette | Roussetot |
| Butler | Johnson, Colo. | Rudd |
| Byron | Jones, Tenn. | Sarasin |
| Caputo | Jordan | Shipley |
| Chappell | Kasten | Skubitz |
| Chisholm | Kelly | St Germain |
| Clawson, Del | Kemp | Staggers |
| Cochran | Krueger | Steiger |
| Cohen | LaFalce | Stratton |
| Conyers | Latta | Stump |
| Cotter | Lehman | Teague |
| Delaney | Lujan | Thornton |
| Dent | McCloskey | Traxler |
| Diggs | McHugh | Tsongas |
| Dodd | McKay | Vander Jagt |
| Eckhardt | Mann | Vanik |
| Eilberg | Milford | Wiggins |
| Fary | Miller, Calif. | Wilson, Bob |
| Fish | Moffett | Young, Alaska |
| Flood | Moorhead, | Young, Tex. |
| Flowers | Calif. | Zerferetti |
| Ford, Tenn. | Moorhead, Pa. | |
| Fraser | Murphy, Ill. | |

September 11, 1978

CONGRESSIONAL RECORD—HOUSE

H 9357

So the motion was agreed to.
The result of the vote was announced
as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself
into the Committee of the Whole House
on the State of the Union for the further
consideration of the bill H.R. 11280, with
Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Commit-
tee rose on Thursday, September 7, 1978,
the Clerk had read through line 2 on
page 144.

Are there any further amendments to
title I of the bill?

Mr. HANLEY. Mr. Chairman, I move
to strike the requisite number of words.
(Mr. HANLEY asked and was given
permission to revise and extend his
remarks.)

Mr. HANLEY. Mr. Chairman, as we
initiate our deliberation on civil service
reform today, it is my fondest hope that
this legislation will move relatively
smoothly and, without taking up too
much time, be voted on in the Chamber
at some point late this afternoon.

I would like to respond if I can briefly
to some remarks on the part of my dear
friend and colleague and manager of
the bill, the gentleman from Arizona
(Mr. UDALL), going back to Thursday
night, when it was about 9 o'clock and
the tempers were not that good. I would
have preferred to have responded at that
point but logic suggested that it was
time to break it up and come back here
on Monday and start anew. I have great

largest union of Federal employees, the
American Federation of Government
employees, is somewhat unhappy with
it. It did not have to be that way. There
were compromises that could have been
effected.

For instance, the American veterans'
community is not happy with the legis-
lation in this present form. It did not
have to be this way at this point in time.

I could allude to a number of other
entities such as the National Association
of Treasury Agents, and many others,
who are very unhappy with the bill. All
of this was unnecessary of we could have
applied sufficient deliberation to the
measure but expediency was the order
of the day on the part of the White
House and the President, time in and
time out, said that we have to have a bill
this year. Well, in my judgment, if you
are moving in the direction of something
as complex and as broad in scope as this
measure, certainly, then, it was due a
decent foundation and, unfortunately,
the measure that we are deliberating
never enjoyed that decent foundation.

So we are going to do the best we
can this day to make the measure more
palatable so that we will be doing jus-
tice to the taxpayers and at the same
we are not inflicting harm upon that
good dedicated Federal employee.

Yes, we do have problems within our
personnel complement but they are re-
latively few and most of the people
happen to be very dedicated people who
want very much to produce a day's work
for a day's pay.

the best possible bill given the environ-
ment under which we worked."

Mr. Chairman, I yield back the bal-
ance of my time.

Mr. CHARLES H. WILSON of Califor-
nia. Mr. Chairman, I move to strike the
second from the last word.

Mr. Chairman, I do not relish the role
of speaking against quick passage of the
civil service legislation, H.R. 11280, per-
ceived by many to be a good reform vote
in an election year. If the stakes were
not so high I suppose that we could just
let this one sail by.

To put it quite bluntly most Members
of the House seem to feel that anything
labeled civil service reform is better than
nothing.

I would have hoped that we would
have learned from the ill-conceived
Postal Reform Act of 1970 that that is
not the case.

Indeed the similarity between this
civil service bill and the 1970 postal bill
is glaring.

Just as we do today, back in 1970 we
had a juggernaut of forces—many total-
ly unfamiliar with the subject matter—
descending on the Hill to lobby for pas-
sage. Is it not interesting that in the past
few months the Business Roundtable has
sent scores of representatives to lobby
the Congress on the civil service bill de-
spite the fact these representatives when
pressed for details openly admitted they
did not understand the bill?

Just as we do today, back in 1970 we had
a new President pushing for a dramatic
"reform" bill.

respect for the gentleman from Arizona, Mo UDALL, and have worked closely with him from the very beginning.

I do believe, however, that the issue of civil service reform has to be put into another perspective. Certainly I know that he did not intend it that way, but the implication was that by virtue of the activity of several members of the committee that this measure was not moving and was slowed down in the committee process.

I would take issue with that implication and I would have to put it this way that any delays that have been attributed to the deliberation of this measure we have to fault the administration itself because from the very beginning the administration insisted upon expediency. As a result, that insistency agonized many, many entities, This was totally unnecessary. The implication the other evening was that everybody embraced this measure and all America was out there waiting for its enactment into law. That is not necessarily the case in its present form.

I would hope very much that certain amendments today will prevail to make this measure more palatable to most Americans.

Few disagree with the necessity for civil service reform. We all agree, and I think that this committee on the whole is committed, to reforming the civil service system. The problem happens to relate to the methodology employed by the White House in pursuit of this legislation.

As a result of which, for instance, the

There are aspects of this legislation which could be unfair in this regard and we intend, through the amendment process, hopefully to effect responsible change.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. HANLEY was allowed to proceed for 2 additional minutes.)

Mr. HANLEY. Mr. Chairman, we hope very much that during the course of this day, through the amendatory process, we make the measure far more palatable and far more fair to all

Incidentally, I have the highest regard for the administration's chief technician on this measure, the chairman of the Civil Service Commission, Allen "Scotty" Campbell whom I regard as a great professional from the standpoint of public administration.

Unfortunately, the accelerated time frame provided the problems we have with this measure. It is unfortunate that this situation had to prevail throughout the period of deliberation.

Therefore, Mr. Chairman, I am very hopeful that today, posthaste, but yet responsibly, we can do what has to be done to this bill so that we can say, "All right, Mr. President, here is the tool you have asked for. We are providing it for you in this 95th Congress. We would have preferred to have taken a little more time and to have done something far more responsible in the next Congress; but, in any event, we are saying, Mr. President, that this is what you have asked for; and we are going to give you

Just as we do today, back in 1970 we had broad bipartisan support. Incidentally, Republicans must have wry smiles on their faces as they watch Democrats support their bill.

If President Nixon were pushing this particular bill to open so many positions to political appointees, he would have been laughed off the floor, by my Democratic colleagues. Now we are doing this for an administration which has announced through its Secretary of Agriculture that it will soon start disciplining errant congressional Democrats by removing their friends from appointed positions.

Just as we do today, back in 1970 during consideration of the Postal Reform Act the White House had a Democratic champion for the bill, ironically the same one we find today. I do not think we want to further damage Mr. UDALL's record by passing this bill, too.

Virtually every Member of the House will agree that the postal reform bill of 1970, to put it mildly, did not solve all of the troubles of the Postal Service, as passage in the House this year of corrective legislation by a 384 to 11 vote proved. We do not have to make the same mistake with civil service reform by acting in haste.

I think that it is also important to emphasize that during consideration of this bill all Members should understand that when in some cases Mr. UDALL implies certain support for this legislation he is talking about very different forms of the bill. Indeed this bill now being discussed by Mr. UDALL is not the same one

approved by the Post Office and Civil Service Committee—there are substantive differences. Contrary to the implication given by Mr. UDALL, the Federal employee unions do not support this bill.

In summary, I hope that every Member of this House will realize that a bad civil service bill would not simply hurt a few of the local Washington area members with a concentration of Federal employees, it will damage every citizen's contact with every aspect of the Federal Government.

Mr. CLAY, Mr. Chairman, I move to strike the require number of words.

Mr. Chairman, I am pleased to announce that I have received assurances from the President that he will press for consideration and action by the other body on Hatch Act reform prior to adjournment. Accordingly, in view of President Carter's personal assurances of his intent, I deem it unnecessary to continue my effort to attach Hatch Act reform to civil service reform or to further oppose consideration of the reform measure on the House floor.

I applaud the President for his continued support to Hatch Act reform and am delighted by his assurances that he will use the powers of his office to encourage Senate consideration and action prior to adjournment. My efforts were geared to insure Senate consideration of the bill in the forthcoming House-Senate conference on civil service reform. Now, assuming that the President's efforts are successful, I feel a lessened sense of urgency for Hatch Act reform to be a part of civil service reform.

employees anxious to exercise their basic political rights. I look forward to continuing our mutual efforts in support of those federal employees.

Sincerely,

JIMMY CARTER.

AMENDMENTS OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas, Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. COLLINS of Texas:

On page 137, line 12 after "(11)" insert the following: "the Federal Bureau of Investigation,".

On page 142 after line 22 insert:

(e) With regard to employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b) (8) (A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

On page 213, line 5: after "(B)" insert the following: "the Federal Bureau of Investigation,".

On page 258, line 7: strike out 10,920 and insert in lieu thereof "10,780".

On page 258, line 13: strike out "Management," and insert in lieu thereof the following: "Management, except that the Director of the Federal Bureau of Investigation, without regard to any other provision of this section, may place a total of 140 positions in the Federal Bureau of Investigation in GS-16, 17, and 18."

On page 273, line 15: after "(B)" insert the following: "the Federal Bureau of Investigation,".

ployment individuals with histories of alcoholism or drug abuse.

Existing law also limits the FBI from the purview of the Civil Service Commission in such areas as recruitment, qualification requirements, promotion and internal placement, career and career-conditional employment, and temporary assignments. Title I of the bill would allow active overview of the Bureau by the Merit Systems Protection Board and the Office of Personnel Management and affect the authority of the FBI Director to place up to 140 positions at supergrade levels in order to respond to the investigative priorities of the Justice Department.

Title IV should also exclude the FBI on the same basis as other national security agencies. The Senior Executive Service could place executives from other agencies in positions of high sensitivity in which demanding, rigorous or dangerous duties could be thrust upon them. The lives and safety of FBI personnel should not be jeopardized by the possibility of assignment of supervisory executives from other than law enforcement backgrounds.

Title VI on research and demonstration projects should exclude the FBI for obvious reasons. The Bureau is charged with the investigation of 78 different types of violations of criminal statutes relating to the integrity of Federal officials. The impartiality of such investigations is threatened by any program which makes it dependent on other agencies for its executive staffing or compels it to participate in exchanges of execu-

Mr. Chairman, for the consideration of my colleagues I am submitting the following letter from the President of the United States.

THE WHITE HOUSE,
Washington, September 8, 1978.

HON. WILLIAM CLAY,
Chairman, Subcommittee on Civil Service,
U.S. House of Representatives, Wash-
ington, D.C.

DEAR MR. CHAIRMAN: Early in my administration I proposed to Congress that the Hatch Act provisions affecting the political activities of federal employees be modified.

I was pleased that the House, under your leadership, voted overwhelmingly last year to strengthen the protections of federal employees from political coercion on the job while permitting them to freely exercise their First Amendment rights to participate in the political process. I continue to support Hatch Act reform.

Because I am concerned that the issues surrounding Hatch Act modification and Civil Service reform not become intertwined, I have consistently sought reform of the Hatch Act independent of action on Civil Service reform.

I believe separate consideration of the two bills is the best way to insure that each bill is eventually passed. This does not reflect any diminution of my commitment to fuller political participation for federal employees while affording necessary protections to the public. It does reflect my belief that the Hatch Act should not be considered together with Civil Service reform.

I share your concern that the Senate has not yet acted upon Hatch Act legislation, and intend to bring this concern to the attention of the Senate leadership. Hopefully, consideration and action will be taken without undue delay—prior to adjournment.

Your efforts on behalf of Hatch Act reform merit the appreciation of all federal

Mr. COLLINS of Texas. Mr. Chairman, I ask unanimous consent that the amendments I have offered, which are related to the FBI and are to title I, title IV, and title VI, be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, I have offered four amendments which would insert identical provisions into titles I, IV, and VI of the bill. I asked and was given unanimous consent that they be considered en bloc.

My amendments exclude the Federal Bureau of Investigation from the bill on the same basis as the various national security agencies—the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency.

Title I of the bill sets forth merit system principles, but its prohibited personnel practices section would contradict the current status and flexibility of the FBI. The Bureau has been exempted, for example, from considering alcoholics and drug abusers for employment—the Alcoholism Rehabilitation Act, Public Law 91-616, and the Drug Abuse Rehabilitation Act, Public Law 92-255—but under the merit system language of title I and a recent ruling by the Civil Service Commission defining “handicapping condition” to include alcohol or drug abuse, the FBI might have to consider for em-

tives with these agencies. The bill's exclusion of the General Accounting Office is based on the same reasoning: The impartiality of GAO's Government-wide audits would be threatened.

Finally, Mr. Chairman, the bill as drafted empowers the President to exclude from coverage by the three titles “any executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities,” but the FBI has exclusive investigative responsibility for foreign counterintelligence activities within the United States. It is therefore unreasonable to refrain from excluding it for substantially the same reasons as for exempting the other security agencies.

Mr. Chairman, I urge enactment of my amendments.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, if I can have the attention of my friend, the gentleman from Texas, I hope maybe we can work this thing out in just a few minutes to the gentleman's satisfaction.

One of the many problems we have wrestled with in this legislation is what do we do about exempting intelligence agencies? The President's bill as originally submitted did not exempt the FBI from the bill.

I am prepared this morning to offer a substitute, and I hope to have the sub-

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stitute language ready in just a moment for the gentleman from Texas (Mr. COLLINS). What my substitute will do is this—and I hope it will be acceptable to the gentleman from Texas (Mr. COLLINS) because we are giving him most of what he wants and most of what the Bureau wants—we will totally exempt the FBI from the senior executive provision of the bill. That is No. 1.

No. 2, we will exempt the FBI from the title VI experimental personnel demonstration portion of the bill which they wanted out from under.

With regard to the "whistle-blower" section, the language of the bill now permits the President to exempt the FBI from that section, and based on language submitted to us by the White House today, I think they have worked this out with the Justice Department. If the President does decide to exempt them—and he may exempt them, he will under the language of the bill be required to issue special rules and regulations so that the FBI "whistle-blowers" will be in a position to have some place to go and so that they will have some protection. This will be done through a system to be designated by the President. This would be essentially consistent with the amendments the gentleman from Texas (Mr. COLLINS) has offered and showed me this morning.

I will have this language ready in just a moment as further discussion goes on. I hope it will be acceptable to the gentleman from Texas (Mr. COLLINS), and I hope we put this matter to rest.

thing they want to discuss or they can make it an FBI agency matter. They have their choice of either doing it confidentially or going before FBI as a complainant.

I checked on and found out that so far this year there have been 248 citizens who reported to the FBI, to the Office of Professional Responsibility. So it is an active section of FBI. I can see why we are very aware, from the comments we have in Washington today, that we must be very certain we have all and full access for any employee.

The second referral point is that they can go to the Justice Department itself. The Justice Department has its own Office of Professional Responsibility, and that particular OPR is reporting only to the Attorney General.

Now, that was in the clarification amendment that we put into this law on the gentleman's suggestion. The gentleman from Georgia (Mr. LEVITAS) clarified this point so it now codifies the Justice Department referral. That is the way it works in practice, and it works well. It depends on a strong Attorney General, and we have a strong Attorney General.

It is interesting that last year under this provision, there was someone who reported to the Attorney General, and after a full investigation the No. 2 person in the FBI was removed. When we have a provision strong enough to remove the No. 2 executive within an agency, we do have something that is unusually strong.

cludes; and because the FBI is in charge of investigating white collar crimes throughout the Nation, we have at least as much reason for excluding it from the personnel exchanges and experiments proposed in title VI as we have for excluding the General Accounting Office. The bill rightfully excludes the GAO in order to preserve the objectivity of its audits, but the objectivity of investigations into alleged Federal employee wrongdoing is at least as important.

Mr. Chairman, I urge support of these amendments in order to conform this bill to the laws which rightfully correspond to the FBI's unique investigative needs.

Basically, Mr. Chairman, I support the package of amendments offered by the gentleman from Texas (Mr. COLLINS), but I certainly hope that we can work out this adjustment that the gentleman from Arizona (Mr. UBALL) will offer.

There are two points here, though, that I would like to make to the Members of the House. One is that the reason I would like to see a very satisfactory adjustment of this issue of the FBI is because there has been doubt on the part of some Members on this bill and it is an honest doubt.

The FBI is a sensitive agency. We should clear up any concern over how the FBI would be influenced. We can clear up some of the concerns about the bill itself. I think the entire bill will receive more support if some of these lingering doubts—that is with regard to the FBI—are cleared up.

So in that sense, I would hope that we

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I want to say that I have great regard for the FBI. This in a fine agency, but it is an agency that has suffered some agonies in the past. I know of the concern the professional members of the FBI have about the status of their agency today, and I do not want to come out here with legislation that will disrupt them further and submit them to additional agony.

I am reluctant to start exempting agencies, because many of the Federal agencies think they are special and think they ought to have special treatment. I am going to be pretty careful about exempting any other agency, but I think the FBI has made a case for the compromise I am going to offer in just a moment, as soon as the staff gets it ready for us.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I appreciate the gentleman's yielding.

Mr. Chairman, as the gentleman knows, in our FBI present system, as far as the investigation of what they call the whistle-blowers is concerned, the present setup within the FBI involves four different places where they can go. The first one, of course, is the Inspection Staff where they have the Office of Professional Responsibility, known as the OPR.

As I understand it, in Phoenix, Ariz., in Dallas, Tex., or St. Louis, any place they live or work, they can pick up the telephone and call directly to the OPR, and in confidence they can discuss any-

Mr. UDALL. Mr. Chairman, the concern I have, if I may express this to the gentleman from Texas (Mr. COLLINS), is that the public should have confidence that there are channels within the Government so that people can "blow the whistle" on the FBI just as they can on other agencies.

We all remember our old Watergate fears, and the fear of some of our friends was that we would have been in a situation where, concerning L. Patrick Gray, if he had blown the whistle on one of his people, he would have blown the whistle and the appeal would have gone on to John Mitchell.

We want to have the President set up a channel through the agency that will satisfy most people that there is a channel available so that these matters can come forward.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I rise in support of amendments to provide certain exclusions for the Federal Bureau of Investigation.

The rigorous and dangerous duties performed by the Bureau's employees do not lend themselves to same aspects of this legislation.

The best argument for exclusion of the FBI is probably the exclusion in the bill of other national security agencies. The Bureau's domestic work is as dangerous and rigorous as that of the Central Intelligence Agency, which the bill ex-

can work out a solution to which the gentleman from Texas and the gentleman from Arizona have provided a very positive role in adding to the momentum of this bill.

There are unique problems facing an intelligence agency such as the FBI, and I think this package of amendments is necessary to clarify any questions that we do have.

Mr. UDALL. Mr. Chairman, will the gentleman yield to me for the purpose of offering amendments as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS)?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

AMENDMENTS OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. COLLINS

Mr. UDALL. Mr. Chairman, I offer amendments as a substitute for the amendments.

The Clerk read as follows:

Amendments offered by Mr. UDALL as a substitute for the amendments offered by Mr. COLLINS: Page 137, after line 18, insert:

"(3) If the President does not designate the Federal Bureau of Investigation, in its entirety, under paragraph (2) (B) (ii) of this subsection, functions of the Special Counsel relating to the enforcement of this section with respect to the Bureau, or any unit thereof, shall be carried out by the President (or his designee) notwithstanding any provision of law to the contrary."

Page 213, line 5, after "(B)" insert the following: "the Federal Bureau of Investigation."

Page 273, line 15, after "(B)" insert the following: "the Federal Bureau of Investigation."

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The CHAIRMAN. The gentleman from Illinois (Mr. DERWINSKI) still has the floor.

Mr. DERWINSKI. Mr. Chairman, in order to expedite the procedure, I will yield back the balance of my time, so that the gentleman from Arizona (Mr. UDALL) can explain his amendments.

The CHAIRMAN. Does the gentleman from Arizona (Mr. UDALL) wish to be heard on his amendment?

Mr. UDALL. Mr. Chairman, for the time being, I shall reserve my time.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Chairman, I rise in support of the amendments offered by the gentleman from Texas which would exempt the FBI from coverage under titles I, IV and VI of the Civil Service Reform Act.

Enactment of H.R. 11280, as written now, could effectively deprive the Director of the FBI of his prerogative to control all phases of personnel administration. Traditionally, this authority, which would be lost under title I, has been one of the keystones of the Bureau's semi-autonomous status and has provided insulation from improper external influences into matters which could compromise classified information or sensitive operations.

With the creation of the senior execu-

promise comes down, but in the meantime I would be happy to yield to the gentleman from Texas (Mr. COLLINS) for his comments.

Mr. COLLINS of Texas. Mr. Chairman, at this time I would like to offer an amendment to the substitute amendments offered by the gentleman from Arizona (Mr. UDALL).

The CHAIRMAN. The gentleman from Texas (Mr. COLLINS) is advised that the gentleman from Louisiana cannot yield for the purpose of offering an amendment. He can yield time for debate.

Mr. LIVINGSTON. Mr. Chairman, I yield back the balance of my time.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS TO THE AMENDMENTS OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment to the amendments offered as a substitute for the amendments.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas to the amendments offered by Mr. UDALL as a substitute for the amendments offered by Mr. COLLINS of Texas:

On page 141, line 20, after "(c)" inserts "(1)"; on page 142 after line 3, insert the following:

On page 142 after line 22 insert:
 "(2) In the case of employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b) (8) (A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in

tant to clarify through the chairman, the gentleman from Arizona, with respect to the language contained in the first part of his amendment to which the gentleman from Texas has offered an amendment. Under this language, would it be possible for the President to designate, as his designee, the special counsel otherwise created in this legislation for purposes of investigation in an FBI matter? Because, if that is the case, it would seem to me to defeat the purpose of the Collins amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, it is very clear. The Collins amendment to my amendment states that it is ordered by the Congress that he not do it this way, that he work through the Attorney General. The President is given pretty broad powers, but I cannot imagine that he would go to the special counsel with this history we have made here today.

Mr. LEVITAS. I thank the chairman for that clarification. I think that does relieve not only myself, but others on these concerns, because I think the legislation is quite clear that the special counsel created by this legislation would not be the vehicle through which these matters would be pursued. I think it is very important because without this clarification, the FBI would be treated substantially different in the sensitive areas from the other intelligence agencies.

Mr. UDALL. The gentleman from Georgia has accurately stated what I am trying to do in this compromise.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

tive service under title IV; one can easily imagine the consequences of other agencies' officials, previously unexposed to the broad scope of criminal law enforcement, who would be entrusted with new responsibility for its leadership in the Bureau executive system.

Inclusion of the FBI under title VI would seriously threaten the impartiality of investigations the Bureau is mandated to conduct with regard to violations of criminal statutes dealing with official and political corruption.

Mr. Chairman, there can be no credible argument in favor of inclusion of the FBI in the present bill. The FBI ranks as one of the agencies in the Government most subject to oversight. It must make regular reports to six committees of Congress—Senate and House Judiciary, Intelligence and Appropriations—and is subject to oversight by the Department of Justice, the General Accounting Office and the Office of Management and Budget.

Finally, failing to exempt the FBI, like all other security agencies, from these three titles of the bill, could mean the end of the FBI as we know it—a centrally administered, tightly disciplined, responsive career law enforcement agency. Such action would create just one more agency, subject to the traditionally inefficient bureaucratic mechanisms.

Mr. Chairman, I urge this body to agree to the amendments. Possibly, if we can reach an amicable compromise through the efforts of the gentleman from Arizona, I would like to join in those efforts. I would like to see how the ultimate com-

the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

The CHAIRMAN. The gentleman from Texas (Mr. COLLINS) is recognized.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I will be glad to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, this amendment to my substitute is perfectly acceptable. It carries out the intent of what the gentleman from Texas was trying to do earlier.

So, if we will adopt the Collins amendment to the Udall substitute, and adopt the Udall substitute, we will have this compromise worked out.

Mr. COLLINS of Texas. Let me ask one question: It is my understanding that the President, when he wants to use this authority would go to the Attorney General. That would be the person he would turn to to follow up on this?

Mr. UDALL. The President will be empowered to set up a separate system, and under the gentleman's amendment to my substitute it would be required that it go through the Attorney General.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to my colleague from Georgia.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for yielding to me. First of all, I would like to commend the gentleman from Texas (Mr. COLLINS) on the leadership he has taken in this regard.

I have one question. I think it is impor-

Mr. COLLINS of Texas. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I would ask of the gentleman from Texas, and through him the chairman of the committee, whether or not the amendment that is proposed by the gentleman from Arizona, as proposed to be amended by the gentleman from Texas, is the essence of agreements and understandings made with the chairman of the House Intelligence Committee, the gentleman from Massachusetts (Mr. BOLAND), whom I do not see on the floor today.

I would ask the gentleman from Arizona, as I just asked the gentleman from Texas, whether or not the substitute proposed by the gentleman from Arizona to be further amended by the amendment offered by the gentleman from Texas, incorporates the agreements or understandings or discussions had with Chairman BOLAND of the House Intelligence Committee?

Mr. UDALL. If the gentleman will yield, here we are dealing with another matter. That is a different matter. I have worked out an amendment with the gentleman from Massachusetts (Mr. BOLAND) which I will accept later in the proceedings on that matter.

Mr. MAZZOLI. I thank the gentleman from Arizona.

Mr. COLLINS of Texas. Mr. Chairman, I think we now have an understanding that questions will go through the Attorney General and the FBI, and I would accept the substitute with the amendment.

Mr. UDALL. Mr. Chairman, the staff

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tells me the Collins amendment to the Udall amendments has not been placed properly in the bill.

I would ask unanimous consent that the Collins amendment to the Udall substitute amendments be clarified as to its place in the bill as identified in the amendment at the desk.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

On page 141, line 20, after "(c)" insert "(1)";

On page 142, after line 3, insert the following:

"(2) In the case of employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b) (8) (A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona to modify the amendment?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS), as modified, to the amendments offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendments offered by the gentleman from Texas (Mr. COLLINS).

The amendment, as modified, to the amendments offered as a substitute for the amendments was agreed to.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this is a simple amendment, but I think a very important amendment. One of the biggest fears that is in the minds of many Federal employees today is to what extent we allow this bill to politicize the system. I think the flexibility we have talked about and the modernization we have talked about is supported by the average citizen and Federal employees alike. What they fear is who is going to implement these merit principles that are so finely pronounced in title I. What this amendment does is say that we will have in fact a personnel director that is not a political appointee. It is a competitive merit system person himself or herself who will be responsible for implementing these principles.

I would point out to my colleagues that under the bill we do centralize a great deal of the responsibility with respect to guarding the merit system principles and hiring principles enunciated in title I. No longer will we have a centralized bureau like the Civil Service Commission that will have total responsibility of making sure that merit system principles are adhered to.

There is provision in the bill to delegate this responsibility to individual agencies. I think we have had the experience in the past of agency heads saying they were not responsible for implementing it, it was the job of the Civil Service Commission, and so forth. Per-

If we truly fear the politicization of both the SES as well as the entire Federal bureaucracy, what better way to accomplish this than to permit a political appointee to decide the fate of job applications and promotions.

Casting doubt on the integrity of the hiring and promotion process, as we will if the gentleman from Virginia's amendment is not adopted, will likewise cast doubt on the independence and impartiality of Federal decisionmaking.

I urge my colleagues to support this amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment is unnecessary, and it was soundly defeated in the committee.

There are really two things wrong with it. First, it mandates that every agency, however large or small, must have a full-time personnel officer-director. There are a whole variety of agencies, there are agencies such as HEW that has tens of thousands of employees and there are Federal agencies that may have a mere handful of employees. If you want a formula to increase the number of bureaucrats in every agency, however small or large, then this will do it through requiring a full-time personnel director.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I am sorry that I have not explained the amendment well enough so that my colleague understands it. There is no re-

The CHAIRMAN. The question is on the amendments, as amended, offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendments offered by the gentleman from Texas (Mr. COLLINS).

The amendments, as amended, offered as a substitute for the amendments were agreed to.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas (Mr. COLLINS), as amended.

The amendments, as amended, were agreed to.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 141, line 20, insert "(1)" after "(c)".

Page 142, after line 3, insert the following:

"(2) (A) The head of each agency shall establish a personnel office and appoint an individual to be the head of such office.

"(B) The position to which any individual is appointed under subparagraph (A) of this paragraph shall, notwithstanding any other provision of law, be a position within the competitive service or a career reserved position within the Senior Executive Service. The requirement of the preceding sentence shall not apply if a majority of the civil service positions within such agency are excepted from the competitive service by or under any law (other than this title).

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read, and printed in the RECORD.

haps this delegation is a good idea, but only if we are sure who has the responsibility within each agency to guard against the politicization of the system and make sure that these merit principles are adhered to.

This amendment does one thing, somebody in that agency is a personnel officer where that agency is composed mostly of competitive people, to make sure that this person is a career person and not a political appointee.

I think it is one small step toward guarding against the appearance of, and the actuality of, in many cases, of politicizing the system, and will be a major reform in the bill as it is.

I would hope my colleagues can consider this favorably. I think it establishes a very important element with regard to a reform measure by saying simply that within each agency there is somebody responsible for safeguarding these merit principles we are enunciating, and, No. 2, that that person is not a political appointee and that person has knowledge of and understands the merit principles.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from Virginia (Mr. HARRIS) for yielding to me.

Mr. Chairman, I rise to applaud the efforts of the gentleman from Virginia (Mr. HARRIS) and endorse the goal that he seeks.

quirement that this person's job has to be fulltime with regard to personnel director, it simply says that somebody in that agency is the personnel director. It means that that person may have other duties, and that is not covered by this amendment at all. This in no way creates any additional requirements so far as the number of personnel is concerned, it simply designates one person in that agency as the personnel director.

Mr. UDALL. My theory is that if we accept this requirement, that even very small agencies must have an individual who is the personnel director, we will have to have some individual designated to do that.

Mr. HARRIS. That is right.

Mr. UDALL. The second point is that we will not be giving the management a little bit more freedom and flexibility.

So that in every case, whether it is HEW or a smaller agency, the personnel director has to be a career officer. I hope and I believe that in most cases they will be career officers, but clearly there are some advantages there, but to say that even very large agencies must do this, is a critical requirement to impose, especially if we are going to grant the President and the Cabinet officer freedom to put somebody in these agencies who is responsible, and then say we are going to take away the flexibility of the President and the Cabinet secretary and require in all cases that they have to be career persons in this particular personnel spot.

I urge defeat of the amendment.

Mrs. SPELLMAN. Mr. Chairman, I would like to point to a comment made by our distinguished chairman who pointed out that this is an important position and that he would hope that these people who were doing the hiring would be career people.

We are talking about attempting to keep from total politicization of the system. If we are going to have political appointees doing the hiring, we can be certain that additional political types are going to be hired.

Do we have a civil service system which we are working to retain? Do we have a merit system which we are working to preserve? If so, should we demand anything less than to have people who are professionally trained do the hiring? It has nothing at all to do with the number of people they hire. It has nothing at all to do with the number of hours which these people work in doing the hiring—whether they work at their recruitment functions full time or part time. We merely ask that career people should be hiring career employees.

Mr. Chairman, I find it very difficult to see how we can object to that. If, indeed, we are trying to protect a merit system, then I feel we can do no less than to adopt the amendment.

Mr. FISHER. Mr. Chairman, will the gentlewoman yield?

Mrs. SPELLMAN. I yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I support this amendment. It is one of the things which we can do to add an extra protec-

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, before I give my devastating argument against the amendment, I first wish to commend the gentleman from Virginia (Mr. HARRIS) for very dramatically representing his unique constituency. We appreciate the fact that in northern Virginia one does have a substantial number of Federal employees, and they look to their Congressman for support when they feel that their interests are affected.

However, Mr. Chairman, this is a gut issue. Basically, this bill is intended to strengthen the hands of the President as the Chief Executive of the Federal Government. That is the purpose of the bill. But this amendment would restrict management in personnel matters. This amendment is one of a pattern of amendments which would turn this bill away from the direction in which it is properly headed.

A real problem with our Federal Government is its huge size and the fact that it is almost uncontrollable. A President of the United States, we must keep in mind, is not just a world figure meeting at Camp David with heads of state. He is not simply the spokesman for the aspirations of a free people. He is something more than that: He is the Chief Executive of our Government. We have shackled our Chief Executives over the years with restrictions which prevent them from effectively managing the entities over which they presumably preside.

Campbell, who comes largely from academia and experience in State government, become ineligible to head a Federal personnel office? And is that not a good argument against adoption of the amendment?

Mr. DERWINSKI. The gentleman is using an unusual example, but the analysis is correct. If I read this amendment correctly, someone coming to head the personnel service must, in fact, under this amendment be a career official.

Mr. HARRIS. Mr. Chairman, will my colleague yield on that?

Mr. DERWINSKI. I yield to the gentleman from Virginia.

Mr. HARRIS. I thank the gentleman for yielding.

I would like to respond to both of my colleagues on that. I rise in defense not of the amendment but of Mr. Campbell. Any implication made on this floor that Mr. Campbell could not pass a civil service test I think is an unfair impugning of his ability.

Mr. DERWINSKI. Just a minute. Mr. Chairman, I reclaim my time. I do not want the gentleman to abuse my time. No one is impugning anyone. All we are trying to do is point out the basic unacceptability of the gentleman's amendment.

Mr. HARRIS. Will my colleague yield on that point?

Mr. DERWINSKI. I will yield if the gentleman behaves himself.

Mr. HARRIS. My colleague certainly does not want to put any restrictions on behavior. I am sure of that. I cer-

tion against undue political influence in the various departments and agencies of Government.

The personnel officer, part time or full time, as the case may be, is in a sensitive position. It seems to me that we ought to protect against loading these sensitive positions with political appointees.

This amendment would be a way of doing it very clearly, and it would then make it possible for Members, perhaps like this Member from Virginia, to support final passage of a bill; but we have to be convinced on behalf of thousands upon thousands of Government employees that here and there extra steps have been taken and that care has been taken to see that undue political influence cannot be exerted.

Mr. Chairman, it seems to me that this is a sensible, a manageable, and a logical way to achieve just that highly necessary objective.

Mrs. SPELLMAN. Mr. Chairman, I thank my colleague, the gentleman from Virginia (Mr. FISHER).

I would like to point out that we are looking out not only for those people who are Federal employees, but for all of the citizens of the United States who are served by these Federal employees; and I feel that if the people were given their choice, they certainly would want the job of hiring performed by professional staff rather than by political appointees.

Mr. Chairman, I yield back the balance of my time.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

This amendment would follow that costly path.

Mr. Chairman, I suggest that the bill before us is in this area a good bill. It is a strong bill, and I would suggest not only rejection of this amendment, but of any other amendments which would have the effect of adding new shackles to the ability of the President and his appointees to properly run this huge Federal Government of ours.

If you want to know what proposition 13 is all about, it is not just dollars and cents or objections to a tax bill. Proposition 13 mentality includes frustration over the inability of the average citizen to get proper service from Government.

Why is this frustration felt? Because the Federal Government, especially the civil service bureaucracy, often does not respond to the public interest. Frankly, the bureaucracy sometimes does not respond to the directives of a President.

What we are trying to do in this bill before us is to give the President the legitimate authority a Chief Executive should have, and on that basis I strongly recommend the rejection of the amendment.

Mr. LEACH. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Iowa.

Mr. LEACH. I thank the gentleman for yielding.

The current head of the Civil Service Commission is Mr. Scotty Campbell, who has a good deal of respect on the Democratic side as well as on our side of the aisle. If this amendment were adopted, would not someone like Mr.

tainly think that the notion that was brought up by the last question that this in any way hampers bringing competent people into the personnel director position is unwarranted.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. HARRIS, and by unanimous consent, Mr. DERWINSKI was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Will the gentleman yield further?

Mr. DERWINSKI. Of course. I yield to the gentleman.

Mr. HARRIS. I thank the gentleman for yielding, but I think the point is that we are not saying here that they have to be existing in competitive service now. We say that the position has to be a competitive service position. That means that the person in that position has to be qualified; that is all. I would want to assure the gentleman that many personnel directors would and could come from outside the system. All we are saying here is that that person comes in and qualifies as a competitive employee and not just as a political hack. That is all this amendment does, and I would hope that we would not misconstrue the amendment as doing anything more than that.

Mr. DERWINSKI. Just as the gentleman was a little concerned that we not cast some reflection on Mr. Campbell, may I point out that noncareer appointees are not necessarily political hacks. Many of them are great statesmen. They are needed to rejuvenate the civil service. They are needed to bring in imag-

ination, spirit, and creativity. So I think if we would just keep in mind that the injection of experts from acadamia or from the business world often brings the kind of leadership that we need to shake up a bureaucracy, I think in that sense the gentleman should welcome a blood transfusion for the tired Federal service.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

I think the point here is that in the bill we have pronouncements against politization of the civil service. Ninety percent of the senior executive service must be career service. There are only 10 percent who will be political appointments. They are the people we bring in from the outside to carry out the administration program. I do not think the ordinary Federal employee thinks some career Federal employee is going to be his friend any more than some competent person brought in from the outside. I think the amendment is unnecessary. It just attaches some additional restrictions.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, very briefly, I want to commend the gentleman from Virginia for attempting to do just exactly what it was that the gentleman from Illinois (Mr. DERWINSKI) stated that the gentleman was doing; namely, to turn this bill

means that 90 percent has to be qualified, that is all. Any percentage can be brought in from the outside. It is a question of whether they are qualified, or whether they are brought in as political appointees.

May I make the point and ask the gentleman from Illinois (Mr. DERWINSKI) and the gentleman from Arizona (Mr. UDALL) to listen to the point. If, in fact, we mean in the bill if, in fact, first, the merit principles recently set down in title I are meaningful, and, second, if we really mean 90 percent of the senior executive service are going to be competitive appointments, then should we not have a personnel director that is competitively appointed, rather than politically appointed? If 90 percent of the people that the personnel directors are going to deal with in the senior executive service and the rest are going to be competitive appointments, should not the personnel director be a competitive appointment; or should we under the bill open up, not to this President, but perhaps to some future President the opportunity of putting a fox in charge of the chicken house?

Should we allow a political appointee to be the one to implement these merit principles that we think are so important?

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I do not represent a rural area, so I do not know what foxes do in chicken houses;

NOES—336

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|-----------------|-------------|----------------|
| Addabbo | Findley | Mikulski |
| Akaka | Fittian | Milkva |
| Alexander | Flippo | Milford |
| Ambro | Florio | Miller, Ohio |
| Anderson, | Flynt | Mineta |
| Calif. | Foley | Minish |
| Andrews, N.C. | Ford, Mich. | Mitchell, Md. |
| Andrews, | Ford, Tenn. | Mitchell, N.Y. |
| N. Dak. | Forsythe | Moakley |
| Annunzio | Fountain | Moffett |
| Archer | Fowler | Mollohan |
| Ashbrook | Frenzel | Montgomery |
| Ashley | Gammage | Moore |
| AuCoin | Garcia | Moss |
| Badham | Gaydos | Mottl |
| Bafalis | Gephardt | Murphy, N.Y. |
| Baldus | Glaimo | Murtha |
| Barnard | Ginn | Myers, John |
| Baucus | Glickman | Myers, Michael |
| Bauman | Goldwater | Natcher |
| Beard, R.I. | Goodling | Nedzi |
| Beard, Tenn. | Gore | Nichols |
| Bellenson | Gradison | Nix |
| Benjamin | Grassley | Nolan |
| Bevill | Green | O'Brien |
| Biaggi | Gudger | Oberstar |
| Bingham | Guyser | Obey |
| Blanchard | Hall | Ottinger |
| Blouin | Hamilton | Panetta |
| Boggs | Hammer- | Patten |
| Boland | schmidt | Patterson |
| Bolling | Hanley | Pattison |
| Bonior | Harkin | Pease |
| Bowen | Harrington | Pepper |
| Brademas | Harsha | Perkins |
| Brinkley | Hawkins | Pickle |
| Brodhead | Heckler | Pike |
| Broomfield | Hefner | Poage |
| Brown, Calif. | Heftel | Pressler |
| Broyhill | Hightower | Freyer |
| Buchanan | Hillis | Price |
| Burke, Mass. | Holland | Pritchard |
| Burleson, Tex. | Hollenbeck | Quayle |
| Burlison, Mo. | Howard | Quillen |
| Burton, John | Hubbard | Rahall |
| Burton, Phillip | Hughes | Rallsback |
| Butler | Hyde | Rangel |
| Carr | Ichord | Regula |
| Carter | Ireland | Reuss |

away from the general direction in which it is headed.

I remind the House that the Chief of Government, in addition to meeting with heads of state and also running the Federal Government, is also the Chief of a political party. This amendment would reduce, I think clearly the amount of clout that the President of the United States would have.

I was against this politicization of the bureaucracy when it was proposed by Persident Nixon. I am still against it.

The gentleman from Arizona (Mr. UDALL) has properly said that it is only 10 percent, and 90 percent and will still be governed by the civil service. I would point out to this body that if this idea is such a good one, how come we are restricting it only to 10 percent? What is good for 10 percent should be good for the other 90 percent.

Of course, the answer is that the 10 percent who would be selected would be at the top and they would be subject to the President's direction. They would be subject to politicization. We would, thereby, take an enormous step toward the spoils system which we finally got rid of 80 years ago.

Mr. Chairman, I yield to the gentleman from Virginia (Mr. HARRIS) first, then to the gentleman from Illinois (Mr. DERWINSKI).

Mr. HARRIS. Mr. Chairman, I thank the gentleman for yielding. The point the gentleman makes is an important one and should be expanded.

When we speak of 90 percent that must be qualified, that does not mean, and I hope it is not misrepresented to mean, that 90 percent has to come out of the career services. It does not. It simply

but evidently that term applies to the amendment of the gentleman from Virginia, because the gentleman would insist, that this person who is appointed would be one who would be drawn from the ranks of civil servants and would be basically motivated to protecting the tenure of the civil servant, contrary to the public request for more efficient services.

Just to use numbers, if the gentleman from Maryland would agree with my numerical calculations, there are approximately 2 million Federal civilian employees, outside of the Postal Service. Let us assume, even for purposes of argument, that these 9,000 positions would all be political. That is just 9,000 out of 2 million, and all we are speaking of is 900 so I see no spoils system nor political grab.

I see nothing behind the basis thrust of this bill but pure governmental nobility.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HARRIS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 16, noes 336, not voting 80, as follows:

[Roll No. 745]

AYES—16

| | | |
|--------------|---------------|-------------|
| Bedell | Gilman | Murphy, Pa. |
| Bennett | Gonzalez | Myors, Gary |
| Breckinridge | Hannaford | Spellman |
| Carney | Harris | Steers |
| Fish | Holt | |
| Fisher | Lloyd, Calif. | |

| | | |
|-----------------|-----------------|--------------|
| Cavanaugh | Jacobs | Rhodes |
| Cederberg | Jeffords | Rinaldo |
| Clausen, | Jenrette | Risenhoover |
| Don H. | Johnson, Calif. | Roberts |
| Clay | Jones, N.C. | Robinson |
| Cleveland | Jones, Okla. | Roe |
| Coleman | Jones, Tenn. | Rogers |
| Collins, Ill. | Jordan | Rooney |
| Collins, Tex. | Kastenmeier | Rose |
| Conable | Kazen | Rosenthal |
| Conte | Keys | Rostenkowski |
| Conyers | Kildee | Roybal |
| Corcoran | Kindness | Runnels |
| Corman | Kostmayer | Ruppe |
| Cornell | Krebs | Russo |
| Cornwell | LaFalce | Ryan |
| Cotter | Lagomarsino | Santini |
| Coughlin | Le Fante | Satterfield |
| Crane | Leach | Scheuer |
| Cunningham | Lederer | Schroeder |
| D'Amours | Leggett | Schulze |
| Daniel, Dan | Lent | Sebelius |
| Daniel, R. W. | Levitas | Selberling |
| Danielson | Livingston | Sharp |
| Davis | Lloyd, Tenn. | Shipley |
| de la Garza | Long, La. | Shuster |
| Dellums | Long, Md. | Sikes |
| Dent | Lott | Simon |
| Derwinski | Luken | Sisk |
| Devine | Lundine | Skelton |
| Dickinson | McClory | Skubitz |
| Dicks | McCloskey | Slack |
| Diggs | McCormack | Smith, Iowa |
| Dingell | McDade | Smith, Nebr. |
| Dodd | McDonald | Snyder |
| Dornan | McEwen | Solarz |
| Downey | McFall | Spence |
| Drinan | McHugh | Staggers |
| Duncan, Oreg. | McKinney | Stangeland |
| Duncan, Tenn. | Madigan | Stanton |
| Early | Maguire | Stark |
| Edgar | Mahon | Steed |
| Edwards, Ala. | Markey | Stockman |
| Edwards, Calif. | Marks | Stokes |
| Edwards, Okla. | Marlenee | Studds |
| Emery | Marriott | Symms |
| English | Martin | Taylor |
| Erlenborn | Mathis | Thompson |
| Ertel | Mattox | Thone |
| Evans, Del. | Mazzoil | Treen |
| Evans, Ge. | Meeds | Tribe |
| Evans, Ind. | Metcalfe | Tucker |
| Fascall | Meyner | Udall |
| Fenwick | Michel | |

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|-------------|--------------|-------------|
| Ullman | Waxman | Wolf |
| Van Deerlin | Weaver | Wright |
| Vanik | Weiss | Wylder |
| Vento | Whalen | Wyllie |
| Volkmer | White | Yates |
| Waggonner | Whitehurst | Yatron |
| Walgren | Whitley | Young, Fla. |
| Walker | Whitten | Young, Mo. |
| Walsh | Wilson, Tex. | Zablocki |
| Wampler | Winn | |
| Watkins | Wirth | |

NOT VOTING—80

| | | |
|----------------|----------------|---------------|
| Abdnor | Flood | Neal |
| Ammerman | Flowers | Nowak |
| Anderson, Ill. | Fraser | Oakar |
| Applegate | Frey | Pettis |
| Armstrong | Fuqua | Pursell |
| Aspin | Gibbons | Quie |
| Bonker | Hagedorn | Richmond |
| Breaux | Hansen | Rodino |
| Brooks | Holtzman | Roncallo |
| Brown, Mich. | Horton | Rousselot |
| Brown, Ohio | Huckaby | Rudd |
| Burgener | Jenkins | Sarasin |
| Burke, Calif. | Johnson, Colo. | St Germain |
| Burke, Fla. | Kasten | Stelger |
| Byron | Kelly | Stratton |
| Caputo | Kemp | Stump |
| Chappell | Krueger | Teague |
| Chisholm | Latta | Thornton |
| Clawson, Del. | Lehman | Traxler |
| Cochran | Lujan | Tsongas |
| Cohen | McKay | Vander Jagt |
| Delaney | Mann | Wiggins |
| Derrick | Miller, Calif. | Wilson, Bob |
| Eckhardt | Moorhead, | Wilson, C. H. |
| Ellberg | Calif. | Young, Alaska |
| Evans, Colo. | Moorhead, Pa. | Young, Tex. |
| Fary | Murphy, Ill. | Zerferetti |

Mr. DENT changed his vote from "aye" to "no."

Mr. GONZALEZ changed his vote from "no" to "aye."

The amendment was rejected.

The result of the vote was announced as above recorded.

no change in existing law, it simply carries these nondiscrimination principles forward into this legislation and it is perfectly agreeable to me.

Mr. CLAY. I thank the gentleman.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Missouri (Mr. CLAY) has very properly explained his amendment. I congratulate the gentleman for his attention to detail and his support for this legislation.

Mr. CLAY. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 142, line 24, insert "(a)" before "If".

Page 143, after line 6, insert the following new subsection:

"(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit System Protection Board and the Office of Personnel Management. Such report shall include a description of—

"(1) significant actions taken by the Board to carry out its functions under this title; and

"(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

This mandates the GAO to do this, even though the GAO already has the authority to conduct investigations. They would be mandated by this amendment to make a report each year. However, my inclination is to accept the amendment offered by the gentleman from Virginia on the understanding that the Senate bill does not have such a provision, and that possibly we may want to take a look at it in the conference. But, with that understanding, I am inclined to accept the amendment offered by the gentleman from Virginia. (Mr. FISHER), who is trying to work toward improvements on this bill.

Mr. FISHER. I thank the gentleman.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. FISHER. I yield to the gentleman from New York.

(Mr. GILMAN asked and was given permission to revise and event his remarks.)

Mr. GILMAN. Mr. Chairman, I rise in support of the gentleman's amendment. This amendment is designed to insure effective accountability for the actions of the Office of Personnel Management in view of the enormous concentration of power that would be placed in the Office under the administration's proposal. One of the more serious weaknesses of H.R. 11280 is that the possibility for manipulating the civil service for personal or political favoritism is greatly increased because personnel policy would be made by an administrator serving at the pleasure of the President, instead of

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY: On page 138, after line 5, insert a new section as follows:

"(C) on the basis of sex, as prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d);", and redesignate the subsequent section accordingly.

On page 142, after line 14, add a new section as follows:

"(3) under the Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;", and renumber the subsequent sections accordingly.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, this amendment is offered at the request of the Equal Opportunity Commission. It clarifies the statutory basis of discrimination and is intended to insure that nothing in the bill can be construed to detract from the provisions of title VII of the Civil Rights Act of 1964, as amended.

Specifically, the amendment clarifies that the provisions of the Equal Pay Act are included in allegations of discrimination, and that a trial de novo remains available to complainants in discrimination cases.

The amendment makes no changes in the bill, it simply makes explicit the intent of the bill's drafters.

Mr. Chairman, I urge adoption of the amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, this amendment makes

Mr. FISHER. Mr. Chairman, I ask unanimous consent that the amendments may be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. FISHER asked and was given permission to revise and extend his remarks.)

Mr. FISHER. Mr. Chairman, if I may have the attention of the gentleman from Arizona (Mr. UDALL) who is managing the bill, I would say that this is a general amendment to title I, which would extend somewhat the role of the General Accounting Office in keeping track and monitoring and examining the work done under this bill. The bill, as it stands, says this: That if a Member requests a General Accounting Office study of some facet of the bill, it will be done. The GAO on its own may initiate a study. My amendment would simply extend this a little bit and specify that the GAO shall prepare and submit annually a report on significant issues to the President and the Congress on the activities of the Merit System Protection Board and the Office of Personnel Management. This, no doubt, would result in improvements in both of the new agencies and would increase their accountability.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. FISHER. I will be glad to yield to the gentleman from Arizona.

Mr. UDALL. My concern about the amendment basically is that we are going to add some more to the voluminous paperwork that is produced every year.

by a bipartisan body. Another serious weakness is the sweeping authority to be granted the Director to delegate to the agencies the functions of the Office of Personnel Management. A further loophole is the potential opening of thousands of positions formerly reserved for the competitive service to the ravages of political patronage.

The number and rapidity of changes contemplated by H.R. 11280 and Reorganization Plan No. 2 will make it virtually impossible for Congress to effectively oversee the Office of Personnel Management unless provision is made for an annual systematic review of the policies and program decisions and the compliance and enforcement actions of the Office of Personnel Management by the GAO.

Mr. Chairman, I believe this amendment is necessary to help reduce the great risk of reverting to political and personal favoritism on a grand scale in the civil service. I believe it is absolutely essential if the Congress is to have the minimum information it needs to hold the Office of Personnel Management accountable and to oversee the executive branch with regard to merit in the civil service.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. FISHER).

The amendments were agreed to.

The CHAIRMAN. Are there any other amendments to title I?

AMENDMENTS OFFERED BY MR. LEACH

Mr. LEACH. Mr. Chairman, I offer amendments.

The Clerk read as follows:

September 11, 1978

CONGRESSIONAL RECORD—HOUSE

H 9365

Amendments offered by Mr. LEACH:

Page 137, line 4, after "which is" insert "in the Foreign Service of the United States or which is".

Page 143, line 15, after "831-835)" insert "or the authorities or responsibilities under the Foreign Service Act of 1946 (60 Stat. 999; 22 U.S.C. 800 and following)".

Page 149, at the end of the matter below line 14, insert the following new item:

"1209. Exception for the Foreign Service."

Page 165, line 15, strike out the quotation marks and the period which follows.

Page 165, after line 15, insert:

"§ 1209. Exception for the Foreign Service."

"This chapter shall not apply to the Foreign Service of the United States."

Page 178, line 5, strike out the period and insert in lieu thereof "; or".

Page 178, after line 5, insert:

"(3) whose position is in the Foreign Service of the United States.

Page 182, in the analysis for chapter 77, insert the following new item:

"7703. Foreign Service Grievance Board."

Page 188, line 12, strike out the quotation marks and the period which follows.

Page 188, after line 12, insert:

"§ 7703. Foreign Service Grievance Board

"This chapter shall not apply to any individual who is entitled to utilize the Foreign Service Grievance Board under sections 691 through 694 of the Foreign Service Act of 1946 (22 U.S.C. 1037-1037c)."

Page 274, line 1, after "individual" insert "(other than an individual in the Foreign Service of the United States)".

Mr. LEACH (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

These proposed modifications are designed to preserve the Foreign Service personnel system which the Congress has taken special care to maintain over the years.

Mr. Chairman, the Foreign Service has a substantially different personnel system than the civil service involving the establishment of rank-in-person rather than rank-in-grade. I believe it would be a mistake to change the Foreign Service system through this legislative vehicle. Accordingly I urge adoption of these amendments.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendments.

Mr. Chairman, I think we are seeing the beginning of what we are going to be wrestling with this afternoon.

The gentleman from Iowa (Mr. LEACH) is a very distinguished and valuable member of our committee. He has a special concern about protecting the Foreign Service. The Foreign Service is important, and they do have special problems.

Mr. Chairman, we have been lobbied since this bill began by the Park Service and the Forest Service. I spoke with a distinguished member of the other body today who wants to exempt the Smithsonian Institution. Each one of us probably has some special agency with which we have a special relationship, and we would like some special provisions or special exemptions written into the law with respect to that agency.

With regard to the Foreign Service, in the committee the gentleman from

the amendments offered by the gentleman from Iowa (Mr. LEACH).

The amendments were rejected.

The CHAIRMAN. Are there other amendments to title I? There being none, the Clerk will read title II.

The Clerk read as follows:

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Chairman, I also ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Chairman, the three amendments I am proposing have been prepared with the support of the Department of State and are consistent with the position taken by the full Post Office and Civil Service Committee in July, when it voted to exempt the Foreign Service from the Senior Executive Service and from provisions pertaining to Federal Labor Management relations.

The first amendment simply excludes the Foreign Service from the provisions in title I of the bill pertaining to merit system principles and prohibited personnel practices.

The second amendment exempts the Foreign Service from the authority of the Merit Systems Protection Board and Special Counsel since the service already has its own apparatus—the Board of the Foreign Service—and officer—Director General of the Foreign Services—to oversee personnel policies and practices.

The third amendment exempts individual members of the Foreign Service from the categories subject to personnel research and demonstration projects under the direction of the Office of Personnel Management.

Iowa (Mr. LEACH) offered an amendment to exempt the Foreign Service from the Senior Executive Service in this bill. I was opposed to that amendment, and he carried the day. It was a major victory for the gentleman from Iowa.

Now in these amendments he would go further. We have in title I some basic statements of principle with regard to the merit system Government-wide, and those principles include the following: that employees should be protected against arbitrary action, personal favoritism, coercion for partisan political purposes, and so on; that employees should be protected against reprisal for the disclosure of information, and so on; that employees should maintain high standards of integrity, conduct, and concern.

Mr. Chairman, these amendments exempt the Foreign Service from those provisions. I am sure that just as soon as we pass this kind of amendment, other Members on the floor will be in with similar amendments to exempt agencies for whom they have some special concern.

Mr. Chairman, I would hope that we would leave the bill as it is and not begin to make exemptions. It is going to be a long night. If we continue at the speed at which we have been going, I think we can finish the bill at a reasonable hour this evening.

This amendment is unsound. We have already made our major concessions to the Foreign Service.

Mr. Chairman, I would hope that these amendments would be defeated.

The CHAIRMAN. The question is on

H 9370

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title II, and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. HANLEY

Mr. HANLEY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HANLEY: Page 186, after line 25, insert the following:

"§ 7702. Pretermination hearings

"(a) If an agency gives notice under—

"(1) section 4303(b) (1) of this title of its intention to separate an employee; or

"(2) section 7513(b) (1) of this title of its intention to remove an employee, or to suspend an employee for more than 14 days;

such employee may, on or before the 10th day after such employee receives such notice, elect a pretermination hearing under this section in lieu of further proceedings under section 4303 or section 7513 of this title. An election of a pretermination hearing under this section must be made in a writing submitted to the Merit Systems Protection

Board in accordance with regulations prescribed by the Board.

"(b) Any pretermination hearing elected under subsection (a) of this section shall be treated as an appeal to the Merit Systems Protection Board under section 7701 of this title, except that—

"(A) such hearing shall be conducted by an administrative law judge appointed under section 3105 of this title and employed by the Board, whose decision shall be final, subject to judicial review under section 7703 of this title as a decision by the Board;

"(B) subsection (d) of such section 7701 shall not apply; and

"(C) no hearing pursuant to such election shall be scheduled before the 14th day after the date of the submission of such election to the Board.

"(2) (A) Subject to subparagraph (B) of this paragraph, an employee who has elected a pretermination hearing under this section shall not be removed or suspended under section 4303 or section 7513 of this title before the issuance of a decision under this section.

"(B) If, on the 90th day after the submission of an election of a pretermination hearing under this section, a decision under this section has not been made in connection with such hearing and the administrative law judge involved determines that such delay was caused primarily by the employee involved, such employee may, after such day, be removed or suspended in accordance with the proposed action on which the election under this section was based, pending a final decision by the administrative law judge under this section.

"(c) This section shall not apply in any case in which—

"(1) there is reasonable cause to believe the employee involved has, in connection with the matter on which the proposed action involved is based, committed a crime

to submit amendments to title II that would streamline the appeal procedure for Federal workers who are discharged or suspended for more than 14 days.

Under the present system, there is a two-step appellate procedure which takes up to 2 or more years to process from the time action is initiated until the final administrative appeal is concluded.

In my judgment it is unconscionable to keep an employee in limbo and most likely out of work for this period of time. Moreover, it is unfair to an agency because if that employee is ordered reinstated after 2 or more years the agency must return the employee to his or her position even though it may have been filled in the interim. This could result in an agency paying two employees to do one job.

Neither the President's proposal nor the committee's bill prevents these inordinate delays. They both perpetuate the two-step appeal procedure without providing for necessary time limits on the appeal process. My amendments, on the other hand, would prevent these foreseeable consequences. For the first time strict time limits would be incorporated into the procedure. They provide that an employee who is the subject of a discharge action or suspension for more than 14 days will receive a notice of charges, be afforded a hearing before the MSPFB and be provided a final decision in a maximum of 90 days. This would end the administrative appeal process.

If it is determined that discharge or suspension is warranted the action will

gressman DERWINSKI alleged that the streamlined appeal procedure would result in increased Government cost. In support of this claim he relied upon the estimates of the Congressional Budget Office which estimated an increased cost of \$2.6 million in fiscal year 1978, \$11.0 million in fiscal year 1979; \$11.6 million in fiscal year 1980, \$12.5 million in fiscal year 1981, and \$13.4 million in fiscal year 1982.

These claims of increased costs based upon the Budget Office estimates are erroneous. Their estimates were based upon H.R. 6225, the pretermination hearing bill ordered reported by the Post Office and Civil Service Committee on January 25, 1978. The streamlined appeal procedure amendment to H.R. 11280 is vastly different than H.R. 6225 thus rendering the Budget Office's analysis inapplicable. It differs on the following basis:

First. These amendments do not expand coverage of the appeal procedure to employees in the excepted service as provided for in H.R. 6225. Thus, the Budget Office estimate of increased costs resulting from additional cases is not applicable.

Second. H.R. 6225 extended coverage to include the appeal of all suspension actions. These amendments limit coverage to suspensions of more than 14 days.

Third. H.R. 6225 required that appeal cases be heard by Administrative Law Judges instead of hearing examiners. The Budget Office determined this would result in increased salary costs. These

for which a sentence of imprisonment may be imposed; or

"(2) a matter affecting the national security is involved.

"(d) The parties to a negotiated collective bargaining agreement may agree to implement or substitute in whole or in part the procedure of this section as part of a collective bargaining agreement, or may agree upon alternative methods of settling matters subject to this section.

"(e) The Merit Systems Protection Board shall prescribe such regulations as are necessary to carry out the purpose of this section.

Page 170, line 8, insert "and, in the case of removal of an employee, subject to section 7702 of this title," after "section."

Page 179, line 9, insert "and subject to section 7702 of this title," after "Management,".

Page 182, in the matter following line 17, strike out "7702" and insert in lieu thereof "7703", and insert after the item relating to section 7701 the following: "7702. Pre-termination hearings.

Page 187, line 1, strike out "§ 7702" and insert in lieu thereof "§ 7703".

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I rise

to be immediately imposed, and the only appeal from the administrative determination is to the Federal courts after the employee is discharged or suspended. This procedure parallels the private sector where collective bargaining agreements provide for one hearing before an arbitrator. The only appeal from binding arbitration is to the courts.

Additionally, unlike the present system and the one proposed in this bill, my amendments attempt to build into the system a motivation to expedite appeals. The employee is motivated to act expeditiously because if he or she requests a delay or otherwise makes it impossible for the process to be completed within the 90 days, then he or she is removed at the end of the 90-day period. Any further right of the employee to a hearing will be after the discharge or suspension action is imposed. Moreover, the agency is motivated to act promptly because if delay results from a request by the agency or the failure of the MSPB to schedule a timely hearing, the employee remains on the payroll until a decision is rendered.

Based upon private sector experience, I strongly believe that it would be beneficial to all sides to eliminate the present cumbersome layers of appeals. Employees will not have to suffer long periods of uncertainty and unemployment before knowing the disposition of their cases. And agencies will not be faced with staffing problems that result from appealed adverse actions remaining open for so long.

I urge my colleagues to join me in support of these amendments.

During the markup of H.R. 11280 Con-

amendments eliminate the requirement of Administrative Law Judges, thereby negating the increased salary cost estimates. Under the amendments cases would be heard by hearing examiners of the Merit System Protection Board.

Fourth. Unlike H.R. 6225 these amendments also place a 90-day time limit on the processing of appeals. The Budget Office's estimates were based on employees remaining on the payroll 120 days longer than under the present system. According to Chairman Campbell during the markup session on June 22, 1978, under the present system it takes between 30 to 60 days to remove someone from the payroll. Thus their figures were based on employees remaining on the payroll for between 150 and 180 days. However, under these amendments it would only be 90 days, therefore, the estimates do not apply.

Fifth. The Budget Office does not take into account the fact that these amendments would provide for binding arbitration as a substitute to the Statutory appeal procedure. This could result in a net cost savings to the Government because under such an alternative procedure the unions generally assume one-half the cost. Under the statutory procedure the Government pays the entire cost.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I am delighted to yield to my friend, the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, is this not virtually what passed the subcommittee

that I chair in the Committee on Post Office and Civil Service?

Mr. HANLEY. Essentially, there was similar dialogue on the committee passed measure and I know that during the course of Committee consideration of this amendment there were some figures provided by OMB which suggested the cost of this concept would be rather heavy; however, in analysis, the cost provided by the OMB applied to the bill you refer to.

Mr. CLAY. Mr. Chairman, if the gentleman will yield further, so virtually it is the same proposal that passed the subcommittee and the full committee and is now awaiting a rule from the Committee on Rules.

Mr. HANLEY. Well, no; there are substantive differences in the committee-passed bill and this amendment. The cost associated with this amendment is substantively less than the cost associated with that bill.

The CHAIRMAN. The time of the gentleman from New York (Mr. HANLEY) has expired.

(By unanimous consent, Mr. HANLEY was allowed to proceed for 2 additional minutes.)

Mr. CLAY. Mr. Chairman, will the gentleman yield further?

Mr. HANLEY. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, I thank the gentleman and I intend to support the amendment.

Mr. UDALL. Mr. Chairman, I rise in

against being fired; we are going to have some costs involved.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, just to clarify the point with respect to the cost of this measure, the dollar figure associated previously was in error. That was the figure of OMB in association with a similar but much heavier measure that had been passed by the committee and is now pending in the Committee on Rules.

So that figure should not at all be associated with this amendment.

The dollar factor is very minimal, and I would repeat what I have already said: That in essence what we would be doing here is we should be applying the concept that is utilized in the private sector where, if that employer for some reason decides he is going to dismiss an employee, in fairness there is a bit of consultation with the employee prior to definitive action. So he calls the gentleman or the gentelady in and says, "For these reasons it appears that termination of your tenure is in order."

In that way we give the individual the benefit of the rationale of the employer. So actually what we are doing here, if we adopt the amendment, is simply concurring with the traditional concept in the private sector in fairness to that employee.

Mr. UDALL. Mr. Chairman, if the gentleman agrees, as I do, that one of

man from New York (Mr. HANLEY), the figure he earlier quoted of \$63 million as the possible cost of the application of this amendment was the result of research for the Civil Service Commission, but the gentleman, with a brush of his hand ruled that out.

Can the gentleman tell us specifically what figures he has to substantiate the cost of his amendment?

I am speaking of something other than an opinion now. I would like to have something specific.

Mr. HANLEY. Mr. Chairman, if the gentleman will yield, I believe in fairness, the figure used by OMB and provided the committee at that time was a figure used in association with an entirely different bill, and the committee labored under the impression that that was the cost of this amendment in committee. That is not true.

What the actual cost is I do not know. However, I do know that this cost is substantively less than the cost in the singular bill that was approved by the committee and is now pending in the Committee on Rules.

Mr. DERWINSKI. But the point is—and I am sure the gentleman will not dispute the other statistics we have—that the Civil Service Commission appealing now is 152 days. We would in fact, through the gentleman's amendment, add more days over and above whatever we provide for in this bill.

Mr. HANLEY. Mr. Chairman, will the gentleman yield on that point?

Mr. DERWINSKI. Let me finish my

opposition to the amendment.

Mr. Chairman, this is a major amendment and was debated at some length in the committee and was then rejected by a vote of 10 to 15. There is something very fundamental and very basic at stake here. This amendment goes exactly opposite to the main thrust of what we are trying to do in this bill. Presently, it is pretty hard, one of the premises on which this legislation is founded is that it is too difficult to discharge or discipline inefficient Federal employees.

Now, if one is a Federal employee, the current law is that he can be given 30 days notice and then be terminated. After that, there is an opportunity to come in and have a hearing. The employee is entitled to have a written decision and an appeal may be taken by the employee to an outside appeals authority. This turns it around and says that employee cannot be fired unless you have a hearing before they are fired. It moves in the opposite direction and instead of doing what this bill is trying to do to make it easier to fire incompetent Federal employees, it makes it much more difficult; so it is contrary to the basic purpose of the bill. It will make it even more difficult than it is today to remove an incompetent employee.

There was an estimate by the Congressional Budget Office that it would cost \$63 million. That was an earlier pre-termination bill and I do not know the differences in cost between that one and this one.

Clearly, if we are going to set up a whole new structure and a whole new web of protection for Federal employees

the fundamental purposes of this bill is to make it easier and not harder to discharge incompetent employees, then the gentleman's amendment goes directly in the wrong direction.

We have testimony that it takes 152 days now—and that is the average time—to complete this appeals process. The real vice of this amendment is that it would keep this person on the payroll sitting around for that length of time. We would encourage employees who otherwise would go away and accept their discharge to appeal because they are going to get paid, and there they are inflicting their presence on the whole system while this appeal process is going on.

Mr. Chairman, I think it would be a major mistake to accept this amendment. I strongly urge that it be defeated.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendments.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I am going to be very brief. The gentleman from Arizona (Mr. UDALL) made the proper arguments against the amendment.

Actually here again we are in what may be a pattern in working on this bill. This is a classic case of an immediate retreat from a new goal. Basically, this amendment would add an extra step which would impede termination of the services of an incompetent employee.

As I understand this amendment, it would encourage everyone to appeal. If I may have the attention of the gentle-

thought first.

Mr. Chairman, the gentleman starts taking us down the road of adding to the appeal time, adding to the delay, and, therefore, denying the very goal of the bill, which is a streamlining of personnel procedures.

Mr. HANLEY. Mr. Chairman, will the gentleman yield now?

Mr. DERWINSKI. Yes, I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, obviously, on the basis of what the gentleman has just said, a misunderstanding prevails, because what I would suggest through this amendment is that we are expediting that process, because within a timeframe of not more than 90 days that matter would have to be disposed of one way or the other, as opposed to present law or the language of this bill, which still makes it possible that the process could continue up to 2, 3, or maybe 4 years.

Think of the cost involved in that procedure, where again you are dealing with administrative law, just in an effort to resolve that one employee problem.

My guess is that this would be far less expensive than the present methodology; and, beyond that, certainly fair to that individual.

It certainly is not my intent to encourage continued employment of incompetent people, but I do not feel that that individual should certainly be entitled to his or her day in court.

Mr. DERWINSKI. They are entitled to their day in court under the bill. The effect of the gentleman's amendment would be to add an additional layer, an

additional step, and this would have the effect of encouraging people to utilize it. And that is where the cost factor comes in. I think it is the height of optimism for the gentleman to imply that there would be minimal cost because, in effect, through the gentleman's amendment, he would be encouraging almost automatic use of this provision, and the costs are almost impossible to calculate.

Mr. HANLEY. If the gentleman will yield further, is it not rather logical that the cost factor associated with an endeavor that can be washed out within a 90-day period would be far preferable to a procedure which currently provides maybe up to 2 or 3 or 4 years before that decision is made? That is a rather costly process.

Mr. DERWINSKI. The gentleman is talking about the present system which takes 2 or 3 or 4 years. That has been streamlined. The gentleman's amendment would add an additional 20 or 30 days.

Mr. HANLEY. No.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, in the interest of due process, I rise in support of the gentleman's amendment.

The courts have generally found that a job is a property right and, therefore, that due process should apply in any decision with regard to that right.

sort of thing. That was nonsense. An employee can be out of the system today in 30 days, and then the appeals process starts. And, indeed, there have been situations where it has taken a couple of years, and even 3 years, but when we looked into those situations we found that that was because the Government itself had dragged its feet, that the Government had caused the delay, not the employee. The idea was to drag the case out, to the point where no employee could afford to continue to fight his dismissal.

So what we are having proposed here at this time really is not going to extend the time. It will give a date finite to the Government, and the Government will be advised that at the end of 90 days it must have reached some conclusion. Therefore, it makes very good sense, No. 1, to give an employee a fair opportunity and, No. 2, to allow that employee to know that in 90 days his or her case will be disposed of. The citizens of the United States would also be spared the expense incurred by delays.

It has been really cruel and unusual punishment to have dragged cases out, as they have been in the past. The amendment makes very good sense, and I would certainly support this proposal by the gentleman from New York.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support this amendment, and I only want to make one additional point in connection with it. The acting chairman has pointed out that the purpose of the bill is to enable the

be selected from among individuals who have served in the competitive service.”

Mr. HARRIS. Mr. Chairman, this bill and the reorganization plan that Congress approved this past month separates the Civil Service Commission into two parts. It has a Merit System Protection Board, which has the job of protecting the rights of the employees. It has taken the personnel function out of the Civil Service Commission and set it up in another office.

All right, so in this amendment we are just talking about the Merit System Protection Board. The Board purports to have a three-person board that has one single job, and that is to protect the civil service employees with respect to the merit principles espoused in the bill. What this amendment does is say that one person appointed to that Board will have had experience in the merit system. It requires only that one person on that Board, at least, will have served in the merit system to the extent of knowing what the problems of the employees are, what the employees' side of the contest is, what the needs are to protect the particular rights of an employee.

I think it is a matter of simple justice and a matter of simple appearance here if we are truly trying to restore confidence in the employees with respect to whether there is an arm of the Government that protects that employee's rights. That is what the Board is created for; that is what the Board is supposed to do; that is what the Civil Service Commission was created for. But, most of us

Due process, in our system of justice, means an individual is innocent until proven guilty.

What the gentleman from New York is seeking to do is to provide the Federal employee with an opportunity to prove his or her innocence before they would lose their jobs. Removing employees from their jobs prior to any hearing would reverse our standards of justice.

In our committee hearings, I might add, there was testimony that, while in some instances it did take an inordinate length of time to remove an employee, there are statutory and regulatory provisions and procedures available that, if properly utilized, would enable the discharge of an employee within a very reasonable period, and not the 152 days as suggested by our acting chairman.

Accordingly, Mr. Chairman, I urge the adoption of this amendment.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Speaker, I would like to call to the attention of all of those Members present—and, I would hope, of anyone who is at all interested in the bill—the words of our distinguished Chairman. He made it very clear, and he was absolutely right, that under today's system an employee can be out of the system in 30 days.

We have heard a great deal of talk about how it takes 18 months, to fire an employee. We were at times told it took 27 months, and 3 years, and all that

boss to get rid of incompetent employees. Of course, that sounds good until we stop to remember that competence is a matter of opinion. So, when this bill gives the power to fire incompetent employees, it also gives the power to fire competent employees.

Now, let us assume the most favorable supposition, and that is that the great majority of the firings are of incompetent people. There is no question that out of a large number that may get fired over a number of years, there are going to be some mistakes made for one reason or another, so somebody gets fired who is not incompetent, and so his salary ceases.

It is all very well to talk about reinstatement and payment of back salary and so forth. The family, however, of this employee has got to eat, and they cannot eat on future pay. I think that to deny the employee a hearing before firing him for "incompetence" is quite unfair. I support the amendment proposed by the gentleman from New York.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. HANLEY).

The question was taken; and the Chairman being in doubt, the committee divided, and there were—ayes 15; noes 23.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 150, line 2, after "United States," insert the following "One member of the Board shall

know that the Federal employee lost confidence in the Civil Service Commission some time ago with regard to that agency's protecting employee rights.

All right, if we are going to have a separate Board to protect employees' rights, if that Board is to be a three-person Board, I think it makes eminently good sense to have at least one person on that Board with experience in the merit system competitive service.

I would urge my colleagues to adopt this amendment and to make this little recognition that in establishing something to protect employees' rights we will have somebody on there that has had the employee perspective and not management perspective.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this was considered in the committee. The amendment offered by the gentleman from Virginia was defeated in that forum and should be defeated today.

This is not a major matter but there is a principle at stake. We are going to set up a merit system protection. The President is going to appoint the board members and they will be confirmed subject to the will of the Senate. We will start in by saying one of the three must be a person who served in the career service. That seems to make a good deal of sense. But if we adopt that, let us start putting other restrictions on the President: that one of them ought to be a lawyer; one of them ought to be a woman; one of them ought to be a non-Caucasian; and one of them ought to be of some other qualifications.

I would hope and believe the President would appoint from time to time people on this board who have had actual civil service employee experience, but to suggest on all occasions and at all times there must be someone to meet that particular qualification ties the hands of the President and suggests the Senate is not going to exercise any oversight jurisdiction on this matter.

I do not think this is a necessary amendment. I think it is a mischievous amendment and ought to be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. STEERS: Page 144, strike out line 16 and all that follows down through line 19 on page 145 and insert in lieu thereof the following:

"§ 1102. Appointment of members of the Office of Personnel Management

"The Office of Personnel Management is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate, not more than two of whom may be adherents of the same political party. No Commissioner of the Office of Personnel Management may hold another office or position in the Government of the United States.

"§ 1103. Terms of office; filling vacancies; removal; quorum

"(a) The term of office of each Commissioner of the Office of Personnel Management is four years.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland (Mr. STEERS)?

There was no objection.

Mr. STEERS. Mr. Chairman, this amendment is simple enough, which is why I thought it need not be read. It certainly would change the character of this bill and I think in a very salutary manner.

Of course, I believe the Civil Service ought to be reformed, but I believe the measure before us is not the appropriate vehicle.

I am most concerned about the concentration of personnel authority in the hands of one individual, one man, the Director of the Office of Personnel Management. In my opinion this would politicize the Federal service and destroy the merit system which has served the American people well for nearly 100 years.

Placing Government-wide personnel responsibility in the hands of one Director would take the decisionmaking process out of the public's eye. The Director would have merely to make a proposal affecting Government-wide personnel decisions to himself, debate it by himself, and make a unilateral decision whether to implement the proposal. Thus there is no check on arbitrary and capricious actions by a Director.

My amendment would preserve the impartial administration of the civil serv-

a bipartisan body, it would be made by an administrator serving at the pleasure of the President. Although this change has been accomplished by Reorganization Plan No. 2 of 1978, it was done under a procedure that excluded amendments.

On July 7, 1947, the 80th Congress approved Public Law 162, thereby establishing the Commission on Organization of the Executive Branch of the Government. The Commission became known as the First Hoover Commission. It was directed to investigate the structure of the executive branch and recommend ways of improving its efficiency, effectiveness, and accountability.

Between July of 1947 and May of 1949, 300 men and women worked for the Hoover Commission. Twenty-four task forces scrutinized each of the major functional areas of the Government and reported their findings and recommendations. The Commission then studied and evaluated the task force reports and issued a series of 19 reports to the Congress.

In a statement of purpose and principle, the Hoover Commission declared:

There is perhaps no time in history when it has been more important to evaluate the effectiveness of the Executive Branch of the Government in carrying out the will of the Congress and the people. While we recognize that efficiency in itself is no guarantee of Democratic Government, the sobering fact remains that the highest ideals and aims of democracy can be thwarted through excessive administrative costs and through waste, disunity, apathy, irresponsibility, and other by-products of inefficient government.

The Commission's recommendations in

"(b) Any Commissioner appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term.

"(c) Any Commissioner appointed for a four-year term may be reappointed to any following term.

"(d) Any Commissioner may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Office of Personnel Management shall act upon majority vote of those members present, and any two members present shall constitute a quorum for the transaction of business of the Board.

"§ 1104. Chairman; Vice Chairman.

"(a) The President shall from time to time designate one of the Commissioners of the Office of Personnel Management as the Chairman of the Office of Personnel Management. The Chairman is the chief executive and administrative officer of the Office of Personnel Management.

"(b) The President shall from time to time designate one of the members of the Office of Personnel Management as Vice Chairman of the Office of Personnel Management. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1105. Functions of the Office

"The following functions are vested in the Commissioners of the Office of Personnel Management, and shall be performed by the Commissioners, or by such employees of the Office as the Commissioners designate."

Page 146, lines 23, 24, and 25; page 147, line 25; and page 148, line 1, strike out "Director" and insert in lieu thereof "Commissioner".

Redesignate the following provisions (and references thereto) accordingly.

ice system. While it would continue the proposed split of the Civil Service Commission's responsibilities between the Office of Personnel Management and Merit System Protection Board, it would vest the powers of the Office of Personnel Management in three Commissioners. By so doing, it will provide for checks and balances against misuse of authority.

By creating a commission, the decisionmaking process would be opened to the public and all decisions would require a majority vote. Moreover, it would be a bipartisan commission. Therefore it will act as a check against an incumbent President using the authority of the Office of Personnel Management for personal political reasons.

While no system is "fail safe," as the Watergate era demonstrated, I believe the public would be better served by an open system which would decentralize authority instead of the system proposed in this bill.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from New York.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I rise in support of the gentleman from Maryland's amendment.

The most serious weakness in the administration's proposals to reform the civil service is that it increases the possibilities for manipulating the civil service for personal or political favoritism. Instead of having personnel policy made by

total, therefore, are directed to the achievement of reforms which it hopes will bring about a more responsible and a more responsive government, a government that will act with dispatch, with greater internal coordination and harmony, with consistency of administrative policy, and economy of operation.

On considering restructuring the Civil Service Commission, the Hoover Commission warned that—

The Government must impose upon itself many regulations and controls to fend off myriad pressures and influences which seek special privilege or gain, particularly for political reasons.

It therefore rejected all single-administrator forms of organization and concentrated on organizational structures which would protect the merit system and at the same time provide the desirable benefits of single administration. It refused to propose any reorganization which would weaken the protective functions of or sacrifice the public confidence in a full-time, bipartisan commission of three members.

Accordingly, the Hoover Commission recommended that the bipartisan, three member Commission form be retained but that the President designate one of the Commissioners as Chairman and vest in him full responsibility for administering the operating organization and program of the Commission. The Chairman's role, apart from that of the other Commissioners, was to be the principal point of contact between the President and the heads of operating agencies in all matters of civilian per-

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sonnel management, both domestic and foreign, acting within the rules and regulations established by the full Commission.

Thus, while the Chairman would exercise authority to implement the rules and regulations of the civil service, the full Commission would retain its power and responsibility for establishing those rules and regulations. In addition, the Commissioners not designated as Chairman the duty of continuing the study of the nature, frequency, and source of abuses of the merit system in order to initiate steps to prevent their recurrence.

I agree that daily operations of the central personnel agency do need to be the responsibility of a single individual. This is, in fact, what happens now with the Chairman of the Civil Service Commission. He is designated by law as the Chief Operating Officer of the Agency. Everything the administration wants a new Office of Personnel Management to do, can be done under a single administrator serving under a bipartisan body with the Chairman acting as the Chief Operating Officer.

However, under this bill, the merit system would be seriously endangered, for a single individual would be making personnel policy for the entire Federal Civil Service work force of more than 2 million employees.

Administration spokesmen point to some States and cities where responsibility for making personnel policy was recently shifted from a multiheaded agency to a single administrator. The

The amendment offered by the gentleman from Maryland, (Mr. STARKS) seeks to create a three-headed agency which would manage the Federal Government's personnel system. It would be unworkable, it is unwise, and it would be a serious mistake.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to my colleague, the gentleman from Texas (Mr. BROOKS).

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Chairman, I am opposed to the amendments offered by the gentleman from Maryland. Just a few weeks ago, the House overwhelmingly approved Reorganization Plan No. 2, which established the Office of Personnel Management and the Merit Systems Appeal Board. This plan very properly provided for a multimember board to protect the rights of civil service employees. But, it also very properly assigned to a single-headed office the personnel management role for the Federal Government. This role was previously carried out by the multimember Civil Service Commission and it proved to be a very unwieldy and inefficient management process. That is one of the major problems the reorganization plan and this legislation are trying to correct.

The Federal Government, like any large employer, needs a well run, responsive personnel operation. This can cer-

Commissioners have traditionally performed.

What is being created in the station which the gentleman would amend is a single personnel administrator, a new concept for the administration of Federal employment, not a new concept at the State and local level. At that level that is an accepted practice which has gone on for many years in the more enlightened structures of State and local government.

For the first time we would have the ability to have an executive head of the management function in administering a large Federal civilian work force. To create a second three-member board or a troika to go with the one included in the committee bill would just be foolish because we would then have two committees meeting, and we would still have no one initiating any executive-type action on behalf of the Government in administering its affairs with its vast work force.

I think the gentleman's amendment is defective because it is obsolete. It is an alternative which might have been considered to what we have done in the committee had we done nothing; but as an alternative to what we have done in the committee bill at the suggestion of the administration, it is a bad amendment. Had we done nothing in this area, the gentleman's amendment would be better than the status quo, but it is not better than what we have proposed as a change.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

analogy, however, is inapt for none is comparable to the size, complexity, diversity, and power of the Federal Government. In addition, no one has studied whether the policies made by these local administrators are better or worse, or whether they have resulted in more or less political and personnel favoritism in the civil service, than before.

For the above reasons, Mr. Chairman, I urge my colleagues to adopt the gentleman's amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendments offered by the gentleman from Maryland (Mr. STEERS).

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, you cannot run an army by a committee of generals, you cannot run a business by a committee of businessmen, and you cannot run a personnel system by a committee. The vice of this amendment is that is exactly what the gentleman from Maryland is asking us to do. But the administration's overhaul of the civil service system is to break up the system in which the Civil Service Commission used to be both the adjudicator, the judge, and the protector of the integrity of the system and also the personnel manager for the Government.

Now in the reorganization proposal which the committee headed by the gentleman from Texas (Mr. Brooks) handled, we have broken these down into separate functions, so that the adjudicators can adjudicate and the managers can manage.

tainly be achieved more efficiently with a single-headed office. That is the way it is done in private industry and that is the way more than 30 States carry out their personnel practices.

We should not confuse the role of personnel management with that of handling employee grievances and civil service compliance. I believe that the Congress and this administration have made a significant step forward in setting up the Office of Personnel Management, and I oppose this effort to revert to the previous inefficient and unmanageable structure.

Mr. UDALL. Mr. Chairman, I thank the gentleman from Texas (Mr. Brooks), and I associate myself with his remarks.

What we would be saying by passage of this amendment, if I may say in conclusion, is, "Your personnel management, Mr. President, is a three-headed independent board, the members of which are removable for cause only and are in effect free from Presidential direction."

Mr. Chairman, I think it would be a serious mistake to adopt this amendment.

Mr. FORD of Michigan. Mr. Chairman, I think the gentleman's amendment misses the target he described for us because I am afraid he has not read this bill very carefully.

In the next section of the bill he will find that there is a merit system protection board of three members which performs the merit system protection functions that the present three Civil Service

Mr. STEERS. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Maryland, the author of the amendment.

Mr. STEERS. Mr. Chairman, very briefly, just to correct the record, the Member who spoke just previously said something about my not having read the bill. As proof thereof, he mentioned the Merit System Protection Board.

Mr. Chairman, I am afraid he was not listening to me because in my argument in behalf of my amendment, I mentioned the Merit System Protection Board.

He is quite right in saying that this would create another committee. I point out that the presidents of practically every major corporation in the United States are chosen by committees known as boards of directors. I do not think it follows at all that we have to have a one-headed member who will be judge, jury, and decider of all of these major personnel management problems.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. Yes; I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I would simply like to indicate that with respect to the operation of the Federal Government and the Federal work force, we and the body on the other side of the Capitol are the board of directors. We do not need a substitute board of directors which is not elected by the people.

Mr. DERWINSKI. Mr. Chairman, to emphasize that brevity is sometimes a virtue, I would like to limit myself by saying I believe that this amendment is unnecessary. I think it borders on in-

fringement of the constitutional rights of the President. I think the arguments made against it have been sound, responsible, and, of course, objective. Therefore, I join in opposing the amendment.

Mr. STEERS. Would the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Maryland.

Mr. STEERS. I thank the gentleman for yielding.

In other words, since the Civil Service Commission is clearly now doing what I have proposed be done by a new board, the gentleman believes that the Civil Service Commission for the last 80 years has been unconstitutional?

Mr. DERWINSKI. No, no. What I am saying is that the Merit System Protection Board will continue to function, which is the principle involved. And I am saying that the President will now have control over this Agency through appointment. What the gentleman, I think, approaches is diluting Presidential control.

Mr. STEERS. If the gentleman will yield further, the gentleman said it was unconstitutional, and it is now being done by the Civil Service Commission.

Mr. DERWINSKI. It borders on being unconstitutional.

Mr. STEERS. All right, then, you acknowledge it is not actually unconstitutional.

Mr. DERWINSKI. In light of the reorganization plan that we accepted a few weeks ago.

member of the Merit System Protection Board that he wanted to at any particular time. I think it is wrong to present to the people, to the Federal employee, and to our colleagues a proposition that the bill tries to do. It says that this is an independent board appointed for a term certain, 7 years, and then does not reach the fact that any member of that board could be dismissed summarily on the grounds of the subjective term "inefficiency." This amendment simply tries to perfect the bill to the point of saying, Yes, these are in effect independent appointments. They could be fired for misconduct, even if they have been appointed for a term certain, or for neglect of duty, or malfeasance, but not just on the basis of inefficiency.

I would urge my colleagues to support this amendment, and I would suggest to my colleague, the gentleman from Arizona (Mr. UDALL) that we have a point in the bill that should be corrected if, in fact, we are going to have an independent Merit System Protection Board.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I understand what my good friend, the gentleman from Virginia (Mr. HARRIS) is trying to do, but I really think that the adoption of this amendment could create some unfortunate consequences for the operation of the Merit System Protection Board. Nobody is perfect. We all make mistakes. The man in the White House we hope will

certainly agree with my colleague. I do not mean to sound crass, but I wish the gentleman would not strain at a gnat. The term "neglect of duty" is clearly left in the statute. Any member of the Merit Board that is guilty, as my colleague describes, is subject to neglect of duty even though he or she has been appointed and confirmed by the Senate.

What this bill does is not allow such a subjective term of "inefficiency" to be added to it. Let us not kid ourselves. If we leave the term "inefficiency" in there, we leave it up to the President to fire any member of the Merit System Protection Board that is supposed to be a member of that Board without any other justification than that member has been "inefficient."

Mr. SOLARZ. Mr. Chairman, I thank my friend, but I would insist there is an important and critical distinction between neglect of duty on the one hand and inefficiency on the other. There may be people who serve on the Merit System Protection Board who do attend to their responsibilities, and who do not neglect their duties, but who nonetheless are completely and totally inefficient, and in the interests of the Federal employees whom this Board is supposed to protect, I think it would be a mistake to deny the President the right to remove someone who is clearly and completely inefficient, because if it turns out they are trying to attend to their responsibilities, if this amendment is adopted, there would be no other way to get rid of them.

Mr. DERWINSKI. Mr. Chairman, I

Mr. STEERS. I thank the gentleman. The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. STEERS).

The amendments were rejected.

The CHAIRMAN. Are there other amendments to title II?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 150, line 17, strike out "inefficiency."

Mr. HARRIS. Mr. Chairman, the bill places a great deal of reliance on a Merit System Protection Board that is supposed to be independent of the President, appointed for a term certain, and, therefore, able on a nonpartisan basis—which is one of the requirements of the bill—to act with regard to a contest between employee and management in an impartial manner. The question is how independent or how truly for a term certain are these members of the Merit System Protection Board appointed? The bill makes it clear that they can be removed for misconduct. It also makes it clear they can be removed for neglect of duty or malfeasance in office. These grounds for dismissal of these independent members of the board, who are appointed and confirmed are left in the bill by my amendment. The one term that this amendment would strike is the term "inefficiency," which I think negates the whole principle that is currently in the bill. The term "inefficiency" is clearly and completely a subjective term, which would mean that any President could fire any

do the right thing for America, but the fact of the matter is that some Presidential appointees have turned out bad in the past, and there is no doubt that some Presidential appointees will turn out to be inadequate in the future.

One of the primary responsibilities of the Merit System Protection Board is the expeditious consideration of the appeals that are sent to it, and it is not inconceivable that with the best of intentions, in spite of the fact that the Senate has to ratify these appointments, that in the future someone could be appointed to the MSPB who will simply not be able to cut the mustard, who will lack the ability to do the job.

I think that under those circumstances it really would be most unfortunate to deny the President the right to remove such an individual, because if this amendment is adopted, a simple inability to do the job will no longer constitute adequate justification for the removal of such an individual.

The point that I want to make here is that the 2 million Federal employees who work for the Federal Government, other than for the Postal Service, really are going to require the effective concern of the Merit System Protection Board, its fervent efforts on their behalf, and if it should turn out that someone is appointed to the Board who is not doing the job, I think the President ought to remove that individual in their interest.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I cer-

move to strike the requisite number of words. I rise in opposition to the amendment.

In keeping with the pattern here, Mr. Chairman, I will be very brief. I would like to point out to the gentleman from New York that the gentleman very effectively addressed the amendment; but I would like to comment quite simply that I cannot conceive of the Congress of the United States telling the President he cannot remove someone from office that he deems inefficient. If you want to be on record as saying the President should not be able to remove someone on the grounds of inefficiency, I do not think in the light of today's demands of the public for better service that one wishes to take that position; so I suggest the rejection of the amendment.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to my friend and great statesman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the gentleman for yielding to me.

What would be the benchmark or definition of being inefficient? To what level of performance do we hold these people, to the highest performance level in the land or what?

Mr. DERWINSKI. I would say an acceptable, practical level. For example the kind of efficiency that the gentleman expects in his office and the kind of great efficiency the gentleman brings to the Congress. That is the kind of standard we would expect.

Mr. JOHN L. BURTON. Mr. Chairman, if the gentleman will yield further, so it

would be my level of performance that would set the level of efficiency throughout the civil service system?

Mr. DERWINSKI. Even the most able civil servant would be hard put to meet the level of efficiency the gentleman from California represents.

For example, the gentleman's brother does not quit achieve his efficiency.

Mr. JOHN L. BURTON. Well, would it be safe to say it would be the level of performance that my brother shows in the Congress?

Mr. DERWINSKI. Yes, or that of a mere mortal.

Mr. JOHN L. BURTON. I think I will accept that.

Mr. STEERS. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

Mr. Chairman, I am going to use my time only to ask the gentleman from Illinois (Mr. DERWINSKI) a question, and that is this:

Is it possible to remove members of the FTC, the SEC, and other administrative agencies for inefficiency? Does the gentleman know?

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. STEERS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Does the gentleman mean under present law?

Mr. STEERS. Yes, under present law, is it possible to fire a Commissioner from the Federal Trade Commission?

Mr. DERWINSKI. I am sure some of our experts on Government operations

difference is that the gentleman has strong positions as to the motive of the bill as it relates to what he may call the "spoils system" or "politics."

I take the position that this bill is motivated by the highest of political principles. There is no spoils system or political motivation present. I think in that very fundamental way we differ.

The point here is that what is required from this revised Civil Service structure is a degree of efficiency that the public has judged the present Federal structure to be lacking. As I look at this, this means a return to efficiency and a desire to improve the performances. That is our goal.

Mr. STEERS. Mr. Chairman, is this not my time?

Mr. DERWINSKI. No, this is my time.

Mr. STEERS. Mr. Chairman, I thought it was my time.

The CHAIRMAN. The time is that of the gentleman from Maryland (Mr. STEERS).

Mr. DERWINSKI. Excuse me, Mr. Chairman, I did not mean to usurp the gentleman's time.

Mr. STEERS. Mr. Chairman, I am happy to get the gentleman's interesting observations, but I would reclaim my time merely to say that I do not raise any question as to the motivation of the President or of the administration. I simply think the result of this bill would be very detrimental, and I do not want to let the record go uncorrected.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken, and on a division (demanded by Mr. HARRIS) there were—ayes 5, noes 20.

So the amendment was rejected.

AMENDMENTS OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. STEERS. Page 148, strike out lines 12 through 24 and insert in lieu thereof the following:

(b) (1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (6)."

Page 165, strike out line 24 and all that follows down through line 12 on page 166 and insert the following:

(c) (1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Sys-

would know the answer to that question.

Mr. STEERS. Mr. Chairman, I will ask if any Member who is opposed to this amendment knows whether members of other agencies can be fired for inefficiency. And if they do not know, why on Earth, then, are they voting against this amendment, without even knowing what the practices of other agencies are?

I believe the administrative agencies cannot be massacred one by one by firing for inefficiency, and I think this is a very reasonable amendment for that reason, if for no other.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield further, may I point out to the gentleman that we are not speaking of massacres; we are speaking of a Presidential appointee, and if the President in his judgment feels this particular appointee is not operating in an efficient manner and is in fact inefficient, I think, given the sensitivity of his position and the effectiveness we want from this new civil service system, the President should have this prerogative.

Mr. STEERS. Does the gentleman mean the Merit System Protection Board should be sensitive to the desires of the President? I thought it was instituted to protect employees.

Mr. DERWINSKI. No, I am not saying that at all. I am saying the presidential appointee should perform at a high standard of efficiency.

I should say that where the gentleman from Maryland (Mr. STEERS) and I have our fundamental disagreement is not on an amendment like this or on any other amendments that may have preceded this or that may come later. I think the

Mr. STEERS. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I appreciate my colleague's comments on this amendment.

I think our colleagues who have been engaged in colloquy on the floor make it crystal clear that even though we present it to the public and to our colleagues that we have an independent merit system protection board whose members are appointed for a term certain, they cannot be removed at the will of the President, but this provision is in fact put in here so that these members can be removed at the whim of the President if in fact these members do not perform in accordance with what the President wants them to do.

How in the world are we going to have an independent board whose job it is to protect employees' rights, not to put forward the administration's position but to protect employees' rights, if in fact we allow them to be dismissed at the whim of the President?

I think this is what my colleague sees in the bill, because that is what is in the bill. I think we have to in all fairness show to the public and to the Members of the House that by this language we do not have in this bill an independent merit system protection board but we have members who can be fired by the President anytime the President wants to fire them. I wonder if my colleague agrees with that statement.

Mr. STEERS. Mr. Chairman; I certainly do agree.

The CHAIRMAN. The question is on

tems Protection Board."

(3) (A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule."

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(47) Members, Federal Labor Relations Authority (2)."

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

(Mr. STEERS asked and was given permission to revise and extend his remarks.)

Mr. STEERS. Mr. Chairman, what this amendment would do is quite simple. It would save money. The problem of the size and cost of the bureaucracy is not adequately addressed in H.R. 11280. Streamlining the existing bureaucracy should make it smaller and more cost effective; it should not increase its size and cost. The amendment which I am offering here, which was offered by the

junior Member of the Senate from Pennsylvania. This amendment was adopted by the Senate and will partially address this inconsistency.

Inherent in H.R. 11280, and in the reorganization plan which will go into effect between now and January 1, is an increase in the number of top-level appointed positions in the civil service sys-

tem and an increase in the cost of these top-level positions. In sum, Mr. Chairman, we are seeing a so-called reform measure transform 3 full-time positions, and 3 very much part-time positions, into a total of 13 top-level, full-time positions, all at a higher pay level than currently. While it is tempting to try to restructure and prune back this prolif-

eration of top-level political appointees, this amendment only seeks to reduce the pay of these positions by one level, thus preventing the pay inflation in the bill.

Mr. Chairman, I am including at this point the following table of the proposed positions and the pay levels for them under the administration's proposal and also under the Senate bill:

COMPARISON OF COSTS FOR APPOINTED POSITIONS BETWEEN THE ADMINISTRATION PROPOSAL AND HEINZ AMENDMENT

| Administration proposal | Annual salary | Level | Senate amendment | Annual salary | Level |
|-----------------------------------|----------------|-------|-----------------------------------|----------------|-------|
| OPM: | | | OPM: | | |
| Director | \$57,500 | 2 | Director | 52,500 | 3 |
| Deputy Director | 52,500 | 3 | Deputy Director | 50,000 | 4 |
| Five Associate Directors | 250,000 | 4 | Five Associate Directors | 142,500 | 5 |
| Total | 360,000 | | Total | 245,000 | |
| MSPB: | | | MSPB: | | |
| Chairman | 52,500 | 3 | Chairman | 50,000 | 4 |
| Vive Chairman | 50,000 | 4 | Vice Chairman | 47,500 | 5 |
| Member | 50,000 | 4 | Member | 47,500 | 5 |
| Total | 152,500 | | Total | 145,000 | |
| Special Counsel | 50,000 | 4 | Special Counsel | 47,500 | 5 |
| FLRA: | | | FLRA: | | |
| Chairman | 52,500 | 3 | Chairman | 50,000 | 4 |
| Two members | 100,000 | 4 | Two members | 95,000 | 5 |
| Total | 152,500 | | Total | 145,000 | |
| Total for appointees | 716,000 | | Total for appointees | 582,500 | |

Amendment total for appointed positions (including Associate Directors) is 18.5 percent (\$132,500) less than Administration proposal.

Mr. Chairman, I will yield to the acting chairman if the gentleman would like to speak at this point.

Mr. UDALL. Mr. Chairman, I was going

Mr. STEERS. It is the gentleman's position that this job is so important that it is comparable to the Director of the Office of Management and Budget?

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

to rise in opposition to the amendment. If the gentleman will yield for that purpose, maybe we can save some time.

Mr. STEERS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I want to make a couple of points. The first point is that all of these positions are under compression now. These executive-level positions involved in this amendment are not going to get the October pay raise, in any event, so it has no practical application. The main opposition to the amendment, however, is that the scheduling of these positions in the different executive levels was done by the administration when they drafted the bill, so that positions of equal responsibility here in the new agencies we are creating would be equivalent to those of other agencies. For example, the head of the Office of Personnel Management should be the same level, unless you are going to get out of the synchronized salary system, as the Director of the Office of Management and Budget. And so it goes with the new adjudicatory positions. They should be the same as the positions of the Federal Labor Relations Board, the National Labor Relations Board, and similar positions. This would knock them all out of comparability status with other similar positions in the Federal Government.

For that reason, the amendment is unwise, and I would oppose it.

Mr. STEERS. Mr. Chairman, if the gentleman will yield back my time, what is the OPM Director under the bill supposed to be paid?

Mr. UDALL. Level 2, which would be \$57,500.

Mr. UDALL. That is the position the administration took in drafting the bill. Frankly, I think we have grade creep in the whole Federal Government. I think all executive positions and generals and admirals maybe ought to go down one notch, but I am not sure the place to start is in this bill.

Mr. STEERS. Mr. Chairman, reclaiming my time, I would just say that the time to start will never arrive if it is continually postponed. I think we do have grade creep, and I commend the gentleman from Arizona for acknowledging the grade creep. I regret that he has accepted it by failing to support this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. STEERS).

The amendments were rejected.

AMENDMENTS OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HARRIS: Page 150, line 24, strike out "President shall from time to time designate" and insert in lieu thereof "Board shall, every 2 years, elect".

Page 151, line 3, strike out "President shall from time to time designate" and insert in lieu thereof "Board shall, every 2 years, elect".

Page 151, after line 8, insert the following new subsection:

"(c) Any vacancy in the Office of Chairman or Vice Chairman shall be filled, for the balance of the term in which the vacancy occurred, by a special election which shall be held at the first meeting attended by 3 members.

Mr. HARRIS. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

Mr. HARRIS. Mr. Chairman, this is another effort to try to make sure that we have a Merit System Protection Board that is independent of any President's manipulation. I think my colleagues realize how important it is—or perhaps they do not—to make sure that we have a Merit System Protection Board, no matter which way a President wants to go, no matter how bad the effect might be, that that Merit System Protection Board is standing there as a buttress against any intrusion on these merit principles we adopted in title I.

The way the bill is drafted, the chairman and vice chairman of the Merit System Protection Board can be designated by the President "from time to time." I think it makes eminently good sense, if we are going to have an independent board, to have them elect their own chairman and vice chairman. This is what this amendment does.

The amendment sets up a procedure, where there are vacancies, for those to be filled, and makes clear that the vice chairman fills those duties of the chairman when that office is vacant. I think it is important, Mr. Chairman, that we have in the bill a clear distinction here between an agency such as the Office of Personnel Management directly under the hand of the President, and an independent board such as the Merit System Protection Board. I think this amendment would make it clear that the board is, in fact, independent; that a chairman who may not be operating in accordance with the will of the President still will remain the chairman, and the President cannot change him or her simply because the President disagrees.

I hope my colleagues can distinguish in their minds the difference between the Personnel Board and the Merit System Protection Board. This Merit System Protection Board is supposedly independent; it is supposedly a bulwark against a President who may want to somehow intrude upon the merit system. That is the purpose of the board.

I hope my colleagues can adopt this amendment so that a chairman or vice chairman cannot, in fact, be disciplined by a President of he does not perform the way the President wants him or her to perform.

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the amendments.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. I will be as brief as possible, Mr. Chairman: I do wish, however, to commend my good friend from Virginia on his consistency—consistency in trying to undo what we are trying to do with this bill. This amendment takes the bill away from its main thrust. It ties the President's hands in an appointment area.

The President deserves this flexibility, and I would think that if Members wanted an orderly program for the Federal personnel system, if we want the proper concept of top level management responsibility, that would include appointment of this chairman by the President. I suggest, in keeping with the constructive goals of this measure, that this restrictive amendment be rejected.

which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles."

Page 146, line 18, strike out "(a) Notwithstanding" and insert in lieu thereof "(a) (1) Subject to subsection (b) (3) of this section and notwithstanding".

Page 147, insert after line 14 the following: "(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to ensure compliance with the civil service laws and regulations."

Page 152, after line 20, insert the following: "(e) The Merit Systems Protection Board shall submit its request for annual appropriations to the Office of Management and Budget and to the Congress."

Page 152, insert after line 17 the following: "(d) The Board shall conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

Page 145, line 16, insert "(a)" before "The following".

Page 146, insert after line 16 the following: "(b) (1) The Director shall publish in the Federal Register general notice of any proposed rule or regulation which affects any agency or its employees. Any such notice shall be in accordance with the notice requirements of section 553(b) of this title. Upon receipt of such notice of any proposed rule or regulation, the agency shall, under regulations which shall be prescribed by the Office of Personnel Management, post such proposed rule or regulation in such locations

title II, section 1104(2), and to insure that any such delegation by the Director does not relieve him of his responsibility to assure compliance with civil service laws and regulations, my second amendment specifically prohibits delegating to the agencies the ultimate responsibility of the Director of OPM for the execution, administration and enforcement of the Civil Service Act, other statutes, rules, and regulations of the President and the Office of Personnel Management.

My third amendment requires the Merit Systems Protection Board to submit its budget requests simultaneously to the Congress and the President, as is the case with the Consumer Product Safety Commission and the Federal Energy Regulatory Commission. Without this change, the Merit Systems Protection Board would be little more than a one-eyed watchdog tied by a very short leash to the White House.

The number and rapidity of changes contemplated by H.R. 11280 and Reorganization Plan No. 2 will make it virtually impossible for Congress to effectively oversee the Office of Personnel Management unless provision is made for an annual systematic review of the policies and program decisions and the compliance and enforcement actions of the Office of Personnel Management by the Merit Systems Protection Board. My fourth amendment would require such a review and would further require the Board to prepare annually a comprehensive report to the Congress as well as to the President on whether these policies, deci-

Mr. SOLARZ. Mr. Chairman, I rise in opposition to the amendment.

I will be very brief. The gentleman from Virginia is a good man but I am afraid that this is not a good amendment. In addition to the fact that the Merit System Protection Board is already effectively insulated from Presidential pressure by virtue of the fact that the members of the board are ineligible for reappointment and can only be removed for cause, this amendment constitutes a gratuitous slap at the President. I say this because the President is now permitted to appoint the chairman of almost every other regulatory body in the Federal Government, and it would be both unfair and unnecessary to deny him the right to appoint the chairman of the Merit System Protection Board as well.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. HARRIS).

The amendments were rejected.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer five amendments which I would like to have considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: Page 145, line 18, insert " , subject to section 1104 (a) of this title," after "or".

Page 147, line 5, strike out "service." and insert in lieu thereof "service;".

Page 147, after line 5, insert the following: "except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases in

of such offices of the agency as the agency finds reasonably necessary to ensure notice to the maximum number of employees affected. The issuance of any such rule or regulation shall be in accordance with the rule making requirements of section 553(c) of this title. Any such rule or regulation shall be published in the Federal Register at least 60 days before its effective date.

"(2) Paragraph (1) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency need.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, my first amendment prohibits the delegation of competitive examination authority for the positions common to agencies, except that there may be delegation when the positions are unique to agencies or in extraordinary circumstances in the interests of economy and efficiency.

In view of the sweeping authority entrusted to the Director of OPM and his ability to delegate such authority under

sions, and actions of the Office of Personnel Management are in accord with and contributing adequately to a civil service based on merit principles and free of prohibitive practices.

The last amendment requires the Director of the Office of Personnel Management to notify each agency consistent with the APA of any proposed rulemaking which affects such agency or its employees at least 60 days before the proposed rule or regulation's effective date. Upon receipt of the proposed rulemaking from the Office of Personnel Management, the agency must post the proposed rule or regulation in such locations within the agency to insure notice to the maximum number of employees affected.

Mr. Chairman, I urge my colleagues to adopt these five amendments.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the acting Chairman.

Mr. UDALL. Mr. Chairman, I have had an opportunity to review with the staff the amendments and, in the interest of saving time and finishing at a reasonable hour today, I would be pleased to accept the amendments.

Mr. GILMAN. I thank the gentleman from Arizona.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I studied the gentleman's amendments very carefully. I want to be sure of one thing on which the gentleman could reassure me. None of his amendments in

any way weaken the amendments adopted in the committee in the area of administrative law Judges; do they?

Mr. GILMAN. No. In fact, if anything they may enhance the authority.

Mr. DERWINSKI. Fine.

Mr. GILMAN. I thank the gentleman for accepting these amendments, which I assume the gentleman is willing to do.

Mr. DERWINSKI. Yes.

Mr. GILMAN. I thank the gentleman from Illinois.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 152, insert after line 17 the following:

"(d) (1) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management in carrying out its functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

"(A) invalid on its face, if the Board de-

dispensed with, that they be printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. FISHER asked and was given permission to revise and extend his remarks.)

Mr. FISHER. Mr. Chairman, the purpose of this amendment is to add a small bit to the protection of Government employees throughout the Merit System Board.

According to the bill, the Office of Personnel Management can issue rules and regulations on personnel matters even those pertaining to the Merit System Protection Board. This amendment simply says that the Merit System Protection Board can review any OPM regulation and if it violates a prohibited personnel practice, then it can overrule that regulation and prevent its going into operation.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, I am advised that the administration is willing to accept this amendment. I find it agreeable and I will support it.

Mr. FISHER. I thank my colleague.

I might add that this provision was also included in the Senate bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. FISHER).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. GILMAN

agement, and shall be performed by the Director, or by such employees of the Office as the Director designates—

"(1) recommending to the President for transmittal to Congress or the Commission such legislation or other measures as will promote an efficient civil service and systematic application of merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees;

"(2) appointing individuals to be employed by the Office;

"(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

"(4) directing the preparation of requests for appropriations and the use and expenditure of funds;

"(5) executing, administering, and enforcing—

"(A) the civil service rules and regulations of the President and the Commission the statutes governing the civil service; and

"(B) such other activities of the Office as usual in civil service administration;

"(6) investigating matters pertaining to the administration of functions of the Office or the Director; and

"(7) reviewing the operations under chapter 87 of this title.

"(b) The functions enumerated under subsection (a) of this section shall not include any function which is either reserved to the Commission or the Merit System Protection Board including, but not limited to—

"(1) the preparation of rules under section 1301 of this title;

"(2) the prescription of rules, regulations, or similar policy directives;

termines that such provision would, if implemented by any agency, on its face—

"(i) require any employee to violate section 2302(b) of this title; or

"(ii) is contrary to any merit system principle; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision—

"(i) has required any employee to violate section 2302(b) of this title; or

"(ii) has been contrary to any merit system principle.

"(3) (A) The Director of the Office of Personnel Management, and any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(B) Any review conducted by the Board pursuant to this paragraph shall be limited to determining—

"(i) the validity on its face of the provision under review; and

"(ii) the validity on its face of the provision under review has been validly implemented.

"(C) The Board shall require any agency—

"(i) to cease compliance with any provision of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been so invalidly implemented by the agency.

Page 152, line 18, strike out "(d)" and insert in lieu thereof "(e)".

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be

Mr. GILMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 144, strike out line 6 and all that follows down through line 8 on page 149 and insert in lieu thereof the following:

Sec. 201. (a) Title 5, United States Code, is amended by adding after chapter 9 the following new chapter:

"CHAPTER 10—OFFICE OF PERSONNEL MANAGEMENT"

"Sec.

"1001. Office of Personnel Management.

"1002. Directors; Associate Directors.

"1003. Functions of the Director.

"§ 1001. Office of Personnel Management

"The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal which shall be judicially noticed and shall have its principal office in the District of Columbia, but it may have field offices in other appropriate locations.

"§ 1002. Director; Associate Directors

"(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. No person shall, while serving as Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or by the President.

"(b) There may be within the Office of Personnel Management not more than four Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director. Such appointments may be made without regard to the provisions of this title governing appointments in the competitive service.

"§ 1003. Functions of the Director.

"(a) The following functions are vested in the Director of the Office of Personnel Man-

"(3) the hearing or providing for the hearing of appeals, including appeals with respect to examination ratings, veterans' preference, racial and religious discrimination, disciplinary action, performance ratings, and dismissals, and the taking of final action on these appeals."

(b) (1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management."

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Associate Directors of the Office of Personnel Management (4)."

(c) (1) Section 1104(a) of title 5, United States Code, is amended by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

(2) Section 1302 of such title is amended—

(A) by striking out "control, supervise, and preserve the records of," in subsection (a);

(B) by striking out "and enforce" in subsection (b); and

(C) by adding at the end thereof the following new subsection:

"(e) The Commission, subject to the rules prescribed by the President under this title, shall have authority to issue such regulations as necessary to prescribe general policy relating to the civil service laws. The Office of Personnel Management shall be guided by such policy in carrying out its functions under this title."

(d) (1) The United States Civil Service Commission, as constituted under chapter 11 of title 5, United States Code, prior to the transfer of its functions under section 101 of Reorganization Plan Numbered 2 of 1978, is continued as an agency of the United States, except that of the first members appointed after the date of the enactment of this Act, one shall be appointed for a term of 2 years, one for a term of 4 years, and one

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for a term of 6 years, each such term expiring on March 1 of an odd-numbered year. Thereafter, members shall be appointed as provided under such chapter 11.

(2) If transfer of any function under such section 101 of such reorganization plan is inconsistent with the provisions of this section, such transfer is superseded by this section.

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York (Mr. GILMAN)?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, conforming to the wishes of the House which obviously desires the retention of the Office of Personnel Management, I am offering this amendment which establishes an Office of Personnel Management as an independent establishment in the executive branch structured basically as it is in this legislation before us and in the Reorganization Plan No. 2. However, the amendment further provides for the continuation of the U.S. Civil Service Commission, as formerly constituted, except for certain specified changes in the terms of the Commission.

The Commission, subject to the rules prescribed by the President, shall continue to enjoy the authority to issue such regulations as necessary to prescribe

Civil Service Commission or the Merit System Protection Boards.

The 95-year-old civil service system is not without faults; it has gone through many changes to overcome weaknesses as they have been identified. But abolishing bipartisan personnel policymaking will not correct any of these flaws. Nor will it improve the quality and performance of the civil service system or increase the public's confidence in it. None of the civil service problems identified by the administration as reasons needed for reform would be solved by having personnel policies made by one person. No rational case has been made for abolishing policymaking by a bipartisan body, while the advantages of having a bipartisan policymaking body are obvious.

This division of personnel policymaking from its execution will serve to deter the creation of a civil service czar, and at the same time, insure the continuation of bipartisan policymaking.

Mr. Chairman, I move my amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

This amendment, Mr. Chairman, would drastically distort one of the purposes of the bill.

We have already agreed in connection with the reorganization proposal that we are going to break up the dual functions now handled by the Civil Service Commission. The adjudicatory judicial function of protecting the merit system which we have will be lodged in the Merit System Protection Board. The personnel

any administrative law judge appointed by the Board under section 3105 of this title may—

“(A) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, and

“(B) take or order the taking of depositions and order responses to written interrogatories.

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, I think this is also an important change to be made with regard to the subpoena power that we give a Government agency, and I think it touches upon many other actions which we have taken in the past with regard to subpoena powers given to various Government employees.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, if the gentleman will save us 5 minutes by not explaining the amendment, I am prepared to accept it.

Mr. HARRIS. Mr. Chairman, since I tried to explain the amendment to members of the committee and since my

general policy relating to the Civil Service laws.

The power to make personnel policy includes the power to interpret the laws; to decide the policies for authorizing exceptions to certain laws; to make the policies which determine how job applicants shall be ranked for employment consideration; to take positions out of the competitive service so they can be filled by political cronies; and to set aside almost all civil service laws in demonstration projects that would affect many thousands of individuals. The citizens of the United States would have far greater confidence in the wisdom and impartiality of such policies if they were made by a bipartisan body. This is, of course, the primary reason for having established the bipartisan Civil Service Commission in the first place.

The Office of Personnel Management shall be guided by the policy prescribed by the Commission in carrying out its functions specified in section 1003 of my amendment. The Director of OPM will be vested with the authority to recommend to the President legislation under title 5; directing the preparation of requests for appropriations and the use and expenditure of funds; the execution, administration, and enforcement of the civil service rules and regulations of the President and the Commission and the statutes governing the civil service; and the investigation of matters pertaining to his functions.

The functions enumerated under section 1003, however, shall not include any function which is either reserved to the

management function will be headed up by the director of the OPM.

Now comes this amendment by the gentleman from New York (Mr. GILMAN), which transfers the authority to make personnel policy and to manage that policy from the President's personnel manager, the Director of OPM, to this three-headed judicial body.

It simply guts the authority of the President's personnel policy adviser and places it in the hands of an unresponsive personnel board.

That is exactly what we have been trying to get away from in this bill.

Mr. Chairman, adoption of this amendment would be a major mistake, and I urge the rejection of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. GILMAN).

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The clerk read as follows:

Amendment offered by Mr. HARRIS: Page 151, strike out line 18 and all that follows down through line 5 on page 152, and insert in lieu thereof the following:

"(a) (1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, and receive evidence.

"(2) Any member of the Merit Systems Protection Board, the Special Counsel, and

chairman apparently now understands the amendment, I will give it no further explanation and ask for a vote.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, the gentleman from Virginia (Mr. HARRIS) is now exploring his great success with respect to this amendment.

Perhaps we could have an understanding whereby he would just henceforth offer amendments that are acceptable and would drop all of those which are not acceptable. In that case we could really move this afternoon.

Mr. HARRIS. Mr. Chairman, I say to my colleague that apparently that is basically the system we are operating under right now except for the gentleman from Virginia, who has always been known as a man who fights for principles, whether they are acceptable or not at the time.

Mr. DERWINSKI. I am thinking more of this great civil service reform and of the fact that down in the gentleman's noble heart, he knows we are pursuing the proper course for our country.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENTS OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer two amendments.

The Clerk read as follows:

Amendments offered by Mr. CLAY:

On page 185, line 7, insert the following after "(42 U.S.C. 2000e-16)": "the Equal Pay Act of 1963 (29 U.S.C. 206(d))."

On page 187, line 17, insert after the word "followed" the following: ", except that in a case of discrimination brought under 42 U.S.C. 2000e-16(c), 29 U.S.C. 639a(c), or 29 U.S.C. 216 and 217, the proceeding shall be de novo."

Mr. CLAY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Chairman, these amendments are precisely the same as the two I offered this morning which were accepted.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

We have studied these amendments, and they are acceptable. I urge that they be adopted.

Mr. CLAY. I thank the gentleman.

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Missouri (Mr. CLAY).

The amendments were agreed to.

The CHAIRMAN. Are there other amendments to title II?

Mr. CLAY. Mr. Chairman, I thank the gentleman, I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. BOLAND: On page 155, line 9, strike "information which" and insert in lieu thereof: "information, other than foreign intelligence or counter-intelligence information the disclosure of which is specifically prohibited by law or by executive order, which".

On page 159, after line 5, insert the following new paragraph:

"(9) In any case under paragraph (c) (1) (B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by executive order, or in any case in which the Special Counsel, in consultation with the head of an agency under paragraph (d) (3) of this section, determines that information involved is prohibited from disclosure by law or by executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

On page 160, line 19, strike "paragraph," and insert in lieu thereof: "paragraph, except that prior to including any information in a public list, the Special Counsel shall consult with the head of the agency in-

rule, regulation or any mismanagement or abuse by an officer or employee of the Government. The jurisdiction is very wide and the purpose of this amendment is to quarrel with only one part of it.

It seems to me that when matters involving classified intelligence information are involved, then the Special Counsel ought not to be involved. The various intelligence agencies presently have Inspectors General. There is a Presidentially created Intelligence Oversight Board and in addition, there are the oversight committees of Congress, including the Permanent Select Committee on Intelligence, which have, and ought to exercise, jurisdiction in matters that involve improprieties but which also concern intelligence information.

Mr. Chairman, section 1206 of the bill does exempt classified information from consideration by the Special Counsel in some circumstances. However, it does not in others. To be specific, if there has been a disclosure of classified information in the newspapers or in some other public form, then the Special Counsel is not involved. If, however, disclosure by an employee or applicant has been to a specific Inspector General or, indeed, to the Special Counsel himself, then the Special Counsel may investigate.

Mr. Chairman, the Special Counsel may investigate the most sensitive kinds of intelligence information. Further, the bill requires that when the Special Counsel determines that there ought to be an investigation, he should transmit that recommendation to the head of the

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer a fifth amendment. I thought it was coming up under title III.

The Clerk read as follows:

Amendment offered by Mr. CLAY: On page 187, strike lines 7 through 13, and insert the following in lieu thereof:

"(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, of title 28 except that cases of discrimination shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)) under section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216 and 217), as applicable. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board."

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. CLAY. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Chairman, this is a technical amendment which improves the bill and is acceptable.

involved to determine if any of the information to be contained therein is prohibited from disclosure by law or by executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, in which case the information shall not be included in such a public list."

On page 161, line 7, strike "title;" and insert in lieu thereof: "title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by executive order."

Mr. BOLAND (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BOLAND. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BOLAND. Mr. Chairman, as we all know, this bill creates a Special Counsel. The Special Counsel has the responsibility and the authority to receive allegations, to investigate allegations and to assess any corrective action taken with regard to allegations which are made to him. These allegations may be about prohibited personnel practices as defined by the bill, but they may also include any possible violation of law,

agency involved and require the head of that agency to conduct an investigation about the allegation and submit a written report to him, the Special Counsel, and to the General Accounting Office. Further, the Special Counsel is required to publish a public list of matters which have been referred to the heads of agencies.

These provisions give me pause. I can understand very well the reasons which have convinced the committee that there ought to be a Special Counsel to investigate the allegations of whistle blowers. Indeed, that may be a very healthy thing to have within a civil service system like our own. I think allegations of impropriety, no matter by whom they are alleged to have been committed, ought to be investigated. The question, of course, is who is the proper authority to investigate them? When national security information is involved, it is my strong feeling, and that of the President and the intelligence agencies, as well, that the proper authorities to investigate these allegations are the Inspectors General which have been created in the intelligence agencies.

These Inspectors General have the ability and the authority to investigate any impropriety brought to their attention and they are required by Executive order to bring any activities which they deem indeed to be improper to the attention of the Intelligence Oversight Board. This Board, which has been in operation for some years, has the duty of investigating such matters and making its recommendations to the Presi-

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dent. In addition, any actual or probable violations of law must be brought to the attention of the Attorney General.

Beyond this, the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate are, and have been, exercising continuing oversight over all intelligence agencies—with a particular emphasis on any improprieties or illegalities. These committees require and will receive under these amendments reports detailing any possible improprieties or illegalities from the Special Counsel in those cases which he is precluded from investigating. The committees will then conduct investigations of their own.

Mr. Chairman, the intelligence agencies are already explicitly exempted from the mandatory applicability of merit system principles established in title I of this bill. As originally introduced, this legislation limited the scope of the Special Counsel's authority to investigation of allegations of prohibited personnel practices. In expanding the authority of the Special Counsel, the committee has exempted intelligence agencies in some respects, but not in others from investigations conducted by the Special Counsel. This seems to me to be inconsistent with the exemptions found in title I and those partial exemptions contained in section 1206. It seems to me that this confusion of purpose is ill considered. I believe the House should focus on the inconsistencies in the bill and I believe it should agree to delete intelligence agencies from the coverage

recommendations without fear of reprisal can be very effective if they work within the agencies and they themselves hold very closely the information which they gather in the pursuit of their investigations.

Mr. Chairman, I do not wish to impune the patriotism or the professional integrity of those who will occupy positions in the Office of the Special Counsel. I feel very simply, however, that there is danger in expanding access to classified intelligence information which can be of the most sensitive nature through the Office of the Special Counsel. I do not feel that it was carefully considered. I do not feel, nor do the responsible intelligence officials, that it provides for the safeguarding of the kind of information that may be involved and finally, I am concerned about further discussion in the public forum about classified intelligence information.

I suggest that the best course at this point is to exempt from the provisions of this bill all intelligence information or any allegations which might involve such information. This is the action which the Senate has taken, it is to me the most prudent course and at the same time, it does no violence to the jurisdiction to the Special Counsel as recommended by the committee. He is still empowered to look into any and all allegations of improprieties or illegality except those which may involve intelligence information.

I should note to the members that I have drafted these amendments in such

their jobs. I am certain that the Members of this House will recognize that the Senate Select Committee on Intelligence, which has now been in operation for some 2½ years, has done a fine job in considering many aspects of the intelligence business. The Permanent Select Committee on Intelligence, which I chair, has been in this business for only a year. I can report to the Members of the House that we are doing as careful and as considered a job of oversight as we can. We will continue to do so. That, it seems to me is the way to go. The procedures of this bill are neither crafted for, nor were they carefully considered in light of, the kind of sensitive intelligence information that might be the subject of allegations brought before the Special Counsel. I therefore urge that such information not come within the jurisdiction of this Special Counsel.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Chairman, I have studied the amendments. We modified them a little bit following our discussion, so they are acceptable to us, and I am told the administration finds that they are acceptable as well.

Mr. BOLAND. I thank the gentleman from Arizona.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I am very pleased to

of the bill completely.

Mr. Chairman, the question of whether or not intelligence information would be subject to review by the Special Counsel was a topic not covered in hearings before the Committee on Post Office and Civil Service. Admiral Turner, the Director of Central Intelligence, and other intelligence officials did not have an opportunity to testify on this matter. They, understandably, are very concerned about its application. They are concerned not because they wish to avoid investigations of improprieties or illegalities but simply because they wish to assure the absolute confidentiality and inviolability of the kinds of information that may be involved in such investigations. They feel, as do I, that current investigatory machinery, such as the Inspector General, the Intelligence Oversight Board and most particularly the congressional oversight committees, are more than adequate to perform the task.

The classic rule of intelligence is that the fewer people know a secret, the safer that secret remains. That is why intelligence information is so closely guarded. That is why the two intelligence committees are as careful as they are in the selection and screening of their staff and in the procedures under which they handle classified material.

Mr. Chairman, the job of legitimate, responsible congressional oversight can be done under these circumstances. Within the intelligence agencies, watchdog institutions like Inspectors General who have independent authority to perform their investigations and make their

a way as to exclude only intelligence information. I should also note that the amendments would have the effect of preventing classified information from being disclosed in the public list which is also referred to within this section. Finally, the amendments make a qualifying change to that part of section 1206 which refers to other authorities of the Special Counsel.

Specifically, the amendments make clear that where the Special Counsel has authority under the Freedom of Information Act, it preserves the authority currently exercised by the Civil Service Commission. This last change, Mr. Chairman, in my understanding, merely clarifies the intent of this legislation and is not inconsistent with the intent of the committee in offering this bill.

Mr. Chairman, let me just close with this assurance to the Members. The intent of these amendments is not to preclude the raising of complaints or allegations about improprieties or illegalities within our intelligence community. It is not to prevent such allegations reaching the surface. Rather, it is intended to insure that they are considered under procedures which have been adopted to handle such allegations. These procedures can also safeguard any sensitive, classified intelligence information which may be the subject or somehow involved with such allegations.

It seems to me the best course to exempt the intelligence agencies from the authorities of the Special Counsel. It seems to me that no case has been made that the Inspectors General and the Intelligence Oversight Board are not doing

yield to my friend, the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

Anything that is acceptable to the administration is acceptable to us.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Massachusetts (Mr. BOLAND). The amendments were agreed to.

AMENDMENTS OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. LEVITAS: On page 168, strike line 13 and insert: "such employee's position, which shall include, but not be limited to conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct."

On page 175, strike lines 9 and 10 and insert: "Fourteen days or less for such cause as will promote the efficiency of the service, including conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct."

On page 179, strike lines 10 and 11 and insert: "by this subchapter against an employee for such cause as will promote the efficiency of the service, including for conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct."

Mr. LEVITAS (during the reading). Mr. Chairman, first, I ask unanimous consent that the two other substantially identical amendments to title II be considered as read, printed in the RECORD, and that all the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. LEVITAS. Mr. Chairman, first of all, I would like to take this opportunity to state that I consider this legislation not only to be the centerpiece of the President's reorganization program, but I consider it to be an extremely important and long-overdue reform in government and improvement in the civil service. It is this bureaucracy that deals directly with the people, that implements the policies of the administration and of this Congress, and unless the civil service is the proper tool which it should be to effectively carry out these purposes, then we not only frustrate the policies of our Government, but we generate the type of public cynicism and disrepute of Government that frequently has been true in the past. That attitude undermines the effectiveness of the decisions made by the administration and by this Congress. That attitude is cause of lack of confidence in our Government and is the cause of lack of respect for our Government by the people of the United States.

Mr. Chairman, I want to commend the the chairman of the subcommittee, as well as the ranking minority Member,

ness and discourtesy creates more problems for our Government and for the civil service, perhaps, than some of the large decisions we so frequently hear about.

What this amendment does is this: it defines as "unacceptable performance" in the appropriate section of title II so that the definition of "unacceptable performance" includes a pattern of recurring discourtesy to the public. This definition would give a very clear mandate to the rulemakers and administrators that this is important to the American people and to this Congress to eliminate unprovoked discourtesy by federal employees. I think it will do a great deal to remove some of the problems which the few bad apples in the barrel create for others and will do more to make those good, dedicated public servants recognize that there are people in Government who stand behind them.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I have not seen the amendments until a moment ago. If the gentleman is going to make a record that the Congress is going to say that discourteous treatment to the public involving a pattern of repeated instances could be a ground for discipline, I do not see how anyone could quarrel with that.

I can see how it can be used mischievously by supervisors if we are not careful with the way it is administered.

TITLE III—STAFFING

VOLUNTEER SERVICES

Sec. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3111. Acceptance of volunteer service

"(a) For the purpose of this section, 'student' means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if the individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the United States if the service—

"(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for students;

"(2) is to be uncompensated; and

"(3) would not, under the facts and circumstances involved, be performed by an employee in the absence of voluntary service under this section.

"(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee

for the truly outstanding way in which they have handled a most difficult bill.

The overwhelming number of employees of the Federal Government are loyal, hard-working, dedicated people, who seek to serve the public and, indeed, they are public servants in the best sense of the term. There are some few, however, and they are very few, indeed, who do not realize they are servants of the public. As a result, they do not act toward the public in encounters with them as public servants should. Too often they treat citizens with unconcern, arrogance, slowness, callousness, and plain rudeness. In short, they treat the public with discourtesy.

The amendments which I offer would make it very clear that under the new procedures relating to the civil service and accountability, where there are provisions made for performance appraisal, where there are provisions made for disciplining employees who fail to meet those standards, that one of the specific matters which shall be taken into account is the question of discourtesy to the public, discourtesy by public servants to the public they should be serving.

Some may say, "Well, this is so trivial, this is such an unimportant item when we are dealing with all these great decisions, why should we be troubled by something like rudeness or discourtesy?"

Well, I suggest that most Americans, the millions and millions of Americans who have to deal with public servants, deal with them on a one to one basis. The frustration and the anger and the embarrassment that result from rude-

There is nothing in the Senate bill on this, but we can take a look at it in the conference.

Mr. Chairman, I personally think it is a good idea for the Congress to go on record in support of this basic principle.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman, and I want to say I think it would do a great deal to strengthen the civil service reform and the public's regard for public employees.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I wish to go beyond the immediate language of the gentleman's amendments and point out that those of us on the committee who worked hard to produce this bill appreciate the kind of interest and support and understanding we are getting on the floor.

This is a complex measure, and I believe all the Members appreciate the fact it is the public who will be better served if we write a good bill on the floor this afternoon.

Mr. Chairman, I thank the gentleman from Georgia (Mr. LEVITAS) for offering his amendment.

The CHAIRMAN pro tempore (Mr. BOLLING). The question is on the amendments offered by the gentleman from Georgia (Mr. LEVITAS).

The amendments were agreed to. The CHAIRMAN pro tempore. Are there other amendments to title II?

If not, the Clerk will read.

The Clerk read as follows:

for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims)."

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item: "3111. Acceptance of volunteer service."

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

SEC. 302. Section 2108 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by inserting in paragraph (3) after "means" the following: ", except as provided in paragraph (4) of this section";

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(4) except for the purposes of chapters 43 and 75 of this title, 'preference eligible' does not include a retired member of the armed forces unless—

"(A) the individual is a disabled veteran;

or
"(B) the individual retired below the rank of major or its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member."

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Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. SOLARZ: Page 209, insert after line 12 the following new section:

COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

SEC. 313. (a) Subchapter V of chapter 55

Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLARZ. Mr. Chairman, these amendments have the support, I believe, of the majority and the minority managers of the bill. I know they have the support of the administration and of all the relevant Federal employee unions.

These are in fact amendments which were adopted by voice vote a few months ago on the floor of the House when I offered them as amendments to the flex-time bill. The only reason I am offering them now is that, in spite of the fact the flex-time bill to which these amendments were attached was reported out of both the Committee on Government Operations and the Human Resources Committee in the Senate, it now appears that legislation is caught up in a parliamentary and political tangle, and even though there is no objection to it in the Senate, the bill may not actually come up for a vote on the floor of the other body.

These amendments, in brief, would provide that any Federal employee who is obligated to take time off from work for religious reasons will be permitted to make up for it by working overtime on a voluntary basis without having to be paid at the overtime rate in the process. Under existing law, Federal employ-

hours as compensation for the time taken to practice religious beliefs.

Mr. Chairman, I urge my colleagues to support these worthy amendments.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I thank the gentleman for his leadership on this matter, and I support the amendments.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I am pleased to support the gentleman's amendments.

Mr. Chairman, I would like to commend the gentleman from New York (Mr. SOLARZ) on his amendment and, I emphasize that it has been carefully drafted to avoid any constitutional problems. This was the principal concern of the Civil Service Commission. Therefore, this is a practical amendment which meets the interest of those individuals who do have such religious beliefs and who otherwise have been faced with complications.

This amendment was unanimously approved earlier by the House in passing H.R. 7814, the flexitime bill.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from New York (Mr. SOLARZ).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. HANLEY

of title 5, United States Code, is amended by adding at the end thereof the following new section:

"5550a. Compensatory time off for religious observances

"(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

"(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

"(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved."

(b) The analysis for chapter 55 of title 5, United States Code, is amended by adding after the item relating to section 5550 the following:

"5550a. Compensatory time off for religious observances."

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Page 129, in the table of contents, strike out the item relating to section 313 and insert in lieu thereof the following:

Sec. 313. Compensatory time off for religious observances.

Sec. 314. Effective date.

Mr. SOLARZ (during the reading).

ees who are obligated to take time off for religious reasons must either make up for that time through a reduction in leave time, thereby significantly reducing the amount of time they have to spend with their families, or through a reduction in pay.

Mr. Chairman, I would submit that current law in effect penalizes Federal employees who choose to adhere to the dictates of their religion. This amendment, on the other hand, would make it possible for all Federal employees to observe the tenants of their religion without being penalized for it in the process. And that, I would submit, is what America is all about.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to my friend, the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman from New York (Mr. SOLARZ) for having focused attention on this problem at recent hearings in New York City which were conducted by the gentlewoman from Maryland (Mrs. SPELLMAN) and her Subcommittee on Compensation and Employee Benefits, during which hearings we found an obvious need for legislation of this nature to assist those who wish to pursue their religious observance.

This amendment provides Federal employees the opportunity to take time off for religious observance while at the same time enabling those Federal employees who make such an election an opportunity to opt to work additional

Mr. HANLEY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HANLEY:

Page 190, line 3, strike out "Section 2108" and insert in lieu thereof "Effective beginning October 1, 1980, section 2108".

Page 192, strike out line 3 and all that follows down through page 195, line 9.

Page 195, after line 9, insert the following section heading:

"APPOINTMENTS"

Page 195, line 10, strike out "(g)" and insert "Sec. 304." in lieu thereof.

Page 196, strike out line 11 and all that follows down through line 5 on page 199.

Page 199, line 7, strike out "306" and insert in lieu thereof "305".

Page 200, line 10, strike out "307" and insert in lieu thereof "306".

Page 200, line 13, strike out "308" and insert in lieu thereof "307".

Page 200, line 23, strike out "309" and insert in lieu thereof "308".

Page 201, line 19, strike out "310" and insert "309" in lieu thereof.

Page 203, line 3, strike out "311" and insert "310" in lieu thereof.

Page 206, line 5, strike out "312" and insert "311" in lieu thereof.

Page 209, strike out line 13 and all that follows down through line 20.

Conform the table of contents accordingly.

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

[Mr. HANLEY addressed the Commit-

tee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendments offered by the gentleman from New York (Mr. HANLEY) and to commend him for his leadership on this issue.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I do not intend to repeat today the same arguments that I put forward earlier on behalf of my colleague's amendment when it was first considered by the Post Office and Civil Service Committee. Nor do I intend to restate my views on veterans preference which were expressed in the committee report accompanying H.R. 11280.

Under existing law, a veteran (which generally means an honorably discharged individual who has served in the Armed Forces on active duty during a period of war or armed conflict, or in an area for which a campaign badge is authorized, or for a period exceeding 180 days any part of which occurred between January 31, 1955, and October 31, 1976, and in certain cases the spouse or mother of such a person) is entitled to appointment and retention preference in the competitive service. Preference is given by adding 5 points to the passing score of an applicant entitled to preference, but an applicant who is disabled on account of his military service received 10

disability incurred as a direct result of armed combat will continue to have full preference. Others retired will have no preference, as is the case under existing law, 5 U.S.C. 3501(a) (3) (A). All other individuals entitled to retention preference will have retention preference for a period of 8 years following their separation from the military service.

Permit me, however, to summarize the arguments set forth in behalf of this amendment that were circulated to you in my "Dear Colleague" letter of August 11, 1978.

First. The Schroeder amendment does not aid Vietnam-era veterans seeking Federal employment.

The administration would have you believe that their amendment to title III would mean a substantial gain in Federal employment for the Vietnam-era veterans. Regrettably, that will not be the consequence of the committee's action.

It is contended that Vietnam-era veterans would benefit from the Schroeder compromise amendment because it would limit the use of veterans' preference for nondisabled veterans to 15 years following discharge or upon appointment to a permanent civil service position, whichever occurs first. This would, of course, lead you to believe that the number of older veterans competing for jobs against younger veterans would be diminished, thereby affording the more youthful veterans less competition, and correspondingly, more employment. Again, this is not correct.

that veterans' preference has hurt neither the promotion system nor the quality of the civil service. What faults that do exist in the civil service are inherently the problem of the system itself and the way it is being administered and cannot be laid at the doorstep of preference eligibility rights.

Third. Veterans' preference does not apply to promotions.

Under existing civil service law, disabled and nondisabled veterans receive preference in examination, appointment, and retention. In examination, nondisabled veterans have 5 credit points and disabled veterans have 10 credit points added to their passing scores. It should be noted that veterans must have recorded a passing grade before any credit points are added. Veterans, as with other nonveterans taking civil service examinations, must qualify first. After appointment, veterans may not utilize preference eligibility rights to advance their grades except in limited circumstances where there is a transfer to another job series.

Fourth. Retention preference for veterans is not absolute.

Mr. Arch S. Ramsay, Director of the Civil Service Commission's Bureau of Recruiting and Examining testified before the Committee on Post Office and Civil Service, earlier in 1977 and said:

In retention, veterans have the right to be retained over competing nonveterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans preference, performance rating, and length of service. Although, this

points, and an applicant who is disabled and is receiving compensation from the Veterans' Administration because of such a disability is entitled to 10 points and automatically rises to the top of the civil service register of eligibles. A preference eligible may not be passed over to select a nonpreference eligible unless the Civil Service Commission approves the appointment. For retention purposes, all preference eligibles are retained within their competitive group during a reduction in force until all nonpreference eligibles have been displaced.

The committee has amended the bill to modify veterans' preference in the following manner:

In the case of any individual who is retired from the Armed Forces on account of physical disability, no change is existing law is proposed. These individuals will continue to enjoy lifetime veterans' preference for both appointment and retention.

In the case of an individual retired at the rank of major or its equivalent except a disabled veteran, appointment preference for a period of 3 years following his separation from the military service.

In all other cases, individuals who under current law have preference on account of military service, will have appointment preference for a period of 15 years following separation from the military service or until appointed to a permanent position in the civil service, whichever occurs first.

For retention purposes in reductions in force, individuals retired for physical

First, veterans of prior conflicts, the youngest now being in his early forties, would have already exercised their preference eligibility rights, at least those intending to do so, and having successfully sought Federal employment, may not utilize preference eligibility rights to advance their civil service status except for transfers into a different job series. Second, nondisabled veterans whose service commenced on or after October 15, 1976, are not entitled to five-point civil service preference, in accordance with the provisions of Public Law 94-502, the Veterans Education and Employment Act of 1976. Thus, Vietnam-era veterans will still be competing for entry level positions in the Federal Government against other Vietnam-era veterans and nothing done by this committee will change that. There will still be too few jobs available for the number of veterans applying for them.

Second. Veterans preference has far less impact on the employment of non-veteran minorities and women in the Federal Government than the Carter administration would have the public—and Members of Congress—believe.

With few exceptions, the witnesses appearing before our committee have argued for the retention of veterans' preference, and those who did not, failed to produce any statistical material or to demonstrate convincingly that preference eligibility discriminates against women or minorities. In fact, the minority groups that have testified before our committee pleaded for the retention of veterans' preference.

What we have learned, however, is

gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade.

Fifth. Another matter that should be put into perspective is how veterans are distributed within the Federal Government, for to say that "veterans comprise 50 percent of the Federal Service" may give the impression that that ratio holds true "across the board." In fact, more than 75 percent of the veterans in Federal service are employed by three agencies: The Department of Defense, the U.S. Postal Service, and the Veterans' Administration. Veterans thus account for only 37 percent of the Federal jobs outside those three agencies. That is a significant figure, but it is considerably lower than the ratio of veterans in the full-time national work force.

Sixth. The danger to veterans' preference eligibility rights posed by the administration's amendment is further compounded when we consider that veterans' preference and the system under which those scoring highest on examinations are to be appointed is today widely evaded. The agencies disregard the registers, job descriptions are rewritten, veterans are passed over, and those jobs supposed to be reserved for veterans under section 3310 of title V as guards, elevator operators, messengers, and custodians have upon the whole been contracted out.

Seventh. It has been the traditional philosophy in this country, that those

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who were ordered to serve their Nation in the Armed Forces in time of war should be preferred to serve their Nation in a civilian capacity when qualified. Removal of this preference is a matter that goes beyond any question of "flexibility," greater employment of other groups, or like concerns. It is really a question of whether this is a country that feels free, in time of national emergency, to call upon its very best to serve in its Armed Forces and face death, injury, disruption of normal life, and all the other conditions of that service, and after service to their country, to then discard them as veterans, to announce they must compete "as equals" against all nonveterans, except for such nonveterans as may be given preference in recruiting, examination, and selection.

Accordingly, I urge your support for the Hanley amendment.

PERFECTING AMENDMENT OFFERED BY MR.
BONIOR

Mr. BONIOR. Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Perfecting amendment offered by Mr. BONIOR: Page 192, after "(A)" insert "(1)".

Page 192, line 17, after "armed forces, or" insert "(1) if later, December 31, 1985, but only if the individual's service in the armed forces on or after August 5, 1964, is the basis for awarding the Vietnam Service Medal or the Armed Forces Expeditionary Medal for Vietnam; or".

Mr. BONIOR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

their preference for other State jobs dropped significantly.

Second, many early Vietnam veterans may have put off a decision on whether or not to enter the civil service. Under the bill's current provisions, some would have as few as 2 years to use their preference.

With my amendment, all Vietnam theater veterans have a minimum of 7 years preference.

Further, the VVIC, of which I am a member, is attempting to obtain an extension of the delimiting date for the GI bill education benefits of those whose benefits may have expired before the large increases of late 1973 made them viable. This amendment would assure those veterans their 4 years of college, or other training, with time remaining to use their preference.

Mr. Chairman, I commend the chairman of the Veterans Affairs Committee, Mr. ROBERTS, and his predecessor, Mr. TEAGUE, and members of the Veterans' Affairs Committee for the fine work they have done in providing for our older veterans. This country does owe a special debt to its veterans and theirs is a system without equal in the Western world. But it is also a system that has not met the needs of the Vietnam veteran.

Time and again, Vietnam veterans have told us "all we want is what our father had." Specifically, what was it that their fathers had.

They were given a veterans preference in which they alone participated.

They were given Veterans Home Administration loans much more consistent

normal activities without having any special consideration shown to them.

Yet, some of our older vets have had the use of their preference for over 30 years. Today 1 out of 2 Federal employees is a veteran, but only 1 out of 10 is a Vietnam-era veteran.

Although the 8½ million Vietnam-era veterans are nearly one-third of the 30 million total veterans Vietnam era veterans hold only 18 percent of the Federal jobs held by veterans in the civilian work force. This is not because Vietnam era veterans do not want Federal jobs, but because even with preference they cannot compete with the more experienced, older veteran who also enjoys lifetime preference.

A look at the Federal new hires illustrates the difficulties younger veterans have in competing for jobs. In 1977, there were 448,000 new hires in the Federal Government, of which 151,000 were veteran new hires. Of these, 47 percent were pre-Vietnam era career military, 11 percent veterans. Thus, out of 151,000 veterans hired, only 57,000 of these veterans were Vietnam-era veterans.

Further, a significant number of older veterans exercise their preference more than once further limiting the opportunities for younger veterans, existing provisions permit unlimited use of veterans preference. A broad Civil Service Commission survey found that 23.2 percent of 3,500 veterans on registers were current or former Federal employees. This survey drew upon three Federal regions and the Washington area.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

(By unanimous consent, Mr. BONIOR was allowed to proceed for an additional 3 minutes.)

The CHAIRMAN. The gentleman from Michigan (Mr. BONIOR) is recognized for 8 minutes.

(Mr. BONIOR asked and was given permission to revise and extend his remarks.)

Mr. BONIOR. Mr. Chairman, my amendment would provide more than 1.5 million Vietnam veterans with an extension of their preference. Simply put, veterans who served in the Vietnam theater between August 1964 and May 1975 would have 15 years from date of separation or until December 31, 1985, whichever occurs later, to use their preference. Vietnam theater veterans would thus have a minimum of 7 years to exercise their preference.

The question is asked: How would this help the Vietnam veteran? First of all, in sheer numbers and when taken in conjunction with the committee bill, the pool of veterans eligible for preference is diminished by 20 million people which, in and of itself, elevates the Vietnam veteran. When the pie remains the same size but those who partake diminish in number, the size of the shares are bound to increase. One needs only to look at Oregon which instituted this system in 1977. The data indicates the average age of veterans on the preference eligible lists dropped from 43 to 34. Further, competition from other veterans reusing

with the market, areas like Levittown were practically built with VA loans.

They were provided broad, small business loans.

They had hospital care second to none within the VA system.

They had psychological programs geared to their needs.

They were given full tuition benefits under the GI bill.

They were provided a sizable monthly stipend in addition to their tuition.

They have recently been voted a substantial pension which automatically declares them at 65 to be disabled and eligible for pension.

They had the full and enthusiastic gratitude and support of the Congress and the country.

Is not it about time that we turned our attention to those with the greatest readjustment needs?

Mr. HANLEY has stated his belief that veterans preference is a lifetime privilege. I understand his concerns and am convinced of his sincerity. However, it seems obvious to me from the language of President Roosevelt at the signing of the Veterans Preference Act that veterans preference was meant as a readjustment tool:

I believe that the Federal Government functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces, that when they return, special consideration will be given to them in their efforts to obtain employment.

It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the nation, and then expect them to resume their

We are told that older veterans are not block younger veterans, that they have already settled into careers, that the average age of the World War II vet is 58 and that of the Korean vet is 48 and they are, therefore, not interested in a civil service career. Then why are they so vehemently opposed to yielding their preference?

Opponents of our approach have mentioned Peace Corps and VISTA volunteers, people who also performed honest service to their country, will maintain their preference after vets lose theirs. What they do not mention is that these people are eligible for appointment for only 1 year after leaving ACTION service.

They have asserted that my amendment would adversely affect the families of MIA's and widows and orphans, that is simply not true. It does not affect their status.

They have also stated that 95 percent of Vietnam veterans support the Hanley amendment, a figure that certainly bears no relationship to reality. They have stated that all veterans organizations oppose the Bonior and Schroeder amendments despite the fact that we have the support of groups like the National Black Veterans Organization, the American Veterans Committee, the Council of Vietnam Veterans, and a majority of the Vietnam veterans in Congress, not to mention the Nation's No. 1 veteran, VA Administrator Max Cleland, who has given his endorsement to the committee approach and my amendment.

The Vietnam veteran is at a critical juncture in his life. He is 32 years old, married and has two children. In many cases, if they are not unemployed they are underemployed. VA statistics show that over 855,000 Vietnam veterans earn less than \$4,000 per year, and over 2 million earn less than \$7,000. For many of them, if they do not get adequate education benefits, if they do not get psychological help soon, if they do not get employment help, their life patterns will be established and we will bear the awful responsibility for perhaps thousands of desolate and wasted lives—lives that were once offered to us in honest service. I look upon these reforms as a beginning to the fulfillment of that trust.

The argument is made that Vietnam vets will lose their preference in 15 years. We are not concerned about preference in 15 years. In 15 years, the Vietnam vet will be 47 and it will be too late to have a beneficial effect on their lives.

I have talked to many of the older veterans in my district and once they understand what it is we are really trying to do, the great majority of them are supportive.

The point to be made is that I am not anti-World War II veteran, I am not anti-Korea. I am for justice and compassion and I cannot believe that the veterans of those conflicts, who have known the stresses of war and its aftermath, and who have received much for their distinguished service, would deny this one small advantage for Vietnam veterans. If I am wrong, then I have made a

Mr. BONIOR. That is correct.

Mr. MONTGOMERY. The only problem I have with it is this one—and I like the idea of taking care of those persons who really went over there and fought—however, serving on the Committee on Veterans' Affairs as I do, I want to say that we have never discriminated against certain veterans on the basis of where they happened to serve.

During the Vietnam war, for example, I know a number of people wanted to go to the Vietnam war, believe it or not; but they were sent to Europe because we had to build up our forces there.

Under the amendment, that would discriminate against those persons who did not have the choice of assignment and had to go somewhere else.

Mr. BONIOR. The gentleman's remarks are well taken, but, as I indicated at the beginning of my remarks, I think what we have not done with the Vietnam veteran is deal with the readjustment problems.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. Bowler was allowed to proceed for 1 additional minute.)

Mr. BONIOR. If we take them as a group, as an aggregate, I agree with the gentleman that those who need it the most are those who fought.

Dr. Charles Vigley, one of the most noted psychologists on Vietnam veteran problems; has indicated in a recent article in *The American Legion magazine* that that is exactly the case. The

ment is this: It would limit veterans reduction-in-force benefits to 8 years following initial appointment to the Federal Service. That means that all veterans who had been employed by the Government for 8 years or more, including the Vietnam-era veterans who entered Federal service between August 5 of 1964—which incidentally was officially the beginning of the Vietnam era—and October 1972, would immediately lose their RIF protection when the law becomes effective in October of 1980. I do not believe we want to do that; do we? Of course not.

The 84,000 Vietnam-era veterans who entered Federal service in 1973 would have 1 year left in RIF protection. The 113,000 Vietnam-era veterans who began Government jobs in 1974 would have but 2 years of RIF protection remaining, and so forth. So again the effect of the amendment takes heavily away from traditional preference.

The gentleman again alluded to support for his amendment on the part of Vietnam veterans. We do not see it that way. If *The American Legion*, as representative of its 675,000 Vietnam veterans, and the *Veterans of Foreign Wars*, as representative of over a half million Vietnam veterans, and the *Disabled American War Veterans*, with almost 150,000 Vietnam veterans, say that that amendment is wrong and my effort is correct, to whom, then, are we supposed to listen?

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

grievous misjudgment of the American character.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. BONIOR. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY, Mr. Chairman, I thank the gentleman for yielding.

I want to commend him. In the past he has earned great respect in the House for what he has done for the Vietnam veteran.

I just am concerned that the gentleman might be taking the wrong approach in wanting to help the Vietnam veteran.

I know he now has a bill in our committee which would extend the G.I. bill from 10 to 12 years, and it will be considered. Yet, the gentleman has an amendment which would cut off the veterans' preference at 15 years. I do not believe the gentleman is quite consistent in that position; and also, as I understand it, the gentleman will limit it to those Vietnam veterans.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. BONIOR) has expired.

(On request of Mr. MONTGOMERY and by unanimous consent, Mr. BONIOR was allowed to proceed for 1 additional minute.)

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield further?

Mr. BONIOR. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, as I understand the gentleman's amendment, it would be restricted to the Vietnam veteran who served in combat in Southeast Asia; is that correct?

problems of those who serve in combat are much, much broader and different and deeper, and their wounds and scars are much deeper than those who did not serve.

I guess also another point is we are trying to strike some balance in this bill between veterans and younger veterans and women and the minorities. This is the whole civil service package. My objective was to include all Vietnam veterans but to strike a balance. We thought this was the best way to make that approach for those who need it the most, those who fought in combat.

Mr. HANLEY. Mr. Chairman, I rise in opposition to the amendment.

(Mr. HANLEY asked and was given permission to revise and extend his remarks.)

Mr. HANLEY. Mr. Chairman, in anticipation of the Bonior amendment I did a bit of analysis, and here is what I came up with—and when I say “I,” this is a collective judgment of people very close to the subject matter. The problem with the gentleman's amendment is this: It would eliminate almost 4 million Vietnam-era veterans, of whom more than 1,360,000 had served in a combat theater. Now we have a new preference. The administration through this amendment applies only to Vietnam theater veterans, so if one served in the armed services during the Vietnam War but was not assigned to the combat theater, forget it. He loses his preference. This could set a new and disturbing precedent that veterans' benefits would be geared to a combat theater prerequisite.

Another negative aspect of the amend-

Mr. HANLEY. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I want to associate myself with the remarks of the gentleman in the well. As the gentleman has said so eloquently, the Vietnam veteran, as we all know, has had numerous employment difficulties. He is almost exclusively the one who will be helped in the future by veterans' preference and now the gentleman from Michigan, I am sure with all good intentions, proposes a plan which will completely eliminate veterans' preference within the next 7 years. The Vietnam veteran deserves the same benefits as his World War II counterpart.

A recent “factsheet” sent to Members of Congress by proponents of this amendment claimed that “of about 150,000 veterans being hired annually * * * over half are pre-Vietnam veterans.” That is untrue. During the past several years Vietnam-era veterans have consistently accounted for at least 56 percent of the veteran new hires, while 5-point preference, pre-Vietnam veterans have accounted for less than 40 percent. In per capita terms there are only 8.5 million as opposed to 21 million World War II and Korean war veterans, Vietnam veterans have been utilizing veterans preference at a rate more than three times greater than veterans of other wars. By 1980, when the proposed legislation would take effect, the average age of World War II veterans will be 60—at or near retirement age. Thus it is clear that the ratio of Vietnam veterans entering Federal service will increase rapidly.

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I submit it is the duty of Congress to preserve veterans' preference in the form it is now embraced.

I compliment the gentleman on his earlier amendment, and at a later time I want to support it; but at the present time I want to join the gentleman in opposition to the Bonior amendment.

Mr. HANLEY. Mr. Chairman, I appreciate the gentleman's comments.

If I may allude to a letter from the leadership of the National Association of Concerned Veterans, and mind you, their membership is totally Vietnam veterans, other veterans do not qualify for membership, I read the concluding paragraph of the rather lengthy letter:

Moreover, we point out that much of the information that the administration is using to support its case was provided in our previously alluded to testimony. What the NACV does object to is legislation which harms Vietnam veterans, as is the case with the amendment adopted in committee and the original Civil Service Reform Legislation proposed by the administration. Perhaps even more importantly, as citizens, we object to any legislation which undermines its alleged purpose and which is supported by only the most piecemeal and conclusory evidence.

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, the gentleman alluded to the NACV group of Vietnam veterans that support the amendment.

I would just like to say to the gentle-

man that a lot of people do not quite understand what is in the bill.

Right now, under the preference as it stands without the bill, you have a life-long RIF protection once you are in the Federal service, which means everybody else goes first and veterans will never, never be touched.

Under the bill we give them a RIF protection for 8 years after they are hired, and, of course, we always add on the years in service. So the minimum amount of time would be 10 years of seniority, and, of course, we do have seniority considered very heavily in the whole process of civil service.

Mr. Chairman, I just want to make it clear that we would not leave veterans totally unprotected or that they will lose their RIF protection. They will not have seniority protected forever but they will, as long as they have their 8 years of service, have that edge.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Hanley amendment.

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Chairman, I think if a reporter were to ask what ingredient of the Congress is one of the most important to the individual Member, most Members would probably respond, "To be fair," because after all, we sit in judgment of many events of this Nation and we are trying to be fair and balance things out for all peoples.

tirely from the bill, and the reason cited was it would threaten the passage. But the Members of the Senate realize there was indeed a promise, and they did not wish to breach that.

In September 1977, the General Accounting Office issued a report which supports the claim that veterans' preference is not a significant obstacle to minorities, and it in fact shows that veterans' preference helps minorities twice as often as it harms them, based on an examination of the Federal Register. The minority veterans make up only 8.5 percent of the U.S. veteran population but comprise 19 percent of the veterans employed by the Federal Government.

The chart shows that by 1987, 6,290,000 veterans of the Vietnam era, veterans under the bill as it is now proposed, will lose all veterans' preference opportunities currently provided in Federal employment. That is 70 percent of all such veterans and approximately 82 percent of those who served in the Vietnam combat theater.

What is so very wrong with having a strong infusion of people who served their country and came to its defense, many indeed in battle? I think it is a good fiber-building factor in our Government to have patriotism and to have people who are willing in peace as well as war to come to the front and serve their country.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentlewoman from Colorado.

man that a recent article in the Stars and Stripes by Mr. Otto Lukert speaking for the NACV said that he wanted some provision geared more to the Vietnam veteran. He was not pleased with the situation.

Just one other point. Is the gentleman saying the amendment I am offering would eliminate 1.3 million combat veterans from veterans' preference? It is geared not to eliminate, but to protect them for 7 years.

Mr. HANLEY. That could be the gentleman's intent; but, unfortunately, the language of the gentleman's amendment would have this effect.

Mr. BONIOR. In what way?

Mr. HANLEY. It would eliminate almost 4 million Vietnam era veterans, of whom more than 1,360,000 had served in the combat theater, by virtue of restricting the tenure of their preference.

Mr. BONIOR. Mr. Chairman, if the gentleman will yield further, I would tend to disagree with the gentleman. The amendment specifically is intended to protect those veterans.

The CHAIRMAN. The time of the gentleman from New York has expired.

(At the request of Mrs. SCHROEDER, and by unanimous consent, Mr. HANLEY was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I yield to the gentleman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I just wanted to ask the gentleman from New York about the comments the gentleman made about the RIF protection,

Recently, in 1976 we passed a bill that became law, a bill that cut off veterans' preference for the future, so, in other words, the percentage of veterans in the Government will decrease in the coming years without any modification of veterans' preference.

I want to point out a few statistics that I think will help the Members in making their decision.

The new hires in the Federal Government, according to the Bureau of Labor Statistics, have been going down for veterans. For instance, in 1975 the figures for females were 42.2 percent, and the figures for veterans were 32.2 percent. In 1977, just 2 years later, the veterans were 27 percent—in other words, more than 5 percent less than they were previously.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield on that point?

Mr. WHITE. Mr. Chairman, I will yield at the end of my remarks, if the gentleman will wait, please.

Approximately 7 out of every 10 annual new hires in the Federal civil service are nonpreference eligibles. The bulk of the veterans currently employed in the Government are World War II veterans who will soon be retiring in large numbers.

I would like to point out that the veterans' preference represents a promise made to those who entered the armed services. Any modification of the veterans' preference system would be a breach of that particular promise.

On June 15 the Senate Government Affairs Committee voted 9 to 7 to delete the veterans' preference provision en-

Mrs. SCHROEDER. Mr. Chairman, I just want to emphasize a few things the gentleman pointed out, and I thank the gentleman for yielding.

I know there have been many statements made that veterans' preference does not hurt women, and so forth. The GAO has concluded otherwise in many studies, and I think one of the things we lose when we look at general figures is the fact that most of the women hold very low grade jobs. They are being hired as stenographers and secretaries, and is a very large portion of their Federal service.

If we look at who passes the tests, we find that 20 percent of the veterans passed the examinations and 34 percent of the people hired were veterans. So they do much better from passage to hiring.

We also find, when we look at super grades, that 65 percent of them are veterans, and that women are less than 3 percent. So the women and minorities tend to be compacted down in the lower grades, and we are counting them in the statistics equally.

Mr. Chairman, I think a part of what we are talking about here is having a fair shake across the board. I think the gentleman from Texas (Mr. WHITE) understands that, and we could play with figures all day and lose sight of that.

Mr. WHITE. Mr. Chairman, many of these veterans are also women, so when we are talking about veterans, we are talking about women as well as men. We are also talking about the minorities, as I said. The fact is that 42 percent, as

I cited earlier, of those hired are women at the present time.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, in contradiction to what the gentlelady from Colorado (Mrs. SCHROEDER) is saying, in 1977, 203,000 females were hired and only 163,000 veterans were hired to Federal jobs, so the women are being protected.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman from Texas (Mr. WHITE) will yield further, that is exactly what I am saying. The majority of women and minorities who are being hired are lower grades, secretaries and stenographers, and they really were not bidding against veterans in getting those jobs.

We are counting them in the total statistics, and I think that that changes the figures.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has expired.

(By unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, I am not contesting what the gentlewoman is saying. What I am saying is that in innumerable bills, time after time, this Congress has grandfathered groups or individuals, has not tried to change the rules in the middle of the game, and has said to those who are eligible that we are going to allow them to continue in

and over. We should allow these veterans to participate in the law, and I believe we would have a moral question if we did indeed change the law suddenly so that those veterans would not have that opportunity.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has again expired.

(On request of Mr. SKUBITZ and by unanimous consent, Mr. WHITE was allowed to proceed for 1 additional minute.)

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, our colleague, the gentleman from Mississippi (Mr. MONTGOMERY), emphasized the point that old soldiers never die, they just fade away. When Mr. MONTGOMERY spoke of the veterans of World War I and World War II fading away, he also included the Korean veterans. Its my feeling the Korean veteran should be protected.

Mr. WHITE. The Hanley amendment does that. The Hanley amendment also includes the Korean veteran.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment offered by the gentleman from Michigan (Mr. BONIOR).

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I rise in opposition to the Bonior amendment, and I urge that my colleagues be not so hasty as they embark on civil service reform

motion on the career ladder he or she is on, but it will allow one to bid into a career ladder so that he could use it several different times. As to the use of statistics on how many people, 23 percent have used it numerous times to go on other career ladders once one is on the ladder, and he can use it to get on the ladder once, use it for promotion within. But he can use it for horizontal transfer and utilize it because that is considered bidding on a whole new job.

Mr. GILMAN. I think the gentlewoman is correct. However, statistics point out that it is not used frequently for that purpose. I would like to address a remark by the gentlelady from Colorado with regard to retention preference. In my earlier remarks I noted retention preference for veterans is not absolute. Mr. Arch S. Ramsay, Director of the Civil Service Commission's Bureau of Recruiting and Examining, testified before our committee—and the gentlewoman may recall when he said:

In retention, veterans have the right to be retained over competing non-veterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans' preference, performance rating, and length of service. Although, this gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade.

Mrs. SCHROEDER. First of all, on bidding, my understanding is that the Civil

their participation in the existing law. That is all we are saying here. This is going to be phased out. The bulk of World War II veterans are being phased out shortly. The Vietnam veterans are the ones who need it most, and those are the ones we want to get the same opportunities as the World War II veterans, and eventually they will be phased out as well. The percentage of those veterans will continue to go down as the percentage for women will go up. Pretty soon there will be far less veterans. I am saying that we should phase them out fairly.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Kansas.

Mr. SKUBITZ. I thank the gentleman for yielding.

Mr. Chairman, I am a little disturbed because of the fact that we never seem to focus on the Korean veteran. We speak of the way the World War I veteran and the World War II veterans are being phased out. No one says anything about the Korean veteran. I intend to offer an amendment to the Bonior amendment which will include the Korean veteran. It seems to me that any veteran who served in the Korean War in Korea is entitled to veterans' preference just as his Vietnam comrade.

Mr. WHITE. Mr. Chairman, I totally agree with the gentleman. And if we vote for the Hanley amendment, they will be included. The only ones that will not be included in the Hanley amendment will be those who are double dipping, majors

that they forget the sacrifice of our veterans who, in responding to their Nation's call to duty, gave of themselves and of their careers.

Mr. Chairman, permit me to remind my colleagues that veterans' preference does not apply to promotions. Veterans' preference generally is utilized for entry-level positions, in other words, from GS-5 to GS-9, but not for promotions.

I further point out to my colleagues that most of our older veterans, the veterans from World War II and the veterans from the Korean War, are in the upper echelon positions and do not utilize veterans' preference to advance their careers. Our younger veterans, in other words, the Vietnam era veterans, are competing not against other veterans and not against old-guard people. If we reduce the use of veterans' preference, as the Bonior amendment implies, we will only be harming opportunities for Vietnam era veterans and not older veterans. I think there must be a better way to aid Vietnam era veterans without diluting the veterans' preference which the Bonior amendment will do.

Modifying veterans preference would only render it meaningless. Accordingly, I urge my colleagues to oppose the Bonior amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think the gentleman from New York is correct in pointing out that veterans preference does not aid one in a pro-

Service Commission says that over 23 percent of the people in the civil service have used their veterans preference more than once on the horizontal job ladder. Whether the gentleman thinks that is a large number or not depends on his viewpoint.

Secondly, I think on the other issue, on RIF's, that is exactly correct, nothing is really absolute except death and taxes, but it certainly does give one an advantage to hold veterans preference in the Federal service. I think on that we have no disagreement.

Mr. GILMAN. Of course, the basis of our argument is that they are entitled to that advantage, and we hope to preserve that advantage under the Hanley amendment.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the Hanley amendment and in opposition to the Bonior amendment.

(Mr. ROBERTS asked and was given permission to revise and extend his remarks.)

Mr. ROBERTS. Mr. Chairman, I rise in strong support of the Hanley amendment and in opposition to the Bonior amendment. I want to thank the very able gentleman from New York for his firm commitment to our veterans and their families. The gentleman served on the Committee in Veterans' Affairs for several years and he is well aware of the many problems that confront wartime veterans.

Administration officials, and those who advocate that we curtail the preference

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under the guise of helping women and Vietnam veterans either don't understand the issue or simply haven't gotten their facts straight.

First, the 5-point veterans preference is a benefit that goes only to veterans who served during a period of war. Peacetime veterans are not entitled to the benefit and veterans who entered service on October 15, 1976 and thereafter are not entitled to the benefit. So the benefit has been terminated for all individuals who volunteered for service after that date. The pool of eligibles is continuing to increase.

The administration would have us believe that the so-called Schroeder amendment, by limiting the use of preference for able-bodied veterans to the first 15 years after discharge, would actually enhance employment opportunities for Vietnam era veterans. How? By reducing the pool of eligible veterans competing for jobs with the termination of eligibility for World War II and Korean veterans. Surely the House is not going to buy that line. Does any Member of this body believe a 60-year old World War II veteran is competing with a Vietnam veteran for a Federal job?

Everyone knows World War II veterans employed by the Federal Government are retiring in great numbers annually. After all, the average age of the World War II veteran is 59 years. What about the competition from Korean veterans? The average age is 49 years, and they are well established in their careers. There is no competition with these vet-

served during their tour of service, they get equal benefits. I would not want to see us change that principle because a man or woman in service during war has no control over their destiny. All of them support the war effort and we should not treat them differently.

Mr. Chairman, it does not take a genius to understand the impact of the proposed change in the law. I do not care how many "5-year extensions" are added to the administration's proposal, the fact remains that Vietnam veterans come out on the short end. There is no mistake about it.

If the administration thinks the 60-year-old World War II veteran and the 49-year-old Korean conflict veteran is competing with the Vietnam veteran for Federal jobs, reducing the pool can be accomplished without limiting the benefit for Vietnam veterans. You can never convince me that a one-time use of the preference during 15 years after discharge is a better benefit than the Vietnam veteran now has.

The administration's proposal is full of flaws. One of the most serious inequities appears in the proposed plan to limit the reduction-in-force protection to only 8 years. We have not heard from the proponents on this provision of the bill because it will have such an adverse impact on Vietnam veterans in the future. Consider this typical case. Two young men complete high school in 1968. One is drafted into service and is sent to Vietnam. The other individual is not drafted. In fact, he may have purposely evaded

fied women and minorities from being hired by the Federal Government. During 1977, newly hired employees included 213,000 females and 163,000 veterans. Veterans preference is helping minorities. Minority veterans make up only 8.5 percent of the U.S. veteran population but comprise 19 percent of the veterans employed by the Federal Government.

Most importantly, if one bothers to check with the personnel managers of the various Federal departments and agencies, they will find that veterans are outstanding employees. They are all well-qualified, notwithstanding the opinion of some high administration spokesmen that they are experiencing difficulty in hiring qualified women because unqualified veterans appear above them on the civil service register.

Anyone knowledgeable in veterans affairs knows that a veteran never receives a 5-point preference on his or her examination unless the score is 70 or better.

In closing, I urge my colleagues to support the Hanley amendment. Otherwise, the House will, for the first time, violate the principle of equal benefits for equal service. Veterans who fought in Vietnam deserve benefits equal to those who fought during World War II and the Korean conflict. Now is not the time to give them less.

On May 7, 1975, just a little over 3 years ago, President Gerald Ford terminated the Vietnam era by Presidential proclamation. Already we see evidence, by this provision of the bill, that this ter-

erans in the Federal marketplace.

The administration also attempts to sell its proposed program on the fact that the bill gives agencies the authority to give special appointments without competitive examination to Vietnam era veterans. Of course this authority was established by Executive order several years ago, and is already in force. Our committee has expanded the authority already. This is nothing new.

We are involved in the old "shell game" of now you see it and now you do not. As first presented, the 5-point veterans preference would be limited to 10 years. Proponents quickly determined such short-time use of the preference was unthinkable and the administration began seeking some alternative. Proponents then suggested a 15-year, one-time use of the preference.

JIM HANLEY quickly reminded every Member of the House that even with the additional 5 years, more than 6 million Vietnam era veterans would lose their preference by 1987. Proponents of the administration proposal then called a press conference to announce that an amendment would be offered on the floor to provide some additional time for veterans who served in the Vietnam theater. I will admit such an extension would give a few Vietnam veterans from 2 to 5 years of additional time in which to use the 5-point preference.

But why make a distinction based on the location of the individual during war. We have never made any distinction between a combat veteran and a noncombat veteran in providing educational benefits. No matter where they

the draft. He takes a job with the Federal Government. After serving in Vietnam the first person completes his 2-year tour and is honorably discharged. Within 30 days from discharge, he obtains a job at the same agency as the nonveteran. In 1982 there is a reduction-in-force at the agency.

Under the bill, all else being equal, the veteran will not be retained because the nonveteran has seniority. The nonveteran did not have to serve his country during a period of war. Unless the Hanley amendment is adopted, the veteran would be laid off from work and nonveteran would continue on the job. Is this the position in which we want to place our veterans for having defended their country in time of war? I certainly hope not.

Mr. Chairman, I do not care how many briefings are held and no matter how many press conferences are held to try to peddle this package as one that will benefit Vietnam veterans, it simply will not work. This administration proposal will not give the Vietnam veteran any advantage in Federal employment. It should be noted on this point that we cannot get the Civil Service Commission to enforce the laws already on the books to place Vietnam veterans on jobs.

Look at the poor records of most of the departments and agencies who have failed to hire Vietnam veterans through noncompetitive appointments under the veterans readjustment authority we granted several years ago.

Quite frankly, Mr. Chairman, there is no valid data to show that the 5-point veterans preference is keeping well quali-

rible war is fading from the memory of some people. But I say to you, let us not forget those who served during such difficult times. They were drafted to serve. Let us not abandon them now. That is exactly what we will be doing if the Hanley amendment is not adopted.

Mr. Chairman, I also rise in opposition to the amendment offered by the gentleman from Michigan.

As I understand the gentleman's amendment, it would provide for veterans who served in the Vietnam theater, a one-time use of the 5-point preference 15 years from date of discharge, or December 31, 1985, whichever occurs later. I would assume that this is being done because of the flaw in the committee bill called to our attention by JIM HANLEY, which indicated that by the year 1985, more than 4,400,000 Vietnam veterans would lose their entitlement.

Mr. Chairman, this is a perfect example why we should oppose the veterans preference part of this reform bill and support the Hanley amendment. The proposal is full of flaws. First, the administration recommended a 10-year limit on the use of the preference. Finding that would be quickly rejected, the administration agreed to extend the time to 15 years.

Mr. HANLEY alerted all of us to the tremendous adverse impact even this period of time would have on some 6 million Vietnam veterans by the year 1987, and the administration scrambled to plug the dike. It was agreed that an amendment would be supported by the administration to provide some additional time for those who served in combat.

The proposed amendment would give a reprieve for some veterans who served in combat. I have real problems with the principle involved here. Why make a distinction between those who served in combat and those who supported the war effort located throughout the world? Should we now decide how close the individual was to the field of fire in determining the level of benefits to be paid? I think not. Equal benefits should be provided for equal service.

Further, Mr. chairman, the gentleman's amendment does nothing to protect this same Vietnam era veteran in his employment beyond the 8 years provided in the bill. Therefore, after years of employment, this same veteran who served in the Vietnam theater could be terminated from his job in a reduction-in-force action while the nonveteran continues on his job since he has seniority in that he did not have to answer the call to duty in Vietnam. It simply is not fair and equitable.

I urge my colleagues to vote no on the amendment offered by the gentleman from Michigan and to support the Hanley amendment.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the distinguished gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, I think it should be pointed out that under the bill as reported a veteran is protected in a reduction in force for only 8 years. Under the Bonior amendment, the protection is still only 8 years.

Mr. GILMAN. Mr. Chairman, in response to the gentleman's inquiry with regard to the number of women who hold veterans' preference, there are presently enough women entitled to veterans' preference, 831,800 women who are now entitled to hold Federal jobs, to more than fill those jobs. There are some 893,500 jobs in that category.

I thank the gentleman for yielding.

Mr. ROBERTS. I thank the gentleman from New York for his contribution.

If we have the amendment of the gentleman from Michigan it would give a reprieve to some people who have served in combat. I have some problems with doing that. Why make a distinction between those who served in combat or those who supported the war effort throughout the world? I am a combat veteran and I support veterans' preference, but when a man is out in the open sea and his ship goes down, is he in combat or not? It is not that simple. Combat is more than just being in a hostile area and pulling a rifle trigger.

I hope the amendment offered by the gentleman is not adopted. I urge my colleagues to vote "no" on the amendment offered by the gentleman from Michigan and support the Hanley amendment.

The Hanley amendment is supported by the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans and, as far as I know, all of the other major veterans organizations.

Mr. KAZEN. Mr. Chairman, will the

I support his amendment because I simply do not believe the arguments of those who would have us turn our backs on this Nation's veterans.

The committee bill calls for substantial dilution of this Nation's longstanding policy of according military veterans' preference in examination, appointment, and job retention in Federal employment. In doing this, the committee would deny veterans' preference to millions of Vietnam era veterans and would severely limit retention preference for those who are now employed or become employed in Government service.

The committee accepted the argument of the Carter administration that the intent of veterans' preference is to provide for some sort of readjustment to civilian life, and that modifications are now in order because the employment of veterans has caused discrimination against women.

I reject the Carter administration arguments out-of-hand, because I do not believe that veterans' preference laws have hurt the quality of the Federal civil service, nor do I believe that the application of our current law has harmed the employment opportunities of any qualified persons.

Our current laws give honorably discharged veterans an advantage in appointment and job retention, although it is not as overwhelming one.

The concept of veterans' preference is based on the belief that those men and women who served their country honorably in time of war should have some first

Under current law the veteran is protected for life in a RIF action. So under the bill as reported or with the Bonior amendment we are cutting back the veterans' preference, any way we slice it.

Mr. ROBERTS. Of course it is subject to his performance, and I am perfectly willing that he should have to perform properly.

I thank the gentleman for his contribution.

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, does the gentleman have any figures on how many women are veterans? The figures we have are about 2 percent.

Mr. ROBERTS. I would not contest the gentleman's statement, but according to data before the committee, there are well over 600,000 of them.

Mr. BONIOR. Mr. Chairman, if the gentleman will yield further, I would ask just for one other point. The gentleman from Mississippi indicated the question of the 8-year guarantee. That is 8 years, but we also give them the years in military service, which comes out to a minimum of 10 years and maybe 11 or 12 years, and that is sufficient protection it seems to me. It is 11 or 12 years seniority and it also includes the in-service time.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from New York.

gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Texas (Mr. KAZEN).

Mr. KAZEN. Mr. Chairman, I thank the gentleman for yielding.

Will the gentleman tell me how he distinguishes between a Vietnam veteran who was actually in combat and one who served in a combat zone but was never fired on?

Mr. ROBERTS. The gentleman makes an excellent point and it was the point I was trying to make. How is combat defined?

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I will be happy to yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, I would like to answer both the gentlemen from Texas. The specific language in this amendment relates to people who were awarded the Vietnam Service Medal, the Armed Forces Expeditionary Medal for Vietnam. So the guidelines of combat are specifically drawn up by the military by itself by the awarding of those medals.

Mr. TAYLOR. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Missouri.

(Mr. TAYLOR asked and was given permission to revise and extend his remarks.)

Mr. TAYLOR. Mr. Chairman, my colleague from New York seeks to delete one of the most objectionable provisions of the committee bill, and by doing so he would preserve our existing veterans' preference in Federal employment.

consideration in serving their country as civilians from among those with the same relative qualifications.

The committee bill is being sold under the guise of helping Vietnam era veterans in Federal employment, but our colleague from New York has pointed out that, by 1987, nearly 7 million Vietnam era veterans will lose all veterans' preference opportunities if the committee's provisions are left intact.

I urge my colleagues to support the Hanley amendment, for by doing so we will be keeping the faith with those who have served this country with honor.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ROBERTS was allowed to proceed for 2 additional minutes.)

Mr. ROBERTS. Mr. Chairman, I would like to say to my colleagues that we have a system that works. It may not be perfect, but it has worked for a long period of time. We have men and women who have a vested interest in that system. Let us not change the rules in mid-stream.

Mr. UDALL. Mr. Chairman, I wonder if we could get some agreement as to a limitation of time?

Mr. Chairman, I ask unanimous consent that all debate on the amendment offered by the gentleman from New York (Mr. HANLEY) the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR) and all amendments thereto, close at 5 o'clock.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

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There was no objection.

The CHAIRMAN. Members who were standing at the time the limitation of debate was agreed to will be recognized for approximately 1½ minutes each.

The Chair recognizes the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of the gentleman from New York's amendment.

I find it highly ironic that those who have been the strongest advocates of affirmative action for women and minorities now oppose veterans preference. Affirmative action, for which the administration recently reaffirmed its support, is designed to compensate a class of people for opportunities lost by their ancestors. It is speculative at best, when applied to an individual applicant. There is absolutely no guarantee that an individual applicant suffered the lost opportunity that is presumed to have been suffered by the class accorded affirmative action. Veterans preference, on the other hand, is designed to compensate individuals for the actual loss of opportunities, due to military service during time of war. I can understand how a person can support veterans preference and not affirmative action, but it is beyond me how a person can be in favor of affirmative action and not veterans preference.

As stated earlier by the distinguished

42 percent of the Federal hires, and veterans 27.8 percent, it seems clear to me that women are faring very well: Those who want careers are getting them. Those who want clerical jobs to supplement their family's income are getting them.

Considering that the Vietnam veteran, even with the veterans preference notion, holds a median grade of only a GS-6, at the average age of 31 years, I wonder how well veterans preference really works.

We know one thing: It does work for minority veterans, despite arguments that veterans preference works to the disadvantage of minorities. Minority veterans make up 2 percent of the national work force, and fully 9 percent of the Federal work force. In fact, Mr. Speaker, minority applicants on the whole have been unaffected by veterans preference. Some 12 percent of the country's population is minority, but 23 percent of the Federal work force is minority.

I have heard it said that veterans preference affects equal employment opportunity, and that its elimination would restore that notion. It is clear, however, that the administration is not interested in establishing a completely unbiased employment system. Affirmative action discriminates in favor of women and minorities. Even more disconcerting have been the administration attempts to create special noncompetitive appointment positions for many of its friends. For instance, the so-called Sugarman

by the Carter discharge review program? Veterans preference rewards honorable service. There has been few enough rewards for those who did their duty in Vietnam.

Mr. Chairman, I submit that now is the time to demonstrate a concern and appreciation for what the Vietnam veteran went through in the mud and jungles of Southeast Asia. If the Members of this body truly appreciate his sacrifices, they will support this amendment and now.

I rise in opposition to the gentleman from Michigan's amendment.

I find it highly ironic that the gentleman and some of his colleagues have been especially critical of the Committee on Veteran's Affairs for not having done enough for veterans of the Vietnam era, and now offer as their first congressional initiative a plan which would eliminate the most meaningful benefit the Vietnam veteran has available to him. The Vietnam veteran has had numerous employment difficulties. He is almost exclusively the one who will be helped in the future by veteran's preference. And now the gentleman proposes a plan which will completely eliminate veteran's preference within the next 7 years. The Vietnam veteran deserves the same basic benefits as his World War II counterparts, and I submit it is the duty of the Congress to preserve veterans preference in the form it now enjoys. Does the gentleman submit that the service of the Vietnam veteran was less deserving than his World War II coun-

gentleman from New York (Mr. HANLEY), there is no evidence whatsoever that veterans preference is harmful to the hiring opportunities of women and minorities. The administration and its allies have been playing a very simplistic game. They look at the proportion of women and minorities in the higher levels of the civil service, and at the proportion of veterans in those levels, and then conclude that veterans preference is responsible for the low percentages of women and minorities.

First, it is rational that veterans be represented in those categories. A majority of our male population in the 50 and above category is veteran. Second, the lack of women and minorities parallels a similar lack of women and minorities in higher positions in the private sector. Did veterans preference cause that imbalance too? It is clear that, in both cases, those disparities have little to do with veterans status, and much to do with societal structures which are being overcome. Furthermore, the disparities are certain to change rapidly even without a change in veterans preference. World War II veterans make up the bulk of our veteran civil servants. These veterans are now almost 60 years old, on the average, and will be retiring in droves.

Without regard to representation in the upper echelons of civil service, it is interesting to note that women now constitute almost as large a percentage of professional new hires as veterans. Last year, 11,929 women were hired at GS-7 positions and above, while 13,621 veterans were. When we couple this with the fact that, overall, women constitute

plan would allow noncompetitive appointments for women and minorities all the way up to GS-18.

Even worse, in recent months the administration announced a special, non-competitive hiring program for individuals who served for 1 year in ACTION programs such as VISTA and the Peace Corps. How can this administration embrace on a noncompetitive basis those who served voluntarily in capacities that were often exotic vacations, and then seek to cut off from a mere 5-point boost the veterans who suffered in the foxholes and the trenches of our Nation's wars?

Mr. Chairman, it has become a standard criticism of the traditional veterans organizations that they are comprised of older veterans who care only for benefits that accrue to those who fought in World War II. I would submit to you that this issue, which is fully supported by all of our veterans organizations, impacts almost exclusively on the well-being of our Vietnam veterans. The World War II veteran will use veterans preference sparingly in the future, if at all. The Korean war veteran is for the most part enscorced in his profession. It is the Vietnam veteran who has encountered employment difficulty, and it is the Vietnam veteran who will be helped—or hurt—by the way the House votes on this amendment today. Again, Mr. Chairman, I find an irony in the makeup of those who oppose veterans preference. How many of those who are trying to end perhaps the most meaningful benefit for the men who went off and fought our most unpopular war cried crocodile tears over his status last year when they supported the deserters and malcontents who were helped

terpart's? If not, I should think he would vote against his own amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. HILLIS).

(Mr. HILLIS asked and was given permission to revise and extend his remarks.)

Mr. HILLIS. Mr. Chairman, I rise in wholehearted support of the amendment to H.R. 11280 being offered by our distinguished colleague, Mr. HANLEY and in opposition to the Bonior amendment. For years, this Nation has recognized its commitment, a lifelong commitment, to our veterans.

Due to the nature of military service, careers and educational plans are disturbed. These disruptions put veterans at a disadvantage when they return to civilian life and begin to look for meaningful employment. To compensate, the VA has solicited American businessmen to "hire the vet." Employment counseling services are provided to veterans before and after their separation from active duty.

For its part, the Federal Government has given preference to veterans in securing employment. However, no preference has ever been given to veterans of a particular war over other veterans. The committee's bill is designed to "provide greater employment opportunities to Vietnam era veterans and to encourage the recruitment and retention of qualified applicants, particularly women and minority applicants." This is to be accomplished by eliminating veteran's preference after 15 years for nondisabled veterans. Further bonus

points could only be used once within that 15-year period.

The Vietnam veteran is a different type of veteran.

First, they served in a very unpopular war, and moreover, it should be remembered that a great percentage of Vietnam veterans are minorities. One of the arguments against the draft was that it unfairly selected minorities to serve. I believe that veterans' preference, in fact, will do more in the future to assist minorities in obtaining meaningful jobs in the Federal Government than any other group. We have numerous programs already designed to insure equal employment opportunities for minorities and women in the Federal Government. This is not to say that we do not need to do more to assist these groups; however, eliminating the veterans' preference is not the answer.

Our Nation's veterans need our support now more than ever, particularly the Vietnam veteran who served his country well only to return in many instances to an ungrateful Nation. Because of the difficulty many veterans experienced upon their return home, it seems to me to be unconscionable that we now arbitrarily cut them off 15 years after their separation from service. By 1980 alone, nearly 500,000 Vietnam-era veterans will lose their eligibility rights; and in the next 7 years, over 6 million veterans will lose these rights.

If we are to alter these regulations, we must do so prospectively, not retroactively. It is totally unfair to tell those who

of war will be given the same protective rights which we give to Vietnam soldiers who served in a theater of war.

All my amendment does is to give to the Korean war veterans the same rights and privileges so far as eligibility is concerned as we give to the Vietnam war veterans.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. SKUBITZ. I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, may I say to the gentleman from Kansas that the effect of his amendment actually is already in place in my amendment. My amendment would include, as present law does, those who served in Korea.

Mr. SKUBITZ. Mr. Chairman, I would like to reclaim my time.

Let me say to my colleague the gentleman from New York is only partly correct. The gentleman's amendment goes further and maintains everything in its present place. My amendment only applies to Korean veterans and Vietnam veterans who served in theaters of war. His amendment maintains the status quo.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. CORNWELL).

Mr. CORNWELL. Mr. Chairman, being one of three Vietnam combat veterans in the House of Representatives and in the Senate, in Congress as a whole, I have to take issue with the statement which was just made regarding the Vietnam veteran, saying that the Vietnam

application adversely affects the employment opportunities of women and minorities.

The so-called Schroeder amendment would limit veterans' preference to a "one-shot" use within 15 years after discharge from military service. If we allow this legislation to become law, 21 million World War II and Korean war veterans would immediately lose all employment preference rights when the law went into effect in October 1980. What really concerns me, however, is 5 million of the 8.5 million Vietnam era veterans would have zero to 5 years of employment preference remaining—not 15 years. Only those who entered military service before the termination of veterans' preference on October 15, 1976, and left the service after October 1980, would receive the full 15 years of employment preference.

The legislation would also limit veterans' "reductions-in-force" benefits to 8 years following initial appointment to Federal service. That means that all veterans who had been employed by the Government for 8 years or more—including the Vietnam-era veterans who entered Federal service between August 5, 1964, to October 1972—would immediately lose their "RIF" protection when the law became effective in October 1980.

Veterans' preference, currently in effect, was based upon recognition of the fact that millions of young men and women had been called upon to give up their usual occupations, often at great economic sacrifices and many had been exposed to personal danger and hard-

served "Sorry, but we are changing the rules on you in the middle of the game." It is totally unfair for our Nation—this Congress—to act in such a capricious, arbitrary manner, and I cannot emphasize to my colleagues too strongly that we must not permit this erosion to begin.

A vote for the Hanley amendment is a simple way for the Congress to say thank you to our Nation's veterans, and to retain veterans' preference as we have known it—and as those who served their country in its time of need thought was the case. This is not a pro-Vietnam veterans' bill as has been suggested. This is a well-disguised, antiveterans program. I urge adoption of this amendment.

AMENDMENT OFFERED BY MR. SKUBITZ AS A SUBSTITUTE FOR THE PERFECTING AMENDMENT OFFERED BY MR. BONIOR

Mr. SKUBITZ. Mr. Chairman, I offer an amendment as a substitute for the perfecting amendment.

The Clerk read as follows:

Amendment offered by Mr. SKUBITZ as a substitute for the perfecting amendment offered by Mr. BONIOR: In lieu of the language of the Bonior amendment insert the following: Page 192, after "(A)" insert "(1)",

Page 192, line 17, after "armed forces, or" insert "(ii) if later, December 31, 1985, but only if the individual's service in the armed forces on or after June 25, 1950, is the basis for awarding the Vietnam Service Medal, the Armed Forces Expeditionary Medal for Vietnam or the Korean Theater Service Ribbon."

Mr. SKUBITZ. Mr. Chairman, the amendment I offer does no violence to the Bonior amendment.

What I am proposing to do is to expand the Bonior amendment so that Korean war veterans who served in that theater

veteran is different. I do not think that we are any different than any other veteran who ever fought a war for this country for the purposes of liberty and freedom. We have probably had as many legs blown off, as many wounds, as many traumas as were suffered by any other veteran in any other war. I do not think we are different because it was an unpopular war. I think we are different because we are younger and we do demand and do deserve a preference here as regards jobs in the public sector. Facts and statistics aforementioned prove this overwhelmingly.

I think we need to focus attention on those veterans who need it the most and who deserve it the most at this time.

(By unanimous consent, Mr. CORNWELL yielded the balance of his time to Mr. BONIOR.)

The CHAIRMAN. The Chair recognizes the gentleman from Mississippi (Mr. LOTT).

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Chairman, the Schroeder amendment which was adopted by the House Committee on Post Office and Civil Service was a compromise to the administration's original proposal on veterans' preference.

Outwardly, veteran's preference seems absolute. It gives an impression that non-veterans stand little if any chance in gaining Federal employment when competing with veterans. No doubt this is why the supporters of modifications suggested veterans' preference be diluted. The administration has charged that its

ships. It was felt that readjustment to civilian life would be difficult for many, that those who remained at home would acquire a tremendous head start financially over the serviceman and that, therefore, some assistance should be given to the veterans in readjusting and retaining lost ground.

Unemployment, as well as competing for and holding jobs, is still uppermost in the minds of many. According to a recent Harris study, unemployment and the lack of jobs is listed as the greatest problem facing returning Vietnam veterans. It is, therefore, inconceivable that this body would even contemplate reducing any aspect of veterans' preference.

I recognize the unemployment needs, including promotion and upward mobility of women and minorities but veterans are finding themselves a minority.

I cannot help but believe that my colleagues continue to feel as I do, that our veterans are in fact special and deserve more than a little consideration. Veterans' preference is a longstanding legitimate expression of public policy that has been folded into the overall merit system framework. I feel the present laws are achieving their intended effect of giving an advantage to veterans while preserving the essential elements of competition. Because of their service and the sacrifices so many of our veterans were called upon to make, I urge my colleagues to support the Hanley amendment.

The CHAIRMAN. The Chair recognizes the gentlewoman from Maryland (Ms. MIKULSKI).

(Mr. MIKULSKI asked and was given

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permission to revise and extend her remarks.)

Ms. MIKULSKI. Mr. Chairman, I rise in opposition to the Hanley amendment regrettably and enthusiastically rise in support of the Bonior amendment. The United States must continue to be a grateful nation to those of who fought and defended us in World War II, that created the Korean and the Vietnam conflicts.

However, we must meet the needs of those veterans according to the point of life in which they now find themselves.

I feel the Bonior amendment perfects the administration bill by extending both time and opportunities for the Vietnam veteran where time is running out. But for the World War II veteran, who is 58 years old, giving him 5 points in his old age is not the way to help him. That veteran is concerned about other needs, it is the need for retirement security, and he is particularly afraid that a catastrophic illness will wipe him out. I propose that instead of keeping the 5-point preference when he does not need it, that, to show our gratitude, on developing a comprehensive health care program for veterans that, No. 1, would care for them in terms of catastrophic illness and, No. 2, would provide for long-term care, where perhaps we could take unused nursing home beds in veterans' hospitals, where they could be cared for with respect and dignity along with their comrades.

Mr. Chairman, as we consider the Hanley amendment to the civil service

World War II veteran, whose average age is 58, must make provisions for his future well-being, as well as that of his family. For that reason, I have introduced House Joint Resolution 1113 which requires the Veterans' Administration to develop a comprehensive plan to provide health and social services to the ever-increasing number of senior veterans. Such a plan would include providing retirement counseling and planning services for senior veterans; converting unused acute-care hospital facilities under the jurisdiction of the Administrator to long-term care facilities; expanding the number of hospital-based home care units; expanding and improving long-term care and catastrophic health care programs; establishing new facilities to provide daytime care (in lieu of nursing home care) for senior veterans who are able to live with their families; establishing hospice programs for terminally ill senior veterans; and extending health care services to surviving spouses of veterans.

My colleague, Representative HECKLER, has also introduced legislation, the Veterans' Geriatric and Gerontological Health Services Expansion Act, which is also aimed at the real problem that face the veteran.

Today, when we vote on the Hanley amendment, we have to keep in mind the new needs and the new phase of care required by the veteran. We have a new commitment to the veterans which we must meet and extending veterans' preference as it now exists is not the way.

Mr. YOUNG of Florida. Mr. Chairman, I rise in support of the Hanley amendment and in opposition to the amendment of our colleague, the gentleman from Michigan (Mr. BONIOR).

Mr. Chairman, there is just something wrong, in my opinion, with the idea of placing restrictions on the number of times that a veteran might use his preference, or place a limitation on the time that that preference is available. There have been many other arguments made on many other good points, but let me speak on just these two.

All of us, of course, know that in any of our wars there has been no practical restriction on the number of times that many veterans were called on to go into battle day after day after day, and I just do not think there should be any restriction placed on the amount of times that that eligibility should be available to him once he gets back into the civilian job market.

On the limitation of time, every one of us knows personally and knows of many more veterans who have come home from the wars missing an arm or missing a leg.

Mr. Chairman, I submit that that arm or that leg is gone forever, not 8 or 15 years, but it is gone forever. We know of those who came home physically but left their mental abilities and sanity in a foxhole someplace forever.

Mr. Chairman, to provide for those who did fight and for those who were standing by ready to fight is in keeping with the commitment of our country as

reform legislation, my colleagues and I are faced with a very difficult decision. I, for several reasons which I will enumerate, cannot support this amendment.

The United States is a grateful nation for the gallant efforts made by the veterans who defended our cause abroad during World War I, World War II, the Korean war, and the Vietnam conflict. But the United States had made commitments to two constituencies and neither one can be overlooked.

When the veterans returned from war, we made a commitment then to help them readjust to the new lives to which they were returning by offering them the GI bill and veterans preference, besides other benefits. Now we have reached a new phase, and these veterans are concerned with different priorities. Yet at the same time, we made a promise to nonveterans, many of whom supported the war effort, that they would have equal access to jobs within the Government, and that through the merit of their work, they would be upwardly mobile within the ranks of the civil service. Now these groups are converging and we must resolve their problems.

We need to look more closely at the real problems facing the veteran today. After meeting with several veterans' groups, I have found, as I suspected, that the real concerns of the veteran is planning for the future to make sure that he will be able to continue to take care of his family if he becomes ill. He no longer needs to worry about financing his own education or finding a job after finishing school or just finding a first job after being released from the service. The

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. GRASSLEY).

(Mr. GRASSLEY asked and was given permission to revise and extend his remarks.)

Mr. GRASSLEY. Mr. Chairman and members of the committee, we were asked during this debate, and in Dear Colleague letters previous to this debate, to consider what veterans' preference needed to be changed in order to be fair to minorities and women. I and many other Members have taken that challenge into consideration. I have come down on the side of voting in favor of the Hanley amendment and leaving veterans' preference basically as it is for the simple reason that without the sacrifice of a veteran, most of us in this country would not have the freedoms that we have now. The great advancement in the opportunities for women and minorities in the last 50 years in this country has come about only because of the environment of freedom that has been preserved in this country by the sacrifice of our veterans in combat, and this is no time to take away the rewards that we have given and that we owe for that service to our country that has made possible the preservation of freedom for all. Because of this sacrifice I stand in support of the Hanley amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. YOUNG).

(Mr. YOUNG of Florida asked and was given permission to revise and extend his remarks.)

expressed by President Lincoln, "To care for him who shall have bourned the battle—"

The CHAIRMAN. The time of the gentleman from Florida has expired.

(By unanimous consent, Mr. ROBERTS yielded his time to Mr. HANLEY.)

The CHAIRMAN. The Chair recognizes the gentleman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Chairman, I rise in support of the Bonior amendment and in reference to women, I would like to say a word about this subject to the Members of the House. We have in Washington, D.C., in the Civil Service Office, 34 veterans at the top of the register. The only nonveteran woman, an applicant with a score of 100, is 35th on that list. Now, that really ought to tell us something about what is happening to women. I do not think women are necessarily the most important part of the whole population, but we certainly should do a little better than that.

Of all the positions at the 16 to 18 levels of civil service, women hold less than 3 percent. Below that, in grades 13 to 15, the proportion is only 6 percent. They are the clerks. They are the typists. They are down at the lower levels where men do not want to be. This is what is happening to women in the United States of America.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. GARCIA).

Mr. GARCIA. Mr. Chairman, I rise in support of the Bonior amendment and in opposition to the Hanley amendment.

Mr. Chairman, I speak as a veteran of

the Korean war. I want the RECORD to note that I was among those who was in Korea with a regimental combat team. When I was discharged from the service I was able to take advantage of the opportunities afforded me by the GI bill. I think many veterans similarly took advantage of these many benefits offered them simply because they were veterans.

I do not believe I have a lifetime franchise on all of these special provisions. Especially as regards a preference for employment in the Federal Government, I believe the time under which a veteran can exercise that option should be limited. There is a very good and sensible reason for limiting this preference. And that is so that the younger veterans can now reap the benefits we all have been able to take advantage of.

The veterans of the Vietnam war are the ones who suffered most from fighting a war that was unpopular. And I think that most of those who fought there came out of urban America. Those are the ones who need our help and those are the ones I want to help. That is why I support the Bonior amendment and oppose the Hanley amendment.

As a leader in the Hispanic community, I can truly say that I am not expressing an isolated point of view. I want you all to know, as you consider this progressive section of the bill, that it is supported by the American GI Forum—one of the country's largest veterans' organizations; by the Mexican-American Legal Defense Fund, the Puerto Rican Legal Defense Fund, the National Conference of Puerto

ice are veterans and only 9 percent of those are from the Vietnam era. That is basically because other veterans can come in with a higher standing, a higher educational background and more experience, and when they are bidding veteran versus veteran the other veterans tend to come out on top.

(By unanimous consent, Mr. WHITE yielded his time to Mr. HANLEY).

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I rise in support of the Hanley amendment and in opposition to the Bonior amendment.

One last point that I wish to make concerns a statement made earlier by the gentlewoman from Colorado on veterans' preference. Conceding the gentlewoman's assertion that 23 percent of the veterans utilize veterans preference to transfer into other job series, it is unlikely that veterans would exercise veterans' preference to transfer into another job series for the purpose of taking a downgrade.

It would be more likely that a switch into another job series would be for an advancement in grade or responsibility. Further, if most of our veterans are in upper echelons of management, then a switch into another job series would be for a job in the upper echelon of management, and not entry level positions that veterans and nonveterans are competing for, which is the troubled area we are trying to correct by this legislation.

Accordingly, Mr. Chairman, I urge

on the floor that these people are going to phase themselves out, those who are veterans of World War II and Korea. Why not, then, give the preference to those people who need it the most now, the Vietnam veterans? No one is going to need it to that extent when they are 39, 40, or 42. The readjustment problems of these people are occurring now. Their career problems are occurring now.

Mr. Chairman, I hope the Members of the Congress and of this Committee will look with some compassion on this issue. These people fought bravely in that war, as they did in other wars, and the traditional benefits for veterans should be extended to Vietnam-era veterans in this country. They should be considered in this bill.

The CHAIRMAN. The Chair recognizes the gentleman from Arizona (Mr. UDALL).

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, I rise in support of the Bonior amendment, and I am opposed to the Hanley amendment.

We ought to recognize that no one is arguing today against the concept of veterans' preference. It is a good concept, it is a sound concept. The gentleman from Michigan (DAVE BONIOR) supports it, I support it, and the gentleman from New York (JIM HANLEY) supports it. The question is: What kind of veterans' preference are we going to have?

We say it ought to be focused on those

Rican Women, the National Conference of Cuban-American Women, the League of United Latin American Citizens, the National Council of LaRaza and by Image—which is the Hispanic Federal employees' national organization.

I urge you to share their view that altering veteran's preference via this Civil Service Reform Act will benefit future generations of veterans and civil servants.

The CHAIRMAN. The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, I rise in support of the Bonior amendment and against the Hanley amendment.

I just want to point out that I honestly think if we could do this vote by secret ballot, it would pass by a very heavy margin. Why? Because everybody talks about wanting to have the veterans all get a crack at the jobs, but nobody is for increasing the Federal service so they will all have that crack. Probably there will not be more than 150,000 new jobs in the Federal service next year for veterans, 150,000.

If we go with the Hanley amendment, it will leave 28 million potential people bidding for those jobs. If we go with the Bonior amendment, it gets us closer to 8 million people competing for those jobs. They all happen to be Vietnam-era people and they will have a much greater chance.

If we look at the Federal service, 48 percent of the people in the Federal serv-

support for the amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am pleased to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think the gentleman has just proven my point. By just bidding into a higher level job, they have preempted other people from being qualified for that job. That is basically my point, and I think about those 23 percent.

Mr. GILMAN. The gentlelady misunderstands the point I am trying to make. Vietnam-era veterans, for the most part, are just beginning to apply for entry level positions or are in the lower grades, years away from eligibility for upper echelon positions.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. BONIOR).

Mr. BONIOR. Mr. Chairman, in the short time I have been in Congress I have seen much legislation dealing with veterans coming before Congress, most of it on suspension. In fact, practically all of it has been under suspension. Most of it is geared toward those people who fought in earlier wars.

The pension bill that we pass is going to cost close to \$700 million in the first year. Yet we have out in America, as I indicated earlier, 855,000 Vietnam-era veterans suffering from underemployment, earning \$4,000 a year, or making less than \$7,000. I think there are 3 million people making less than \$9,000. All we are asking for is a bill for these people.

It has been argued time and again

areas involving the disabled veterans, and the Bonior amendment enlarges the protection for the disabled veterans. Indeed it doubles the number of disabled veterans who receive benefits.

We also say that it ought to be focused on the Vietnam-era veterans.

Let me tell the Members a few war stories. Let me give an example of why the present system is not working. More than 30 years ago I served in World War II for 4 years. I was on the U.S. side, in case there is any doubt among my detractors. I never heard a shot fired. Most of my time was spent pounding typewriters and performing other vital services in time of war.

I arrived on Iwo Jima on D-Day plus 100 with some baseball equipment and a piano to entertain troops who had been involved in the invasion.

Under the present law, a young person, a widow 29 years old who lost her husband and has children may be applying for a Federal job, and let us say I apply for that Federal job. I get absolute preference.

The Government gave me an education. I got my law degree under the GI bill, and the Government helped me buy my first house. My first house was bought under Government insurance, and the Government helped me with my first law office. I do not need the help now, it is the young people who need this help.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. DERWINSKI).

(Mr. DERWINSKI asked and was

given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, historically there has been veterans' preference of some sort since the founding of our Nation but in a more structured form since 1865 and finally, as we know it today, resulting from the enactment of the Veterans' Preference Act of 1944.

Veterans' preference has come under increasing attack from various quarters. It has been stated that veterans' preference is discriminatory. Veterans' preference, if one must call it discriminatory, does discriminate against those who remained civilian and got their preference by attaining an early education and establishing themselves in the job market while their contemporaries answered their country's call and shouldered arms.

It has been traditional philosophy in this country that, "those who were preferred to serve their Nation in the Armed Forces in time of war should be preferred to serve their Nation in a civilian capacity when qualified."

Removal of this veterans' preference is a matter that goes beyond any question of "flexibility," greater employment of other groups, or like concerns. It is really a question of whether this is a country that feels free, in time of national emergency, to call upon its very best to serve in its Armed Forces and face death, injury, disruption of normal life, and all the other conditions of that service. Then for the country to discard them as veterans, to announce they

hostility, we said to a certain category of American citizens, the person who served in the military establishment, "My friend, once you go back to civilian life, here are the benefits that have accrued to you."

Mr. Chairman, for the life of me I cannot conceive of the attitude of this administration in wanting to renege on that commitment we made traditionally. It is wrong. It is improper. It is unjust.

When we talk about the Vietnam veterans, that is what it is all about. And as I have said time after time during the course of this debate this afternoon, the good majority of the Vietnam veterans, as represented by virtually all of the organizations, sustain this position, and that is to preserve this law.

Mr. Chairman, there is another ramification associated, too, with this. We know that all of the State governments have a tendency to follow suit, once the Federal Government acts. So what you would be doing is that you would be putting the veterans' community on the threshold of total erosion of benefits throughout the 50 States of this Union.

I do not believe that the majority in the House of Representatives wants to do that.

So, despite all that has been said about the effect of this amendment on the Vietnam veteran, there is only one good effect, and that is the provisions of my amendment which preserves veterans' preference, as our Nation committed itself to do to all of the men and women who served.

I think that President Franklin Delano Roosevelt best explained the rationale for veterans preference when he stated:

I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces that when they return special consideration will be given them in their efforts to obtain employment. It is absolutely impossible to take millions of young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

● Mr. MONTGOMERY. Mr. Chairman, I rise in support of the Hanley amendment which would have the effect of retaining veteran's preference as it is in current law. I feel very strongly that we should not change the present rules of giving a five point preference to those men and women who have served our Nation so nobly as members of the Armed Forces.

If we accept this section of the bill as reported, we would be breaking an implied contract with our former servicemen and servicewomen and changing the rules for no reasonable purpose. Veterans preference was intended as a lifetime reward for those who served in the defense of their country.

It should be noted that the current veterans preference law does not apply to able-bodied veterans who entered the peacetime service after October 14, 1976. We are mainly talking about veterans of World War II and Korea, who are fast

must compete "as equals against all non-veterans, except for such nonveterans as may be given preference in recruiting, examination and selection.

Right now we have no need for an emergency armed service, but if the need arises, the response will be forthcoming. However, the law should be there, needing only a slight amendment on qualifying dates of service, to acknowledge that the Nation that calls for sacrifice will also hire its veterans when qualified.

Supporters have waged an extensive campaign for the modification of veterans preference.

I have every reason to believe that with the enactment of this title, veterans will not only lose their preference benefits but will be subjected to discrimination in hiring, reduction in force, promotions, and assignment to and retention in the Senior Executive Service which will encompass upper level officials. I urge my colleagues to support the amendment to restore veterans' preference which this body has historically extended to those men and women who have served our Nation in the Armed Forces.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. HANLEY).

(Mr. HANLEY asked and was given permission to revise and extend his remarks.)

Mr. HANLEY. Mr. Chairman, the issue at stake here this afternoon is the integrity of the U.S. Government. Traditionally, we have heard the phrase "the full faith and credit of the U.S. Government." And during our periods of

Reference was made to the person who was 58 years old. Generally speaking, my contemporaries are not in the job market. It has little effect on us. For that matter, it does not have that much effect on the Korean veteran. But it does have a major effect on the Vietnam veteran. And if ever there was a less than glorious war in the history of this Nation, it was Vietnam, and if ever a set of veterans got shortchanged, it was the Vietnam veterans. Some in this Chamber would move in the direction of further short-changing them.

Someone has said that minorities and women suffer by virtue of the veterans' preference. Let me allude, if I might, for a minute, to the matter of women. I quote Chairman Campbell, commenting on the GAO study of selecting and hiring registers. He said:

The most surprising thing is that the pattern of effects is not consistent across all examinations. In some cases, women obtain little or no advantages by eliminating veterans' preference. Eliminating some or all veterans' preference or advantages will not have a systematic favorable impact on women.

That is the Chairman of the Civil Service Commission. They are not my words. They are his words. So, hopefully, those words can put to rest the apprehension or the concern of those who feel that, by taking this right away from the veteran, you are going to expand upon employment for women and minorities.

That is not at all the case. I implore you, my friends, to vote down the Bonior amendment, to vote down the Skubitz amendment, and vote for the Hanley amendment.

approaching retirement age anyway. What I fear is that the changes in the veterans preference as reported by committee will be harmful to our Vietnam-era veterans.

Mr. Chairman, according to recent studies I have seen, the facts do not show that veterans are disproportionately represented in the civil service.

I hope my colleagues will give their strong support to the Hanley amendment and vote against the Bonior and Skubitz amendments.●

● Mr. WOLFF. Mr. Chairman, I rise in support of the amendment offered by the distinguished gentleman from New York, which would amend the veterans' provisions of H.R. 11280, the civil service reform bill.

I would like to take this opportunity to congratulate my distinguished colleague (Mr. HANLEY) for the leadership he has shown in preserving the preference eligibility rights of all of America's veterans in Federal employment.

It is quite obvious that the veterans' preference modification proposals contained in H.R. 11280, as amended by the Schroeder amendment in Committee, will deny veterans' preference to millions of deserving Vietnam-era veterans. Why, in 1985 alone over 1 million Vietnam-era veterans will lose their preference eligibility. Mr. Chairman, these veterans were asked for an unlimited commitment by this Nation in its time of need. Simple justice requires in return that in their time of need these veterans be given a special degree of consideration which reflects the unlimited gratitude of an appreciative nation.

I, therefore, believe that the Vietnam-era veteran deserves far better than the proposed veterans' provisions of H.R. 11280, which would stigmatize Vietnam-era veterans as a disfavored class among the past defenders of this Nation. Equal benefits for equal service, in my mind, applies to the veterans of any war. This is not the time to change a principle when it would adversely affect so many young Vietnam-era veterans. Congress is not the place for this trampling of rights and expectations to occur.

Mr. Chairman, I strongly urge my colleagues to reject the undermining of the preference eligibility rights of America's veterans in Federal employment. I strongly urge rejection of the Schroeder amendment provisions of H.R. 11280, and support the Hanley amendment. ●

● Mr. CORCORAN of Illinois. Mr. Chairman, I would like to urge my colleagues to support the compromise provision that was reported out of the Committee on Post Office and Civil Service. I refer to the compromise provision because this is emphatically not the original Carter proposal, which, rather than restructuring and reshaping benefits, blindly eliminated them. Moreover, this compromise does not irresponsibly abolish veterans' benefits. It is not an anti-veterans' compromise. Rather, it addresses a matter of philosophy. Is veterans' preference a matter of a lifelong right to preferential treatment as part of the veterans' payment for a job well done, or is it a more limited mechanism for easing the transition from military to civilian life?

fore, to equip a veteran to compete without the advantage of preference points. This is particularly true when coupled with the fact that in addition to all the time actually spent in the civil service, all the time spent in the military is included in seniority calculations for veterans in the Federal civil service.

This compromise definitely improves the situation for disabled veterans. It more than doubles the number of disabled veterans eligible for noncompetitive appointment by lowering the requirement from a 50-percent disability to a 30-percent disability. This is an increase in eligibility from 494,000 to 996,000 disabled veterans who are not required to compete for job appointments.

This is not an antiveterans bill. I would not support an antiveterans proposal. I am, myself, a veteran, having served in Germany with the U.S. Army in the midsixties. In fact, I am a member of my local American Legion post back home. And I have always strongly supported veterans' rights and benefits. I supported the veterans on all the issues brought before the House of Representatives in 1977. Mr. Chairman, you will recall that the measures which I was pleased to support included:

Legislation to provide veterans with automobile assistance allowance and adaptive equipment;

Legislation to increase service-connected compensation for veteran's loss of use of paired extremities;

GI Bill Improvement Act of 1977;

provement Act of 1978; and I cosponsored the Anderson of California bill to increase benefits for World War I veterans.

I support this legislation before us now because it restructures benefits to reach those who need them most, and, surely, the people who need our help most are the Vietnam-era veterans and the disabled veterans. I believe that it is to them that we should offer this preference. In addition, I think it is time to recognize that our aim is to help veterans through the transition to civilian employment, not to offer them a lifetime guarantee of job security far above and beyond that offered to other civil servants in this day and age.

You are all being asked to make a difficult choice today, but I would ask you to consider the question that I asked myself during our committee deliberations: "Who needs our help most now, in 1978?" It should be apparent that the older, more experienced nondisabled veteran is not as desperately in need of help in making up for losses suffered, as is a Vietnam veteran or a disabled veteran.

Therefore, I urge my colleagues to defeat the Hanley amendment and support the committee provision in the bill on veterans preference. ●

● Mr. TEAGUE. Mr. Chairman, I rise in support of the Hanley amendment. To limit veterans preference will be a gross violation of the long-held principle that veterans of all wars should have equal benefits for equal service. The amended provision on veterans preference will do

I believe that veterans' preference should provide a source of support in the process of exchanging a uniform worn with pride for a shirt and tie. It should compensate our honored veterans for time spent in the service of our great country, but it should not act as a barrier to equal protection for our younger veterans, who not only served our country, but suffered because their war was unpopular at home. They did not return to our shores to cheers and ticker-tape parades. They returned to silent eyes and turned backs.

Contrary to the rampant spread of misinformation, this bill most assuredly does not make life more difficult for Vietnam-era veterans. After the first 2 years following enactment of H.R. 11280, during which all veterans would have an opportunity to apply for a civil service position, only veterans who have been discharged within 15 years would be eligible for veterans' preference. When combined with an amendment that my colleague from Michigan (Mr. BONIOR) will be introducing, this 15 years is sufficient to give all Vietnam veterans an opportunity to apply for and obtain a position with the benefit of preference points and without competition from older, more experienced veterans who also have preference points and are, therefore, so often more qualified. This can only limit the competition which would otherwise be experienced * * * that is, a preference would be provided for all Vietnam-era veterans.

The compromise would also limit absolute preference during reductions in force to 8 years, but surely 8 years is sufficient time to learn a job and, there-

State grants for home facilities for veterans;

Retired serviceman's family protection plan and the survivor benefit plan;

Veterans' Administration Medical Facilities Acquisition Act of 1977;

Veterans' Administration Physicians and Dentists Comparability Act extension;

Veterans and Survivors Pension Adjustment Act of 1977;

Veterans' Disability Compensation and Survivors Benefits Act of 1977; and

The Beard amendment to the HUD appropriations bill eliminating benefits for veterans whose discharges were upgraded under the Carter amnesty plan.

And, Mr. Chairman, during 1978, I was with the veterans again in supporting the following measures:

Legislation providing burial expenses (in allowances to States) for veterans;

Legislation increasing the pension for veterans who are recipients of the Congressional Medal of Honor;

Veterans' Disability Compensation and Survivors Benefits Act of 1978;

Legislation extending hospital care in States, territories, and possessions outside the continental United States for veterans;

Veterans' Housing Improvement Act of 1978;

Legislation increasing benefits for permanently disabled veterans' survivors and increasing compensation for veterans rated at 40-percent disabled;

Roberts amendment to the first budget resolution increasing veterans' programs by nearly \$1 billion;

Veterans' and Survivors' Pension Im-

a great disservice to the Vietnam veterans. The argument that by taking away veterans preference we will help Vietnam-era veterans, is a lot of hogwash. There is no supporting data, that I can find, which shows that Vietnam veterans whose average age is 30, are competing for jobs with World War II veterans, whose average is 60, and Korean veterans, whose average age is 50. There is no evidence that veterans use their preference over and over again. On the other hand, there is evidence that veterans preference is doing well for the minority veteran, who comprise 19 percent of the veteran work force, as opposed to only 8 percent of the general veteran population.

The facts do not bear out that women are being hurt by the Veterans Preference Act. Last year new hires show that 213,000 females were hired in civil service jobs as opposed to 163,000 veterans.

All veterans must obtain a passing grade before the five-point add on. There is nothing mandatory about hiring a veteran. The law provides an appointing officer may pass over a veteran to hire a nonveteran. This was done many times during the past year. There is simply no truth to the allegation being peddled by the administration and others, that the Veterans Preference Act is serving to load up our civil service jobs with less than qualified applicants.

All veterans organizations favor the Hanley amendment. Including the National Association of Concerned Veterans, which speaks exclusively for Vietnam-era veterans.

There is no bona fide national veterans

organization, that I know of, that favors the Schroeder amendment in the bill.

Why does the Federal Government want to eliminate five-point preference for persons who served in the Armed Forces in the Vietnam war, and at the same time make eligible for a non-competitive appointment in the Federal civil service, by Presidential Executive Order, persons who served as volunteers in the Peace Corps, Vista, and ACTION programs.

I see nothing wrong with giving a veteran who served in Vietnam an extra five-point preference when such veteran is seeking employment in the Federal Government. Our veterans gave everything they had for their country, and deserve in return everything a grateful Nation can possibly afford. We gave veterans of previous wars five-point and lifetime retention preference, and I see nothing wrong with keeping it for Vietnam veterans.

I strongly urge that the Hanley amendment will be approved.●

The CHAIRMAN. The hour of 5 o'clock has arrived.

The question is on the amendment offered by the gentleman from Kansas (Mr. SKUBERTZ) as a substitute for the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR).

The amendment offered as a substitute for the perfecting amendment was rejected.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Michigan (Mr. BONIOR).

Pursell
Quayle
Rallsback
Rangel
Reuss
Rosenthal
Rostenkowski
Roybal
Ruppe
Ryan
Scheuer
Schroeder
Seiberling

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Addabbo
Akaka
Ambro
Anderson,
Calif.
Andrews, N.C.
Andrews,
N. Dak.
Annunzio
Applegate
Archer
Ashbrook
Badham
Bafalis
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bevill
Blaggi
Boggs
Boland
Bowen
Brooks
Broomfield
Broyhill
Buchanan
Burke, Mass.
Burlison, Tex.
Burlison, Mo.
Caputo
Carney
Carter
Cederberg

Sharp
Simon
Smith, Iowa
Solarz
Spellman
Stark
Steers
Stockman
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Studds
Thompson
Tucker
Udall

NOES—222

Gaydos
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Goldwater
Gonzalez
Goodling
Grassley
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Hall
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Heckler
Hefner
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Hillis
Holland
Holt
Horton
Hubbard
Hyde
Ichord
Ireland
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kazen
Kelly
Killdee
Kindness
Kostmayer

Ullman
Van Deerin
Vanik
Walgren
Waxman
Weaver
Weiss
Whalen
Whitehurst
Wilson, Tex.
Wirth
Yates

Myers, John
Myers, Michael
Natcher
Neal
Nichols
O'Brien
Oberstar
Panetta
Patten
Pepper
Perkins
Pickle
Pressler
Preyer
Price
Quillen
Rahall
Regula
Rhodes
Rinaldo
Risenhoover
Roberts
Robinson
Roe
Rogers
Rooney
Rose
Runnels
Russo
Santini
Satterfield
Sawyer
Schulze
Sebelius
Shipley
Shuster

Lehman
Lujan
Miller, Calif.
Moorhead,
Calif.
Pettis
Quie
Richmond
Rodino

Roncalio
Rousselot
Rudd
Sarasin
St Germain
Steiger
Stratton
Stump
Teague

Thornton
Traxler
Tsongas
Vander Jagt
Wiggins
Wilson, Bob
Young, Alaska
Zerfetti

The Clerk announced the following pairs:

On this vote:

Mr. Richmond for, with Mr. Fary against.
Mrs. Chisholm for, with Mr. Breaux against.
Mrs. Burke of California for, with Mr. Chappell against.

Mr. Corcoran of Illinois for, with Mr. Emery against.

Mr. Miller of California for, with Mr. Zerfetti against.

Mr. Eckhardt for, with Mr. Stratton against.

Mr. Flood for, with Mr. Teague against.

Mrs. MEYNER and Messrs. YOUNG of Texas, MURPHY of Pennsylvania, MURPHY of Illinois, PRESSLER, WRIGHT, MOAKLEY, DERRICK, HEFTTEL, DE LA GARZA, VOLKMER, NEAL, LEVITAS, RAHALL, and DICKS changed their vote from "aye" to "no."

Mr. STEERS changed his vote from "no" to "aye."

So the perfecting amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. HANLEY).

RECORDED VOTE

Mr. CHARLES H. WILSON of Cal-

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 222, not voting 61, as follows:

[Roll No. 746]

AYES—149

| | | |
|-----------------|-----------------|---------------|
| Alexander | Downey | Krebs |
| Anderson, Ill. | Drinan | LaFalce |
| Ashley | Edgar | Leach |
| Aspin | Edwards, Calif. | Leggett |
| AuCoin | Evans, Colo. | Lundine |
| Baldus | Fascell | McCloskey |
| Barnard | Fenwick | McCormack |
| Bedell | Findley | McHugh |
| Bellenson | Fisher | McKinney |
| Benjamin | Fithian | Madigan |
| Bingham | Foley | Maguire |
| Blanchard | Ford, Mich. | Markey |
| Blouin | Ford, Tenn. | Mattox |
| Bolling | Forsythe | Mazzoli |
| Bonior | Fowler | Meeds |
| Brademas | Garcia | Metcalfe |
| Breckinridge | Gialmo | Michel |
| Brinkley | Glickman | Mikulski |
| Brodhead | Gore | Mikva |
| Brown, Calif. | Gradison | Mineta |
| Burton, John | Green | Mitchell, Md. |
| Burton, Phillip | Hamilton | Moffett |
| Butler | Harkin | Moss |
| Carr | Harrington | Mottl |
| Cavanaugh | Harris | Nedzi |
| Clay | Hawkins | Nix |
| Conable | Hightower | Nolan |
| Conte | Hollenbeck | Nowak |
| Conyers | Holtzman | Oakar |
| Corman | Howard | Obey |
| Cornwell | Hughes | Ottinger |
| Cotter | Jacobs | Patterson |
| Coughlin | Jeffords | Pattison |
| Danielson | Jones, Okla. | Pease |
| Dellums | Jordan | Fike |
| Diggs | Kastenmeier | Poage |
| Dodd | Keys | Pritchard |

| | |
|----------------|----------------|
| Clausen, | Lagomarsino |
| Don H. | Le Fante |
| Cleveland | Lederer |
| Coleman | Lent |
| Collins, Tex. | Levitas |
| Cornell | Livingston |
| Crane | Lloyd, Calif. |
| Cunningham | Lloyd, Tenn. |
| D'Amours | Long, La. |
| Daniel, Dan | Long, Md. |
| Daniel, R. W. | Lott |
| Davis | Lukan |
| de la Garza | McClary |
| Dent | McDade |
| Derrick | McDonald |
| Derwinski | McEwen |
| Devine | McFall |
| Dickinson | McKay |
| Dicks | Mahon |
| Dingell | Mann |
| Dornan | Marks |
| Duncan, Oreg. | Marlenee |
| Duncan, Tenn. | Marriott |
| Early | Martin |
| Edwards, Ala. | Mathis |
| Edwards, Okla. | Meyner |
| Ellberg | Millford |
| English | Miller, Ohio |
| Erlenborn | Minish |
| Ertel | Mitchell, N.Y. |
| Evans, Del. | Moakley |
| Evans, Ga. | Mollohan |
| Evans, Ind. | Montgomery |
| Fish | Moore |
| Flippo | Moorhead, Pa. |
| Florio | Murphy, Ill. |
| Flynt | Murphy, N.Y. |
| Fountain | Murphy, Pa. |
| Frenzel | Murtha |
| Gammage | Myers, Gary |

NOT VOTING—61

| | |
|---------------|---------------|
| Ammerman | Clawson, Del. |
| Armstrong | Cochran |
| Bonker | Cohen |
| Breaux | Collins, Ill. |
| Brown, Mich. | Corcoran |
| Brown, Ohio | Delaney |
| Burgener | Eckhardt |
| Burke, Calif. | Emery |
| Burke, Fla. | Fary |
| Byron | Flood |
| Chappell | Flowers |
| Chisholm | Fraser |

| |
|---------------|
| Sikes |
| Slak |
| Skelton |
| Skubitz |
| Lent |
| Slack |
| Smith, Nebr. |
| Snyder |
| Spence |
| Staggers |
| Stangeland |
| Stanton |
| Steed |
| Symms |
| Taylor |
| Thone |
| Treen |
| Trible |
| Vento |
| voikmer |
| Waggonner |
| Walker |
| Walsh |
| Wampler |
| Watkins |
| White |
| Whitley |
| Whitten |
| Wilson, C. H. |
| Winn |
| Wolf |
| Wright |
| Wylder |
| Wylie |
| Yatron |
| Young, Fla. |
| Young, Mo. |
| Young, Tex. |
| Zablocki |

| |
|----------------|
| Frey |
| Fuqua |
| Gibbons |
| Hagedorn |
| Hansen |
| Huckaby |
| Jenkins |
| Johnson, Colo. |
| Kasten |
| Kemp |
| Krueger |
| Latta |

formia. Mr Chairman, I demand a recorded vote

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 281, noes 88, not voting 63, as follows:

[Roll No. 747]

AYES—281

| | | |
|----------------|----------------|-------------|
| Abdnor | Carney | Evans, Ind. |
| Addabbo | Carter | Findley |
| Akaka | Cavanaugh | Fish |
| Alexander | Cederberg | Fisher |
| Ambro | Clausen, | Fithian |
| Anderson, | Don H. | Fippo |
| Calif. | Cleveland | Florio |
| Andrews, N.C. | Coleman | Flynt |
| Andrews, | Collins, Ill. | Foley |
| N. Dak. | Collins, Tex. | Forsythe |
| Annunzio | Conable | Fountain |
| Applegate | Conte | Fowler |
| Archer | Cornell | Frenzel |
| Ashbrook | Cornwell | Gammage |
| AuCoin | Cotter | Gaydos |
| Badham | Coughlin | Gephardt |
| Bafalis | Crane | Gialmo |
| Baldus | Cunningham | Gilman |
| Barnard | D'Amours | Ginn |
| Baucus | Daniel, Dan | Glickman |
| Bauman | Daniel, R. W. | Goldwater |
| Beard, R.I. | Danielson | Gonzalez |
| Beard, Tenn. | Davis | Goodling |
| Benjamin | de la Garza | Gore |
| Bennett | Dent | Gradison |
| Bevill | Derrick | Grassley |
| Biaggi | Derwinski | Gudger |
| Boggs | Devine | Guyer |
| Boland | Dicks | Hall |
| Bowen | Dingell | Hamilton |
| Brademas | Dodd | Hammer- |
| Breckinridge | Dornan | schmidt |
| Brinkley | Duncan, Oreg. | Hanley |
| Brooks | Duncan, Tenn. | Hannaford |
| Broomfield | Early | Harris |
| Broyhill | Edwards, Ala. | Harsha |
| Buchanan | Edwards, Okla. | Heckler |
| Burke, Mass. | Ellberg | Hefner |
| Burleson, Tex. | English | Hefel |
| Burlison, Mo. | Ertel | Hightower |
| Butler | Evans, Del. | Hillis |
| Caputo | Evans, Ga. | Holland |

| | | |
|-----------------|----------------|---------------|
| Hollenbeck | Miller, Ohio | Sawyer |
| Holt | Minish | Schulze |
| Horton | Mitchell, N.Y. | Sebelius |
| Howard | Moakley | Sharp |
| Hubbard | Mollohan | Shuster |
| Hughes | Montgomery | Sikes |
| Hyde | Moore | Sisk |
| Ichord | Moorhead, Pa. | Skelton |
| Ireland | Mottl | Skubitz |
| Jeffords | Murphy, Ill. | Slack |
| Jenrette | Murphy, N.Y. | Smith, Nebr. |
| Johnson, Calif. | Murphy, Pa. | Snyder |
| Jones, N.C. | Murtha | Spellman |
| Jones, Tenn. | Myers, Gary | Spence |
| Kazen | Myers, John | Staggers |
| Kelly | Myers, Michael | Stangeland |
| Kildee | Natcher | Stanton |
| Kindness | Neal | Steed |
| Kostmayer | Nichols | Stockman |
| Krebs | Nowak | Symms |
| Lagamarsino | O'Brien | Taylor |
| Le Fante | Oberstar | Thompson |
| Lederer | Panetta | Thone |
| Lent | Patten | Treen |
| Levitas | Pepper | Tribie |
| Livingston | Perkins | Tucker |
| Lloyd, Calif. | Pickle | Ullman |
| Lloyd, Tenn. | Pressler | Vanik |
| Long, La. | Preyer | Vento |
| Long, Md. | Price | Volkmer |
| Lott | Pursell | Waggonner |
| Luken | Quayle | Walgren |
| Lundine | Quillen | Walker |
| McClory | Rahall | Walsh |
| McCormack | Rallsback | Wampler |
| McDade | Regula | Watkins |
| McDonald | Rhodes | Weaver |
| McEwen | Rinaldo | White |
| McFall | Risenhoover | Whitehurst |
| McKay | Roberts | Whitley |
| McKinney | Robinson | Whitten |
| Madigan | Roe | Wilson, C. H. |
| Mahon | Rogers | Winn |
| Mann | Rooney | Wirth |
| Marks | Rose | Wolf |
| Marlenee | Rosenthal | Wright |
| Marriott | Rostenkowski | Wylder |
| Martin | Roybal | Wylie |
| Mathis | Runnels | Yatron |
| Mattox | Ruppe | Young, Fla. |

| | | |
|------------|-------------|---------------|
| Budd | Stump | Wiggins |
| Brasin | Teague | Wilson, Bob |
| Shipley | Thornton | Young, Alaska |
| St Germain | Traxler | Zerferetti |
| Steiger | Tsongas | |
| Stratton | Vander Jagt | |

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.

Mr. Breaux for, with Mrs. Chisholm against.

Mr. Zeferetti for, with Mrs. Burke of California against.

Mr. Ammerman for, with Mr. Eckhardt against.

Mr. Chappell for, with Mr. Corcoran of Illinois against.

Mr. Stratton for, with Mr. Diggs against.

Mr. St Germain for, with Mr. Miller of California against.

Mr. Krueger for, with Mr. Flood against.

Mrs. BOGGS changed her vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

AMENDMENTS OFFERED BY MRS. SPELLMAN

Mrs. SPELLMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SPELLMAN: Page 208, line 4, after "recruited" insert "(including from within the civil service)".

Page 208, after line 12, insert the following new subsection:

"(d) (1) The regulation under subsection (c) of this section shall provide that in filling any position in an Executive agency for which a recruitment program under subsection (c) is being conducted by that agency for women, to the maximum extent prac-

But we have a very unique situation in the Federal Government today which is friggered by affirmative action programs. We are happy to have affirmative action programs; had there not been affirmative action programs I know that a great many Members who voted for the Hanley amendment would have voted against it. Had they felt that they were hurting women, they would not have voted in favor of the Hanley amendment. So we do acknowledge the fact that even right within this bill there are affirmative action provisions to enable the hiring of women.

But, we have a very unique and a very unfair situation which is developing. As we reach out to bring women into the Federal Government where the agencies specifically seek women, we are finding that women are being brought in from the outside over the women who for years have served in the Civil Service.

And the women in the system are helpless. Here we have women who are capable, who only because they were women were held back. We recognize today how wrong that is, but we did not recognize it years ago. I was part of that kind of system and I thought it was all right. I did not know better. Now we know better. Yet we have no way of helping these women, who have trained the men who are today their bosses, to move up to the positions that they are capable of holding.

Instead, every time there is an affirmative action program we are reaching

Meyner
Michel
Milford

Russo
Santini
Satterfield

Young, Mo.
Young, Tex.
Zablocki

NOES—88

Anderson, Ill.
Ashley
Aspin
Bedell
Bellenson
Bingham
Blanchard
Blouin
Bolling
Bonior
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Clay
Conyers
Corman
Dellums
Downey
Drinan
Edgar
Edwards, Calif.
Erlenborn
Evans, Colo.
Fascell
Fenwick
Ford, Mich.
Ford, Tenn.
Garcia

Green
Harkin
Harrington
Hawkins
Holtzman
Jacobs
Jones, Okla.
Jordan
Kastenmeier
Keys
LaFalce
Leach
Leggett
McCloskey
McHugh
Maguire
Markey
Mazzoli
Meeds
Metcalfe
Mikulski
Mikva
Mineta
Mitchell, Md.
Moffett
Moss
Nedzi
Nix
Noian
Oakar

Obey
Ottinger
Patterson
Pattison
Pease
Pike
Poage
Pritchard
Rangel
Reuss
Ryan
Scheuer
Schroeder
Seiberling
Simon
Smith, Iowa
Solarz
Stark
Steers
Stokes
Studds
Udall
Van Deerlin
Waxman
Weiss
Whalen
Wilson, Tex.
Yates

NOT VOTING—83

Ammerman
Armstrong
Bonker
Breauz
Brown, Mich.
Brown, Ohio
Burgener
Burke, Calif.
Burke, Fla.
Byron
Chappell
Chisholm
Clawson, Del.
Cochran
Cohen
Corcoran

Delaney
Dickinson
Diggs
Eckhardt
Emery
Fary
Flood
Flowers
Fraser
Frey
Fuqua
Gibbons
Hagedorn
Hansen
Huckaby
Jenkins

Johnson, Colo.
Kasten
Kemp
Krueger
Latta
Lehman
Lujan
Miller, Calif.
Moorhead,
Calif.
Pettis
Quile
Richmond
Rodino
Rencallo
Rousselot

ticable, an individual not entitled to status as a preference eligible under section 2108 (3) (A) or (C) for purposes of preference in consideration for appointment shall be entitled, with respect to consideration for appointment to that position, to the preference available to an individual having the status of a preference eligible under section 2108 (3) (A) if the individual—

“(A) is a woman; and
“(B) has completed, in the aggregate, at least 6 years of civilian service.

“(2) Such regulation shall provide, to the maximum extent practicable, that no individual shall be excluded from consideration for appointment by reason of the application of this subsection.”

Page 208, line 13, strike out “(d)” and insert in lieu thereof “(e)”.

Page 208, line 26, strike out “(e)” and insert in lieu thereof “(f)”.

Mrs. SPELLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Chairman, I rise to offer an amendment to section 212 of title III of the bill. Section 212 is entitled, “Minority Recruitment.” I am very much in favor of that section, but I would like to broaden it.

What I am seeking here today is not to add a new class of people who are going to be given special treatment. I seek nothing special for women in general.

from outside the system and bringing women in over the women who have for years been doing the work. Women outside the system supersede those within the system for placement in upper grade jobs.

There is something very, very wrong with that. I am asking that we give recognition to that unusual situation.

According to the White House over 82 percent of all the women are concentrated in the GS grades 1 through 11 and earn less than \$11,000 per year. We know that so many of them are capable of filling top grade positions. We know that many grade 9's, had they been male, would have been 11's or 12's or 15's today.

The Schroeder amendment did not address this problem. The Garcia amendment does not address it either.

So I am offering this today.

How do the veterans' groups feel on this? I would like to call to the attention of the Members the fact that veterans are generous people. They are not opposed. We posed this question to a group of people about to go to a meeting. After they studied the matter, and because of their own knowledge of the situation, this is the telegram I got from the Maryland American Legion. It says:

On behalf of the 60,000 Legionnaires of Maryland we wish to express our appreciation for the Hanley amendment. We also pledge our support for the Spellman upward mobility amendment designed to help women in government gain better positions.

JAMES R. THOMAS,
State Commander.

This discussion was led by men who themselves had been in the Federal system and who knew that throughout the

years there were women who were training men who went on ahead of them.

Let me repeat—we are asking nothing special for women. We are just saying: Let us not pit women against women—let us not forget those who for years have served. We are not creating a new affirmative action program. We are merely providing that when there is an affirmative action program in which women are being sought, that we help those women who are within the system apply and qualify for the jobs that they are capable of handling, instead of bringing new people in above them.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if I listened correctly to the gentlewoman from Maryland, she in fact by her amendment would pit women against women, because what she provides is for a preference to women who have already had 5 years of civil service. New women applicants or those with less than 5 years would be by this amendment facing greater odds in seeking employment than those who have already the 5-year edge.

I am a firm defender of women's rights. But this amendment would be administratively impossible to handle.

You could not possibly conduct your Federal personnel system when you start to, by the back door, insert provisions presumably to correct, for example, the law that Congress just restated of veterans' preference. So what we would be doing, if we accepted this amendment,

this was one of the complaints that we had on the part of women.

I might say that we have also participated in meetings to discuss the subject and have invited the chairman of the Civil Service Commission to join in meeting with the women affected and to attempt to address the problem. The solution that was offered to the women at the time was, "Well, we will have to start somewhere so we will hire women for the top grades—they will then reach down to help you.

"You will never get anywhere until we put these women up here at the top."

We think that that is blatantly unfair on the face of it and I am sure the gentleman will agree.

Mr. DERWINSKI. But, if you take a good look at the amendment, I emphasize what I told you, this would develop women's preference and would automatically discriminate against all other category areas. As I said, each time you provide a preference for someone obviously this has some negative effect on some other category.

Since we do not have a real record in committee, and I do not believe the committee in the other body touched this subject, either, I think the best course of action would be to keep this bill as uncluttered as possible and give this matter priority when we go back to our work within the committee.

Mrs. SPELLMAN. If the gentleman will yield still further, I wish to remind my colleagues that this amendment addresses itself to only those situations in

dent. I can understand the politics of it in that what we could do is to give everyone points. We could give veterans points; we could give points to people who were in the war on poverty; we could give blacks preference; we could give Chicanos preference; we could give young people and old people preference. We could just nullify everything.

We could all run home and tell everybody, "Do you see what we did? We gave you all the goodies." We would not be telling them that we gave them to everyone else, too.

Really, this amendment would be counter productive. I think it goes against the thrust of what women's groups have been trying to do in the Federal service. They want merit promotions based on merit, on background, and on educational ability. They want, based on their own ability, to move forward. They do not want to be given five points just because they are women and they have been around a long time.

Mrs. FENWICK. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I would like to associate myself with the remarks of my colleague, the gentlewoman from Colorado (Mrs. SCHROEDER).

I would only like to point out that we have forgotten the Aleuts who are also a group which may be applying for a special preference if we continue with amendments like this one.

Mrs. SPELLMAN. Mr. Chairman, will

would be to completely contradict the two votes we just had.

Further, this amendment was not considered in the committee. We have no idea how in the world it could be administered. So in the usual parlance of committee terminology, we will be pleased to give it priority at the start of the next session. But I do not see how we could possibly accept this amendment in this bill not knowing what its effect would be.

Mrs. SPELLMAN. Mr. Chairman, if the gentleman will yield, the amendment calls for regulations to be prepared to carry out the concept being proposed.

There will be regulations and we will have an opportunity to see them. We will have an opportunity to provide oversight over both the regulations and the administration.

Mr. DERWINSKI. But as the gentleman from Maryland (Mrs. SPELLMAN) well knows, oversight is a difficult field. Oversight over something we have had no background on or contract with or study about puts us in an impossible situation. I am not speaking just for the committee, but I do not believe that the Civil Service Commission could effectively administer this amendment.

Mrs. SPELLMAN. Will the gentleman yield further?

Mr. DERWINSKI. Yes, of course I yield further.

Mrs. SPELLMAN. Had the gentleman had the opportunity to be with us as we held hearings in five different departments throughout the city and throughout the Government, he would have found that over and over and over again

which affirmative action calls for women. It does not create a new situation, it does not spell out something else that must be done, but it does say when women are being sought for jobs, then it shall apply.

Mrs. SCHROEDER. I move to strike the requisite number of words.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, I think one of the things that we women have talked about more or less, and have snickered about has been the "old boys club."

I really object to this amendment because I see it starting an old-girls club.

As I recall the testimony of the women's groups—and I went out to check it with them—the women's groups in essence have been supportive of removing all preference points rather than cluttering the whole thing up with finding all sorts of new systems.

I think that any woman who wishes to compete within the affirmative action program for a higher job is certainly not prohibited from going ahead and filing for that job. She can file for that job at any time or on any day. The fact that she already has a job in the Federal civil service does not preclude her from taking that step. In fact, it probably helps her because she has some kind of background and she has certain experience. She already has several different ways in which she can move forward in that endeavor.

Therefore, Mr. Chairman, I really urge the Members to turn this amendment down. I think this is a dangerous prece-

the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentlewoman from Maryland.

Mrs. SPELLMAN. Mr. Chairman, would the gentlewoman from Colorado tell us how we can move? Will she tell us how women who are in grade 9 and have been kept in grade 9 because only men were allowed to move into grade 10, 11, and 12, can move forward when they are applying for jobs and are being told, "We cannot move you a couple of grades"?

I might point out that the Civil Service Commission has had a little difficulty in answering that question. Has the gentlewoman given that any thought?

Mrs. SCHROEDER. I think we can allow them to bid on that job and prove they have background and the qualifications, and that we can do testing as we have always done. We do it on the basis of merit. However, to give them points because they have been in the Federal service and someone else has not is something which I do not think we want to do. I think we want to do it on the basis of whether they can or cannot do that GS-11, GS-12, or GS-13 job.

I think women want that, too, not just because we were here and staked it out. The points do not measure whether or not that woman in a GS-9 or a GS-10 job truly is qualified for the higher job. As a matter of fact, if we argue that they were flatly discriminated against with respect to getting the higher jobs, I think there have been blacks also who have been discriminated against, and Chicanos. Many of them in my area have not been able to move up

at all; but to just flatly assign all of them points; too, say, double-bid so that they can go up several steps on the ladder without doing the testing violates the whole notion of merit, and what we are trying to do in the area of Civil Service reform.

Mrs. SPELLMAN. If the gentlewoman will yield further, of course, the point is that they would be taking a test, they would be qualified. They would have to be qualified. However, because they have been held down, they are in a position where they cannot jump these additional grades; and that is what we have to address ourselves to.

Mrs. SCHROEDER. However, they could go out and rebid on the register, and someone would look at the points on the test and the experience in the job. I think that is what should be measured. We do not give them extra points for that.

I think all of us have felt discriminated against at times, whether we are male, female, or what have you; but at some point we are going to end up with white males staging a revolt if we go too far on this sort of amendment.

I think we are really missing the whole point of what this bill is all about.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I strongly support the statement just made by the gentlewoman from Colorado (Mrs. SCHROEDER).

We are plunging into a very, very difficult area if we say to a woman, "Because you are a woman in the Federal service

The amendment that has been put forth by the gentlewoman from Maryland (Mrs. SPELLMAN) came to my attention less than 1 hour ago. It may have a great deal of merit, Mr. Chairman, but because of the complexities involving this amendment, I do not believe this is the proper time to consider this measure. I therefore urge that the Spellman amendment be defeated.

Mr. HAMMERSCHMIDT. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in opposition to the gentlewoman's amendment.

If we were to pass this amendment, Mr. Chairman, it would be the height of discrimination based on a person's status as a member of a class. I am not a lawyer, but it does not take legal training to question the constitutionality of such a provision. And even more, Mr. Chairman, it would be an abominable injustice.

Veterans' preference points are awarded for affirmative service during a period of war. They are awarded without regard to race, sex, or creed. The qualifying criteria is military service. There is simply no correlation between this concept, and the concept of awarding points to people merely because they are women, or black, or from Arkansas, or any other reason not connected with an affirmative act as opposed to an in-

AMENDMENTS OFFERED BY MR. LEACH

Mr. LEACH. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. LEACH: Page 209, after line 12, insert the following new section:

TEMPORARY EMPLOYMENT LIMITATION

Sec. 313. (a) Effective one year after the date of the enactment of this Act the number of individuals employed in or under an Executive agency shall not exceed the number of individuals so employed on January 1, 1977.

(b) The President shall prescribe regulations to carry out the purpose of this section, including regulations to ensure that no increase in the procurement of personal services by contract occurs by reason of the enactment of this section.

(c) In administering this section, an individual employed on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such individual's regularly scheduled work-week.

(d) For the purpose of this section, "Executive agency" has the meaning set forth in section 105 of title 5, United States Code.

(e) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(f) The provisions of this section shall terminate at noon on January 20, 1981.

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Page 129, in the table of contents, strike out the item relating to section 313 and insert in lieu thereof the following:

Sec. 313. Temporary employment limitation.
Sec. 314. Effective date.

and have been such for 5 years, we are giving you the same preference as we give to a veteran."

The next thing we know, other groups will say, "We want five points," and then more people will want five points.

Mr. Chairman, it is a bad amendment, untried, untested, and will lead us into a great deal of difficulty.

I ask that the amendment be defeated.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, does the gentleman agree with the gentlewoman from Colorado (Mrs. SCHROEDER) that the author of the amendment is a member of the old-girls club?

Mr. UDALL. I am with the gentlewoman from Colorado (Mrs. SCHROEDER), on this one and against my good friend, the gentlewoman from Maryland (Mrs. SPELLMAN).

Mr. GARCIA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this particular section of the bill is one that my staff and I have devoted many, many hours to. The reason for this section is because I felt very strongly that one of the factors which most hampers minorities in terms of Federal civilian employment is that their names are not on those civil service registers. The purpose of this section, then, is to insure that minorities will get on those registers, by placing heavy emphasis on their recruitment.

herent status.

If this amendment passes we will indeed have begun to discriminate in reverse, and for this reason, Mr. Chairman, I strongly oppose the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentlewoman from Maryland (Mrs. SPELLMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mrs. SPELLMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Seventy-five Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

Mrs. SPELLMAN. Mr. Chairman, I withdraw my demand for a recorded vote.

So the amendments were rejected.

Mr. LEACH (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Chairman, the amendments I am offering will simply establish a statutory ceiling on the total number of Federal employees in the executive branch.

There has been a great deal of discussion on the Federal bureaucracy, its ineffectiveness, its inefficiencies, the morass of redtape, and the need to reform our civil service laws. Clearly the existing system should be improved and management afforded greater flexibility in mobilizing the bureaucracy to accomplish its objectives. At the same time, the bill before us, in present form, is silent on the issue of the appropriate size of that bureaucracy.

According to Civil Service Commission statistics, executive branch employment, excluding those working for the U.S. Postal Service, has increased over the past year and a half by 112,000. While that figure includes all employees, whether employed full time, part time, or on an intermittent basis, it is significant to note that the increase in full-time jobs alone is 103,000.

I stress this growth figure because it is

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sudden. During the previous 8 years of Republican administrations, total executive branch employment decreased by 115,000. Yet in the past 18 months of the Carter administration Federal employment has increased by an almost identical 112,000.

It is easy to say this represents only a 5 percent increase compared to total executive branch employment of over 2 million, but in actuality it is rather extraordinary. When I first started looking into the matter 8 months ago, executive branch employment had increased by 15,000 and I reported to my constituents that this figure was larger than Fort Madison, Iowa—the seventh largest city in my district. Then the growth figure increased to 40,000 and I reported that the increase in Government employment was larger than Burlington, Iowa—the third largest city in my district. The latest available statistics now reveal that Government employment has jumped by more than 100,000, which is larger than Davenport, Iowa—the largest city in my district.

This trend must be reversed. In an effort to work constructively with the administration in accomplishing the major goal of civil service reform, I am offering this amendment to limit the number of executive branch employees to the number so employed in January 1977, which was 2,119,000. The ceiling would become effective 1 year after the date of enactment of the Civil Service reform bill, which permits the administration to reach the target level of reduced em-

tion, we may see, with all of the ensuing activity to reorganize and reform all aspects of the civil service system, an even greater growth in the number of employees on the Federal payroll.

During committee consideration, this employment ceiling amendment was rejected by a 13-to-8 vote. Frankly, I was disappointed that the Civil Service Commission and administration spokesmen argued strongly that a ceiling would be inappropriate because of the need to establish new Federal programs in the next several years. From the point of view of the minority, this reasoning underscores our philosophical commitment to put a halt to the growth of bureaucracy. Clearly, if one supports the initiation of massive new programs, this amendment should be opposed. But, just as clearly, those of us that are skeptical of the need for more programs should reflect that skepticism in a vote for this amendment.

In a 1976 interview with Business Week—well before the recent development popularly characterized as the proposition 13 tax revolt—the President responded to a question put to him regarding the substantial increase in State employment that occurred during his term of office as Governor of Georgia, that he had promised State employees that no one would be discharged as a result of his reorganization but that he did reserve the right not to fill vacancies as they occurred and would do the same thing upon being elected to office. I believe this approach the President outlined in the Business Week interview is

of Congress should have the right annually to fire one bureaucrat without any cause or argument.

The gentleman from Iowa is a very valuable member of our committee, and I do not want to put down the amendment he has offered, but this is a drastic action to take this afternoon in the middle of a very complicated bill. Maybe we ought to have a limitation on the number of employees in Federal Government, but we do not do it without hearings, not without bringing the departments and the administration in and finding out what is an appropriate limit. We do not legislate in this fashion, in this broadcast manner, in this particular bill.

This was considered by the committee and defeated by a vote of 13 to 8. I would hope we would not get into this business this afternoon of trying to adopt this amendment. Sure, we ought to look into this overall problem of excessive Federal employment, but I do not think there are many of us here tonight who have the information we need to say that we are going to put a rigid ceiling on Federal employment.

What we will end up doing is coming in with exemptions and additional legislation to let people out of it, so I would hope that we would have a vote and reject this amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. COLLINS of Texas asked and was given permission to revise and extend

employment through attrition. According to the Civil Service Commission, the attrition/separation rate for 1977 was approximately 22 percent. Clearly the administration could refrain from filling one in four vacancies during the coming year and thus easily reach the statutory ceiling. I might also point out that the amendment further requires the President to issue regulations to insure that no increase in the procurement of outside services results from the limit on Federal employment. In addition, the amendment assures that part-time employment will be calculated as a fraction of full-time equivalent hours in order to avoid any inadvertent bias against part-time employment for which this body has expressed clear support.

The amendment also provides waiver authority in the event of a national emergency so as to permit the hiring of employees in excess of the statutory ceiling if necessary.

In sunset fashion, the amendment will expire with the termination of the President's current term of office, providing the Congress and the administration the opportunity, at that time, to review and evaluate the effectiveness of a ceiling on Federal employment.

Mr. Chairman, the current trend in Federal employment runs directly counter to the prevailing mood in this country. American taxpayers are weary, not only of high taxes, but of excessive and costly Government bureaucracy. Nowhere in the reform bill before us today is any meaningful effort made to meet that particular outspoken concern. Without explicit direction in this legisla-

on the right track and desire in no way to jeopardize the jobs of Federal employees now on the payroll. At the same time, I do believe this Congress ought to work cooperatively with the administration to allow for a reduced level of employment through the simple process of attrition.

Finally, let me stress again that not only should direct Federal employment be capped, but indirect employment should also be more carefully constrained. Frightening statistics recently presented by HEW Secretary Califano to the Senate Appropriations Committee, indicate that at the same time the U.S. Government is paying salaries to 144,000 regular HEW employees, HEW is indirectly paying the salaries of another 980,000 who work for private think tanks, universities, State and local government, and related programs. Thus the equivalent payroll for this one Federal Department alone exceeds 1 million jobs.

While my amendments do not address all of these hidden and indirect personnel costs, I believe the Civil Service reform bill offers us a timely opportunity to move beyond rhetoric on the issue of big, costly Government, and take a meaningful step to limit the bureaucracy.

I urge adoption of the amendments.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Iowa has a good idea, and everybody has got a lot of good ideas about civil service. I expect that before midnight we are going to hear most of them at the rate we are going. I had a Member back here with the bright idea that every Member

his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, if I could I would like to call on the gentleman from Iowa who is sponsoring this amendment, because I think the key to the amendment is the fact that the gentleman says it will place a ceiling on civil service. Did the gentleman state that during the past two administrations we had actually had a decrease?

Mr. LEACH. Yes, we had a decrease of approximately 115,000 Federal employees.

Mr. COLLINS of Texas. During the two Presidential terms of Ford and Nixon they have been able to decrease 115,000 in civil service. Under this administration, which has only been here for a year and a half, how many people actually have been added?

Mr. LEACH. As of June, approximately 112,000.

Mr. COLLINS of Texas. In other words, the Carter administration has offset all of the gains that were made in reducing and getting civil service in line. Has the gentleman had anyone who objects basically to this concept the gentleman has of putting a ceiling on the size of the Government?

Mr. LEACH. Well, I have, of course, talked a good deal to my constituents about it, and I get very little resistance in the State of Iowa to that sort of restraint.

Mr. COLLINS of Texas. Of course, down in Texas everyone likes your recommendation. I have been interested in talking about it to many people in civil service who also liked the idea of applicants qualifying although doing tempo-

any duty or waiting for these attrition openings. They want civil service to be a merit proposition instead of being on a political basis.

In the past, to get recognition in civil service there was supposed to be a statute whereby one would make a career out of civil service instead of trying to turn it into a political pork barrel through building new agencies which, as I said, would be the only reason people would oppose this amendment.

Has this been publicized enough to allow people to understand the full ramifications of it?

Mr. LEACH. I think the gentleman from Arizona has a good point. The committee has not held adequate hearings. However, people throughout the country understand this issue. It is a very clear issue. I might also say to the civil servants I talk to are very concerned. Not only is good government more limited government but an immediate and pressing problem for civil servants is the unfounded liabilities of the civil service retirement fund. If we continue to expand our Federal employees system willy-nilly, we will be risking the retirement of a very large number of civil servants.

Mr. COLLINS of Texas. Without a ceiling it would mean personnel headquarters could just go out and pick anybody here and there without giving present civil service people a chance for advancement.

Mr. CHAIRMAN, I rise in support of the amendment offered by the gentleman from Iowa to limit the number of Fed-

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, one of the questions I would have about this is when we start throwing figures out about how many people there are or there are not in civil service employment, one question is how many of those jobs then get contracted out? One of the difficulties we have on this, and I would appreciate the help of the gentleman from Iowa on this, is what we see happening is a shell game. Very often when one tries to get the number of people on the Federal employee rolls down, then they contract out jobs. We still have those people to pay and sometimes it even costs more.

I would hate to see only in-house personnel figures set in an amendment. I think we are aware of the A-76 circular from OMB, which went out under the previous administration, which was to try to force as many jobs as possible out under contract. I wonder if the gentleman is aware how many we contract out and whether or not we count those in the ceiling, and how do we deal with that?

Mr. LEACH. Since 1961 Federal employment has increased 25.8 percent while the population as a whole increased about 19 percent. And, although we do not have the exact figures, clearly the number of individuals involved in contracted service has increased substantially greater than the civil service itself.

completely out of hand. They more than doubled the top levels in the White House.

Mr. CHARLES H. WILSON of California. In other words, they got rid of the lower levels and put in more upper levels?

Mr. UDALL. They have had more chiefs and fewer Indians in those years. The CHAIRMAN. The question is on the amendments offered by the gentleman from Iowa (Mr. LEACH).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. LEACH. Mr. Chairman, I demand a recorded vote, and, pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be

eral employees. It is abundantly clear to me, American taxpayers are at the absolute limit of their tolerance on Federal spending and bureaucracy.

As the gentleman carefully explained, this amendment will not work an unreasonable hardship on the administration since the President is required to comply with the employment limit within 1 year of enactment and the number, by which Federal employment will be reduced, may easily be reached through attrition.

By requiring the President to insure, by regulation, that no increase in the contracting out of services will result from the limit on Federal employment, will effectively prevent the administration from attempting to "end-run" the Congress.

As my colleagues may have noted, recent testimony by HEW Secretary Califano, before the Senate Appropriations Committee, painted a pretty bleak picture for the American taxpayer. According to Secretary Califano, the Department is paying the salaries of 144,256 regular HEW employees plus the salaries of another 980,217 people who work for private think tanks, universities, State and local government agencies, and the like. The total exceeds 1 million, direct and indirect jobs, dependent on HEW funds. This figure, mind you, refers only to one of our major departments.

Mr. Chairman, Federal spending and "jobs creation" by Uncle Sam has grown to staggering proportions. I believe this amendment will enable us to help stem this growth, and I encourage my colleagues to join me in supporting it.

The Civil Service Commission does not know how many contracted-out jobs there are in America today. This amendment addresses this issue by saying the ceiling that will be placed cannot be subverted by creating new contracted-out jobs in place of Federal positions. This amendment then does address the issue Mrs. SCHROEDER has referred to.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I move to strike the requisite number of words.

I wonder if the gentleman from Arizona could respond to a question for me. I was a little surprised that the gentleman from Iowa mentioned that the Federal work force of employees went down during the past 2 administrations, talking about the Ford and Nixon administrations. Did not the gentleman from Arizona hold some studies that showed they went up? What levels are we talking about?

Mr. UDALL. The gentleman from Iowa is talking about overall levels and his figures are right in terms of reduction over the previous 8 years. But that makes the point I was trying to make earlier. We do not have enough facts. Does anyone feel that we have enough facts here about what is a valid personnel ceiling? Maybe we ought to have one, but we cannot solve all the problems of the world in this bill today.

Mr. CHARLES H. WILSON of California. I would hope we could.

Mr. UDALL. The point I was making is the supergrades and executives increased greatly. I have made a study of that. The White House upper levels went

taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 748]

| | | |
|-----------------|-----------------|---------------|
| Ambro | Fary | Fease |
| Amzaerman | Fithian | Pettis |
| Andrews, N.C. | Flood | Pike |
| Applegate | Florio | Qule |
| Archer | Flowers | Rangel |
| Armstrong | Flynt | Reuss |
| Aspin | Fraser | Rhodes |
| Badham | Frey | Richmond |
| Beard, R.I. | Fuqua | Rinaldo |
| Beard, Tenn. | Gialmo | Risenhoover |
| Biaggi | Gibbons | Rodino |
| Bingham | Glickman | Rosenthal |
| Boggs | Hagedorn | Rousselot |
| Boiland | Hansen | Rudd |
| Bonker | Harrington | Russo |
| Brademas | Harsha | Ryan |
| Breaux | Heckler | Santini |
| Brown, Calif. | Hollenbeck | Sarasin |
| Brown, Mich. | Huckaby | Scheuer |
| Brown, Ohio | Ireland | Shipley |
| Broyhill | Jenkins | Shuster |
| Burgener | Johnson, Colo. | Slak |
| Burke, Calif. | Jones, N.C. | St Germain |
| Burke, Fla. | Kasten | Stark |
| Burton, John | Kemp | Steed |
| Burton, Phillip | Krueger | Steiger |
| Byron | Latta | Stratton |
| Chappell | Leggett | Stump |
| Chisholm | Lehman | Symms |
| Clawson, Del. | Lujan | Teague |
| Cochran | McDonald | Thornton |
| Cohen | McHugh | Traxler |
| Collins, Ill. | Madigan | Treen |
| Conyers | Mathis | Tsongas |
| Corcoran | Meeds | Tucker |
| Cornwell | Mikva | Ullman |
| Coughlin | Milford | Vander Jagt |
| Delaney | Miller, Calif. | Walgren |
| Dickinson | Mitchell, Md. | Waxman |
| Dingell | Moakley | Wiggins |
| Downey | Moorhead, Calif | Wilson, Bob |
| Eckhardt | Moss | Wilson, Tex. |
| Emery | Neal | Wright |
| Evans, Ohio. | Oaker | Young, Alaska |
| Evans, Del. | Obey | Young, Tex. |
| Evans, Ga. | Pattison | Zefaretti |

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Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA), having assumed the chair, Mr. NEZI, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 11280, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 294 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal. The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business is the demand of the gentleman from Iowa (Mr. LEACH) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 251, noes 96, not voting 85, as follows:

[Roll No. 749]

AYES—251

| | | |
|----------------|----------------|---------------|
| Abdnor | Edwards, Okla. | Livingston |
| Ambro | Ellberg | Lloyd, Calif. |
| Anderson, Ill. | English | Long, La. |
| Andrews, | Erlenborn | Lott |
| N. Dak. | Ertel | Luken |
| Annunzio | Evans, Ind. | Lundine |
| Applegate | Fascell | McClory |
| Archer | Fenwick | McCloskey |
| Ashbrook | Findley | McCormack |
| Aspin | Fish | McDade |
| AuCoin | Fithian | McDonald |
| Badham | Flippo | McEwen |
| Baalis | Florio | McKay |
| Baldus | Flynt | McKinney |
| Barnard | Foley | Madigan |

Schroeder
Schulze
Sebelius
Sharp
Shuster
Sikes
Skelton
Smith, Iowa
Smith, Nebr.
Snyder
Spellman
Spence
Staggers
Stangeland
Stanton
Steed

Addabbo
Akaka
Alexander
Anderson, Calif.
Andrews, N.C.
Ashley
Bellenson
Bingham
Boggs
Bolling
Bonior
Brooks
Burton, John
Carr
Clay
Collins, Ill.
Corman
Danielson
Davis
Dellums
Derrick
Dicks
Diggs
Downey
Duncan, Ore.
Edwards, Calif.
Evans, Colo.
Fisher
Ford, Mich.
Ford, Tenn.
Garcia
Galmoe

Stockman
Studds
Symms
Taylor
Thone
Treen
Trible
Vanik
Vento
Volkmer
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins

NOES—96

Gonzalez
Gore
Hannaford
Harris
Hawkins
Holtzman
Howard
Johnson, Calif.
Jones, Tenn.
Jordan
Kastenmeier
LaFalce
Le Fante
Leggett
Lloyd, Tenn.
Long, Md.
McFall
McHugh
Meeds
Metcalfe
Meyner
Mineta
Minish
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Gary
Myers, Michael
Nedzi
Nix
Nolan
Oberstar

Weaver
Whalen
White
Whitehurst
Whitley
Whitten
Winn
Wirth
Wolf
Wylder
Wyllie
Yatron
Young, Fla.
Young, Mo.
Zablocki

Obey
Ottinger
Patten
Patterson
Pattison
Pease
Preyer
Price
Rahall
Reuss
Roncalio
Rooney
Rosenthal
Rostenkowski
Roybal
Scheuer
Seiberling
Simon
Slack
Solarz
Stark
Steers
Stokes
Thompson
Tucker
Udall
Ullman
Van Deerlin
Waxman
Weiss
Yates

so that we could go as long as necessary to finish action on the bill. We are on title III, and a lot of the controversy still remains. There are 11 titles in the bill.

It had been my hope and expectation that by 9 o'clock or so, we could finish the bill, but at the rate we are going, it does not look very good. However, we do intend to stay as long as necessary tonight to finish the legislation.

Mr. Chairman, I would urge on my colleagues the philosophy that I have always followed, which is that the function of debate in the House Chamber is to let the House act as a court of appeal on major issues, a half dozen or 8 or 10 major issues that could not be resolved in the committee, where we had a close vote, and not try to have a full-scale markup.

However, this subject of civil service arouses the passions of the Members. Most of us have one or two pet ideas about what ought to be done to improve the civil service.

I know of three noncontroversial amendments to title III. I am going to accept them. I think there is one and perhaps two amendments which may require a little bit of discussion, but I would hope that we could close out the debate on title III in the next 30 minutes or so and get on to some of the more important parts of the bill.

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

934

Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bevill
Blanchard
Blouin
Bowen
Brademas
Breckinridge
Brinkley
Brodhead
Broomfield
Broyhill
Buchanan
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Caputo
Carney
Carter
Cavanaugh
Cederberg
Clausen,
Don H.
Cleveland
Coleman
Collins, Tex.
Conable
Conte
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan.
Daniel, R. W.
de la Garza
Dent
Derwinski
Devine
Dodd
Dornan
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.

Forsythe
Fountain
Fowler
Frenzel
Gammage
Gaydos
Gephardt
Gilman
Ginn
Glickman
Goldwater
Goodling
Gradison
Grasley
Green
Gudger
Guyer
Hall
Hamilton
Hammer-
schmidt
Harkin
Harrington
Harsha
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Holt
Horton
Hubbard
Hughes
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jenrette
Jones, N.C.
Jones, Okla.
Kazen
Kelly
Keys
Kildee
Kindness
Kostmayer
Krebs
Legomarsino
Leach
Lederer
Lent
Levitas

Maguire
Mahon
Mann
Markey
Marks
Marlenee
Marriott
Martin
Mattox
Mazzoli
Michel
Mikulski
Millford
Miller, Ohio
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Mottl
Murphy, Pa.
Myers, John
Natcher
Neal
Nichols
Nowak
O'Brien
Oakar
Panetta
Pepper
Perkins
Pickle
Pike
Poage
Pressler
Pritchard
Pursell
Quayle
Quillen
Rallsback
Regula
Rhodes
Roberts
Robinson
Roe
Rogers
Rose
Runnels
Ruppe
Russo
Santini
Satterfield
Sawyer

Ammerman
Armstrong
Biaggi
Boiland
Bonker
Breaux
Brown, Calif.
Brown, Mich.
Brown, Ohio
Burgener
Burke, Calif.
Burke, Fla.
Burton, Phillip
Byron
Chappell
Chisholm
Clawson, Del
Cochran
Cohen
Conyers
Corcoran
Delaney
Dickinson
Dingell
Eckhardt
Emery
Evans, Del.
Evans, Ga.
Fary

NOT VOTING—85

Flood
Flowers
Fraser
Frey
Fuqua
Gibbons
Hagedorn
Hanley
Hansen
Hollenbeck
Huckaby
Jenkins
Johnson, Colo.
Kasten
Kemp
Krueger
Latta
Lehman
Lujan
Mathis
Mikva
Miller, Calif.
Mitchell, Md.
Moorhead,
Calif.
Moss
Pettis
Quie
Rangel

Richmond
Rinaldo
Risenhoover
Rodino
Rousselot
Rudd
Ryan
Sarasin
Shipley
Sisk
Skubitz
St Germain
Steiger
Stratton
Stump
Teague
Thornton
Traxler
Tsongas
Vander Jagt
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wright
Young, Alaska
Young, Tex.
Zerfretti

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 190, after the matter following line 6, insert the following new section:

EXCEPTIONS FROM THE COMPETITIVE SERVICE

SEC. 301A. (a) Section 2103 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) (1) The President may, by Executive order, except any position from the competitive service if the President determines that—

"(A) the duties of such position—

"(i) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

"(ii) require significant participation in the determination of major policies of such administration, or

"(iii) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

"(B) it would be impracticable to apply competitive examination procedures in the filling of such position because of—

"(i) national security,

"(ii) statutory or other significant requirements establishing special employment conditions,

"(iii) the unusual nature of the duties of such position,

"(iv) duration and frequency of service,

"(v) work location, or

"(vi) inadequate number of applicants.

"(2) Periodically (but not less often than 2 years), the President shall review exceptions from the competitive service under Presidential authority, and shall revoke an exception if the President determines that, because of changed circumstances, the exception is no longer appropriate under the

Mr. MARKEY changed his vote from "no" to "aye."

Mr. NOLAN changed his vote from "aye" to "no."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take just a moment to answer the inquiries which a number of my colleagues have made about our plans for this evening.

This is the third full day of action on this important legislation. The leadership had committed to us this evening

provisions of paragraph (1) of this subsection.

"(3) The President shall periodically review exceptions from the competitive service in the Executive agencies made by or under statute, and shall prepare and transmit a report on each such review to each House of the Congress containing such legislative and administrative changes as the President considers appropriate."

(b) Section 3302(1) of title 5, United States Code, is amended by inserting ", to the extent authorized under section 2103(c) of this title," after "necessary exceptions".

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. HARRIS. Mr. Chairman, this amendment simply calls for placing into statute what is already in law, under the Executive order with respect to excepting positions from the civil service merit system.

It further calls for a study of those positions which have been excepted from the civil service system and calls for such report to be made to Congress.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Arizona.

Mr. JDALL. Mr. Chairman, this is a reporting amendment, and it carries forward some of the Executive order provisions.

case may be, if during such period such employee or Member deposits into the Fund the amount specified in paragraph (2) of this subsection.

"(2) The amount to be paid under paragraph (1) of this subsection is an amount equal to the sum of—

"(A) the full amount by which the annuity paid to such employee or Member would have been reduced for the period beginning on the date of his retirement and ending on the date on which he makes an election under paragraph (1) of this subsection if he had elected at the time of retirement to receive a reduced annuity under subsection (j) or (k) (1) of this section, as the case may be; plus

"(B) interest on such amount at the average annual interest rate earned during such period by securities held by the Fund.

"(3) An election by an employee or Member under paragraph (1) of this subsection voids prospectively any election previously made by such employee or Member under subsection (j) or (k) (1) of this section.

"(4) An annuity which is reduced by reason of an election made under paragraph (1) of this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

"(5) Rights and obligations resulting from the election of any reduced annuity under this subsection shall be the same as those rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring."

(2) (A) Section 8339(j) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "An employee or Member who, at the time of retirement, elects not to receive a reduced

Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HANNAFORD. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HANNAFORD. Mr. Chairman, I rise to offer amendments.

The language of my amendment is embodied in H.R. 3800, which I introduced last year. This gives civil service retirees a second chance to elect a survivor annuity.

Since its initial introduction, the bill has received the support of 44 cosponsors including Chairman Nix of the Post Office and Civil Service Committee, GLADYS SPELLMAN, chairman of the Subcommittee on Compensation and Employee Benefits, and nine other members of the Post Office and Civil Service Committee. The National Association of Retired Federal Employees has fully endorsed the bill. Furthermore, I have recently received 103 petitions signed by concerned constituents and 569 persons have written expressing support for this measure.

Under current law, a civil service employee must announce a survivor beneficiary at the time of retirement. If a survivor is not named at that time, the individual has no recourse. My amendment would give the retiree a second chance.

I am prepared to accept it.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am happy to yield to my colleague, the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I always prided myself on recognizing a good amendment when I see one. Therefore, we will accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was agreed to.

AMENDMENTS OFFERED BY
MR. HANNAFORD

Mr. HANNAFORD. Mr. Chairman, I offer the following amendments.

The Clerk read as follows:

Amendments offered by Mr. HANNAFORD: Page 200, line 13, insert "(a)" after "Sec. 308."

Page 200, after line 20, insert the following new subsection:

(b) (1) Section 8339 of title 5, United States Code, relating to computation of annuity, is amended by adding at the end thereof the following new subsection:

"(n) (1) An employee or Member who, at the time of retiring—

"(A) if married, notifies the Office of Personnel Management under subsection (j) of this section that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of this title; or

"(B) if unmarried, does not elect a reduced annuity under subsection (k) (1) of this section;

may, during a period of one year beginning on the date of the retirement of such employee or Member, elect a reduced annuity with a survivor annuity under subsection (j) or (k) (1) of this section, as the

annuity under this subsection may, as provided in subsection (n) of this section, later elect to receive such an annuity."

(B) The first sentence of section 8339 (k) of title 5, United States Code, is amended—

(1) by inserting "or as provided in subsection (n) of this section" before ", an unmarried employee"; and

(11) by inserting after "retired employee or Member" the following: ", except that an election under subsection (n) of this section may be made only with respect to an individual who had an insurable interest in such employee or Member at the time of the retirement of such employee or Member".

(3) (A) Subject to the provisions of subparagraph (B), the amendments made by this subsection shall apply with respect to employees and Members retiring before, on, or after the date of the enactment of this Act.

(B) (1) For purposes of applying the provisions of paragraph (1) of section 8339 (n) of title 5, United States Code, as added by this subsection, to employees and Members retiring before the date of the enactment of this Act—

(I) the period referred to in such paragraph shall be considered to begin on the date of the enactment of this Act, and

(II) the amount referred to in such paragraph shall be computed without regard to the provisions of paragraph (2) (B) of such section 8339 (n) respecting interest.

Mr. HANNAFORD (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

Mr. UDALL. Mr. Chairman, I reserve a point of order against the amendments.

The CHAIRMAN. The gentleman from Arizona (Mr. UDALL) reserves a point of order.

My amendment provides an equitable solution to a problem faced by many elderly individuals. But the amendment does not provide a free ride. It requires that a retiree who takes advantage of this second-chance election must pay back into the fund a sum equal to the amount that would have been deducted from his or her annuity since the time of retirement. In addition, a reasonable amount of interest must be paid. This provision will deter individuals from using the additional money as an interest free loan and then declaring a survivor after retirement.

CBO estimates that an average of \$2,000 will be paid by about 2,600 retirees to participate in the program. This would total \$5.2 million in additional revenues to the Federal Treasury.

To ease the administrative burden, I have stipulated that retirees will have 1 year from the date of enactment or 1 year from the date of retirement, whichever ever is later, to make use of this second-chance election.

Your support for this equity proposal is important and I urge a "yes" vote.

I do want to commend the gentleman from Arizona (Mr. UDALL) and the Members on both sides of the aisle for their splendid work on this historic piece of legislation. The problem that many of us have found—at least which I have found—is that because of the importance of this piece of legislation it has been difficult to get action that is worthy and related, and that is the reason perhaps for the difficulty that the distinguished committee and the chairman of the subcommittee have had

with the bill. I want to explain the purpose of the legislation and get the reaction, if I could, from the gentleman from Arizona.

This amendment simply allows a second chance annuity selection for Federal retirees. We have had it analyzed by the CBO, and their determination is that it has no added cost. It has widespread support. I have personally had over 500 letters in support of this legislation. My bill has 44 cosponsors, including wide support on the Committee on Post Office and Civil Service. I think the gentleman from Arizona (Mr. UDALL) has a clear understanding of the intent of my amendment, and I would like to get his response to it, if I could.

Mr. UDALL. Let me say to the gentleman from California, if he will yield, that I admire and respect the work that he has done on this place of legislation. I regret that the committee, and the committee in the other body have not had time to act on it. It is not directly related to the overall subject of civil service reform, and there are conflicting estimates as to its cost. For example, the Civil Service Commission estimates that the increase in the unfunded liabilities of the system would be something on the order of \$200 million if this were passed. Nonetheless, I would be prepared in the next Congress to take a look at the legislation to see if we cannot do justice to the thousands of people the gentleman has been working very hard for. I am going to be constrained at this time to

Mr. HANNAFORD. With these kinds of assurances, Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENTS OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SCHROEDER: Strike out section 311 (beginning on line 1 of page 203 and ending on line 3 of page 206) and insert in lieu thereof the following:

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 311. Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by striking out so much of such section as precedes subsection (c) and by inserting in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under subsection (b) of this section. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) The amount of each reduction under

(d) Section 5532(d) of title 5, United States Code is amended by inserting in lieu thereof the following:

"(d) The Office of Personnel Management may authorize exceptions to the restrictions in subsections (a) and (b) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met."

(e) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay."

(f) (1) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed service who is receiving retired pay on or before such date in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to

Nonetheless, I would be prepared in the next Congress to take a vote in the affirmative to accept if such a bill is introduced.

oppose the amendment or to insist on my point of order. I would hope the gentleman, with the assurances that he has here, would not insist on his amendment, and perhaps he might be willing to withdraw it.

Mr. HANNAFORD. Mr. Chairman, I appreciate the gentleman's assurances. I do think the hasty estimates of added cost are incorrect. If they are correct, then the instructions on my amendment to the staff and to the counsel were not followed, because I am assured that the beneficiaries of this amendment would be, indeed, required to fully compensate both in terms of added payment and interest on their added payment in order to bring themselves in with the survivor. But I will accept the gentleman's assurances and withdraw out of respect for the fine work that the committee has done and their difficult job that they had before them. I do hope that we can get early hearings on this in the next Congress, as I have tried to do for the last 2 years.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield?

Mr. HANNAFORD. I yield to the gentleman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

I want to commend the gentleman on offering this amendment, something that certainly is much needed. As the chairman of that subcommittee, I would pledge to hold hearings on this so that we can move it forward.

I appreciate this assurance from the gentleman from Maryland and I yield back the balance of my time.

subsection (a) of this section allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period, except that the amount of the reduction may not result in the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule."

(b) Section 5531 of title 5, United States Code, relating to definitions, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101(23) of title 37;"

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired or retainer pay' means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10."

(c) Section 5532(c) of title 5, United States Code, is amended—

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer";

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired or retainer pay"; and

(4) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired or retainer pay is computed, in whole or in part,"

the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, these are amendments suggested by the administration to section 311, the Dual Compensation Act amendments, in the bill.

The amendments do not change the general thrust of the section, which is to place a "cap" of Executive Level V (now \$47,500 per year) on retired military personnel holding civil service jobs and also drawing military retirement.

The changes do the following:

First. Reduce retired pay, rather than salary, to meet the cap. The Department of Defense informed me that from the bookkeeping standpoint they will have a much easier time in assuring that all affected individuals are covered.

Three examples will suffice to explain this change:

A retiree draws \$30,000 in retired pay and is appointed Secretary of State, at \$60,000 per year. The provision reduces his retired pay to \$0. It does not provide for a reduction in his Secretary's salary so, like any other Secretary of State, he gets the \$60,000 salary for the job he is now doing. The amendment never reduces salary, even if the salary itself is more than \$47,500.

A retiree draws \$10,000 in retired pay and holds a \$37,500 per year civil service

job. There is no reduction in retired pay since his retired pay does not push him over Executive Level V (\$47,500 per year).

A retiree draws \$12,500 in retired pay and holds a \$37,500 per year civil service job. His retired pay would be reduced by \$2,500 per year, since if he was paid that \$2,500 in retired pay he would be over Executive Level V.

Second. Eliminate the reference to VA benefits falling under the reduction provision. The Veterans' Administration and DOD both were concerned that inclusion of such benefits would set an unwanted precedent and make it extremely difficult to administer the act in a uniform manner. Exclusion of the amount of these benefits are, in any event, not large enough to have any appreciable effect upon the intentions of the amendment.

Third. Assure, through certain language changes, that military survivor benefits are not unintentionally covered by the reduction provisions, and that retired naval enlisted personnel who technically draw "retainer" pay are covered.

Fourth. Permit, in extremely limited circumstances, an exception to the pay cap in the case of medical officers who are in severe shortage.

Mr. UDALL. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. The gentlewoman would be delighted to yield.

Mr. UDALL. Mr. Chairman, the amendment has been cleared with the Civil Service Commission. It carries out the purposes of what the committee did

day on which he is passed over, a copy of".

Page 195, line 10, strike out "(g)" and insert in lieu thereof "(h)".

Page 196, line 11, strike out "(j)" and insert in lieu thereof "(i)".

Page 196, line 18, strike out "(k)" and insert in lieu thereof "(j)".

Page 196, line 24, strike out "(l)" and insert in lieu thereof "(k)".

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, my amendment would require the Office of Personnel Management to provide a preference eligible or his designated representative, if said preference eligible is listed on a certificate of the highest three eligibles available for appointment furnished under section 3317(a) of this title, within 15 days of having been passed over by an appointing authority, a copy of:

First. The written reasons submitted by the appointing authority for having passed over a preference eligible; and

Second. The finding of the Commission as to the sufficiency or insufficiency of the reasons submitted by the appointing authority for the passover.

As matters now stand, a preference eligible or his designated representative

The Civil Service Commission (CSC) has encouraged agencies to make use of a variety of hiring practices when problems are encountered in obtaining individuals, other than preference eligibles, from CSC registers by turning a blind eye to questionable procedures used by agencies to circumvent veterans' preference.

CSC, in its June 8, 1976, report to the House Committee on Post Office and Civil Service, "A Self-Inquiry Into Merit Staffing," recognized the veterans' preference causes agencies to utilize questionable hiring practices.

This problem has been recently highlighted in a letter to the chairman of the Post Office and Civil Service Committee, Congressman Nix of Pennsylvania, dated June 26, 1978, from the Disabled American Veterans, wherein it was specifically alleged, and documented, that "the Civil Service Commission chairman or responsible staff members have known since March 1977 that 26 of 40 agencies studied 'Did not have proper procedures in place for the observance of veterans preference requirements in the hiring of attorneys'. Included among the 65 percent of agencies in non-compliance were the Department of Justice, Immigration and Naturalization Service, Drug Enforcement Administration, and the Law Enforcement Assistance Administration."

Another indication of the Commission's lack of concern and neglect of preference-eligibility rights in this area is reflected in the Commission's failure to

and it is acceptable to us.

Mr. DERWINSKI. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. The gentlewoman would be delighted to yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I would just ask if in the process of revising and extending the gentlewoman would provide the full explanation of the amendment for the RECORD and that would give us what we need for this procedure?

Mrs. SCHROEDER. Mr. Chairman, I would be more than happy to. I have written out here exactly what we are doing. I had planned to read it, but I thought at this point I would give our ears a break and just put it in the RECORD.

Mr. DERWINSKI. Mr. Chairman, we realize the amendment of the gentlewoman is consistent with what the gentlewoman put in the committee and that works out fine.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado (Mrs. SCHROEDER).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendment offered by Mr. GILMAN: Page 195, insert after line 9 the following:

(g) Section 3318(b) of title 5, United States Code, is amended by striking out "on request, is entitled to a copy of" and inserting in lieu thereof "is entitled to receive, on or before the 15th day after the

may only receive the above mentioned information upon written request to the Commission. This procedure has proven inadequate, and more pointedly, has rendered the rule of three meaningless for those preference eligibles interested in Federal employment and certified by the Commission as eligible for appointment.

Current law requires the Commission to make up registers of those scoring highest, from which appointing officers are to select from any one of the top three available eligibles certified by the Commission (the so-called rule of three). An appointing authority may not pass over a preference eligible and appoint a non-preference eligible lower on the list unless the Commission agrees that the reasons for passing over the preference eligible are sufficient. If a preference eligible is passed over, and is aware of it, he may appeal the passover as an adverse action. More often than not, however, a preference eligible is not advised or even aware of the fact that he has been passed over, thereby preventing him from initiating such an appeal.

This sad state of affairs is made doubly unfortunate both by the manner in which the Commission has blatantly circumvented the rule of three, as I will next outline, and the increasing frequency with which the Commission rubber stamps requests from agencies for permission to passover preference eligibles among the top three candidates. For instance, in fiscal year 1976-77 alone, somewhere between 73 percent and 78 percent of passover requests were granted by the Commission.

maintain any records advising as to the number of preference eligibles who were taken off a certified register for reason of having been passed over three times. Sec. 3317(b) of title 5 provides that if a preference eligible who was certified from a register has been passed over three times, with such passovers approved by the Commission, certification of the preference eligible may be discontinued, but the preference eligible is entitled to advance notice of such discontinuance. Yet the Commission has advised veteran groups that they do not know how many preference eligibles were taken off registers after the required three passovers.

Mr. Chairman, the decision of the House today to retain the "rule of three" underlines the Congress commitment to continue this procedure. My amendment only insures that the House's will be carried out by the Office of Personnel Management and the agencies.

Mr. Chairman, this amendment was urged by the American Legion, the VFW, and the DAV on their testimony before our committee and enjoys their wholehearted support.

Mr. Chairman, I urge my colleagues to adopt this amendment.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I am happy to yield to the gentleman from Arkansas,

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of the amendment

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offered by the gentleman from New York (Mr. GILMAN).

Mr. Chairman, I rise in support of the gentleman from New York's amendment.

At present a preference eligible who is passed over is not aware of any reason why he or she should request a copy of the reasons for being passed over nor are they aware of the Civil Service Commission thereon since he is not aware he has been passed over.

Such a requirement as composed by the amendment from the gentleman from New York would both inform the preference eligible he has been passed over, aid him in evaluating and improving his job search, and put the Agency and Commission squarely on record.

About 75 percent or more of all agency requests to the Commission for approval of passovers are approved. The Commission argues that this almost blanket approval is granted because only cases which the agencies are confident will be approved are submitted to the CSC. However, there is no way to check this since only rarely do preference eligibles ever request information on being passed over.

If there is no way to determine whether the passover system is equitable under present law and regulations, how could any preference eligible determine whether he had been passed over when the personnel selection system, as contemplated under the new system would be decentralized to the agencies in most cases?

This amendment is unnecessary. It would simply generate a great deal more paperwork.

A veteran now is entitled to this information if he asks for it. This says that if a veteran has moved away and is no longer interested, they still have to run him down and tell him he is entitled to this copy. This would simply create more paperwork. The system we have now has worked very well.

Mr. Chairman, the administration does not support this amendment, and the committee is opposed to it. The system has worked very well the way it is, and I hope we will reject the amendment.

Mr. GILMAN. Mr. Chairman, will the gentleman yield further?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I wish to point out that if the system was working well, we certainly would not need this sort of amendment. At present a preference eligible is not aware of any reason why he should request a copy of the reasons for being passed over after they have been filed by the Commission since he is not even aware that they were filed or that he had been "passed over." Such a requirement as imposed by this amendment would both inform the preference eligible that he has been passed over and it would assist him in evaluating his job search. It would put the agency and the Commission squarely on record.

Mr. Chairman, this amendment does

veterans not knowing that they have been passed over on the list; have no way of objecting. This amendment merely provides reasonable opportunity to a veteran to be heard.

Mr. DERWINSKI. The gentleman from Arizona (Mr. UDALL) emphasized that when the Civil Service Commission passes over a preference eligible, it makes those reasons part of the record. The veteran, in most cases, does then review that record. And I do not think that the additional requirements that the gentleman is attempting to put in are going to do anything but create the very thing we want to avoid, which is a more complex, complicated paperwork and, therefore, an artificial delay in personnel matters.

Mr. GILMAN. If the gentleman will yield further, it is perfectly true that the information is placed in the veteran's record. The problem that necessitates this remedial legislation is that the veteran has no way of knowing that he has been passed over and has no opportunity to be heard when such information is placed in his record without adequate notice. That is precisely what this amendment seeks to correct, to give the veteran 15 days' notice of having been passed over so that if the facts warrant it, he can take the issue up on appeal to the appropriate authority.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The question was taken; and the Chairman announced that the noes ap-

Mr. Chairman, I urge the adoption of the gentleman's amendment.

Mr. GILMAN. Mr. Chairman, I thank the gentleman from Arkansas (Mr. HAMMERSCHMIDT) for his support.

Mr. DERWINSKI. Mr. Chairman, since the debate on this amendment seems to be centered on this side, I wish to express my opposition to this amendment.

I would like to alert the Members to the fact that there are at least two, if not three, amendments of which I am aware that Members have to offer attacking what they call "paperwork." The effect of this amendment is to add to paperwork.

This amendment requires certain reporting provisions to individuals when at the present time we have a system which has worked well, and as far as I know, there have not been major complaints against the procedure.

This amendment would in effect mandate certain additional reporting requirements and would be a bonus for attorneys, but I do not believe it would help run our Government, and I do not believe it would help the Civil Service structure function more properly.

Mr. Chairman, the amendment was offered in committee, and it was rejected by a vote of 15 to 6, reflecting bipartisan opposition and support.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I associate myself with the remarks of the gentleman from Illinois (Mr. DERWINSKI).

nothing more than give proper notice to a veteran who has been passed over.

Mr. DERWINSKI. But, Mr. Chairman, we have to face up to the facts of life, and the facts of life are that the average veteran in civil service is well aware of what his rights are, and if he has any doubt of the procedure after being passed over, he can get the information.

I may also say—and I say this with great respect for my dear friend, the gentleman from New York (Mr. GILMAN)—that at the time the gentleman offered this amendment in committee, it was when the committee had already adopted its version of the veterans' preference, and one of the gentleman's arguments for this amendment was that this was needed as sort of the last defense that a veteran should have.

Having corrected the committee's action earlier through the adoption of the Hanley amendment, this makes it a moot question in terms of veterans' protection and veterans' preference. I really look on this amendment as a "paperwork" amendment.

Mr. GILMAN. Mr. Chairman, will the gentleman yield further?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. GILMAN. Far from obviating the need for the measure by the adoption of the veterans' preference provision, such passage makes it even more important, because this is one of the abuses that has continually occurred and which has eroded veterans' preference.

About 75 percent of the requests for passover are perfunctorily granted. Most

peared to have it.

Mr. GILMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendments were rejected.

AMENDMENTS OFFERED BY MRS. SPELLMAN

Mrs. SPELLMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SPELLMAN: Page 209, after line 12, insert the following new subsections:

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

Sec. 313. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency, that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows: "A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit

organization, without regard to section 209 of title 18."

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VII of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work."

(b) (1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following: "3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees."

(2) The caption for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

(c) Section 410(b) (1) of title 39, United States Code, is amended by inserting after "open meetings" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)".

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Conform the table of contents accordingly.

Mrs. SPELLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD,

Section 3102 of title 5, United States Code, initially enacted in Public Law 87-614, provides authority for the head of each agency to employ nonpaid readers for blind employees of the Federal Government without regard to provisions governing appointments in the competitive service. Contrary to the general prohibition against receiving salary from sources other than the Federal Government, subsection (b) of the section provides specifically that the reading assistant may be paid for his or her reading assistance services by the blind employee or a nonprofit organization. At the time of passage of Public Law 87-614, it was envisioned that readers would also serve on a voluntary basis. But no comparable provision was included regarding the use of nonpaid employees as interpreters for deaf employees.

Mr. Chairman, the limitation of section 3102 to nonpaid employees and the exclusion of interpreters for deaf employees from this statute's provisions, have restricted some Federal agencies from meeting their section 501 obligations. Indeed, in a letter to Senator Ribicoff, Jule Sugarman, Vice Chairman of the Civil Service Commission, stated:

It is my understanding that an amendment to Section 3102 of title 5, United States Code, essentially authorizes the employment of reading assistants for blind employees and interpreters for deaf employees.

In our view, the authorization to provide for these services is needed very much. Federal employees are required by law to exercise affirmative action in the hiring, placement, and advancement of handicapped

bill, adopted an amendment like this.

Mr. Chairman, I personally support the amendments.

Mrs. SPELLMAN. I thank the gentleman.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mrs. SPELLMAN). The amendments were agreed to.

AMENDMENT OFFERED BY MR. CLAY

Mr. CLAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CLAY: Page 209, after line 13, insert the following:

CATEGORY RATING SYSTEM

Sec. 313. (a) Section 3304 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(e) (1) Subject to the provisions of this title (other than section 3318(e)), in cases in which the qualifications of applicants are being determined without the use of written examinations, the Office may provide that individuals shall be evaluated in accordance with a category rating system established by the Office which divides the qualified applicants into three or more categories. The appointing or nominating authority may select any individual within the highest category, or, if at least three candidates have not received such a rating, any individual in the next highest category or categories if necessary to provide the appointing or nominating authority with at least three applicants from which to choose.

"(2) For the purpose of applying section 3318(b) of this title in cases to which paragraph (1) of this subsection applies, an individual shall not be considered to be passed over unless a selection is made from a cate-

and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Chairman, the amendments which I am introducing clarifies some existing doubt as to the authority of the Federal Government to hire or assign readers for blind employees. This amendment would also expand current law to provide specific authority for the employment or assignment of interpreters for the deaf and, additionally, would specifically apply such authorizations to the Postal Service.

I believe this amendment to be noncontroversial.

Section 501 of the Rehabilitation Act of 1973, requires each department, agency, and instrumentality of the Federal Government, including the Postal Service and Postal Rate Commission, to submit to the Civil Service Commission an affirmative action program for the hiring, placement, and advancement of handicapped individuals. Section 7153 of title 5, United States Code, authorizes the President to prescribe rules which shall prohibit as nearly as conditions of good administration warrant discrimination because of physical handicap in an executive agency or in the competitive service. They enunciate clearly Congress general goal that the Federal Government be a leader and set an example with respect to the employment of handicapped individuals.

persons. For the successful employment of blind and deaf persons, two of the most important accommodations are readers and interpreters. We have stated for some time that such services are allowable on an "as required basis" by other Federal employees, but experience shows that these services are often inadequate.

The real need is to convince managers that these are legitimate services and refusal to employ or promote deaf or blind individuals cannot be based upon a need for "extra" services. (The proposed amendment will be very helpful in overcoming these barriers and in assuring that the payment of these services is indeed legal. For these reasons, the Administration favors the amendment.

In summary, section 3102 currently is too vague and, at the same time, too restrictive to allow the Federal Government to effectively promote the hiring of blind and deaf individuals as required by section 501 of the Rehabilitation Act of 1973. My amendments would correct these flaws by providing, in law, specific authority for the employment and assignment of readers and interpreters for the handicapped. They have the full support of the administration, and I believe they should have the full support of my colleagues.

Mr. UDALL. Mr. Chairman, will the gentlewoman yield?

Mrs. SPELLMAN. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentlewoman for yielding.

Mr. Chairman, the gentlewoman submitted these amendments to us earlier. The Civil Service Commission has looked them over. They are consistent with existing law. The Senate, in a similar

category which is lower than the category for which that individual qualified.

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Conform the table of contents accordingly.

Mr. CLAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, this amendment provides category ratings of job applicants in Federal employment. This amendment has the support of the administration and is offered at their request.

It authorizes the Office of Personnel Management to evaluate job applicants according to three or more quality levels. This authority could only be used where the Office of Personnel Management measures the qualifications of candidates by other than written tests.

Like most private businesses, the Commission judges the qualifications of applicants for professional, administrative, and technical jobs by evaluating their experience and education, because it generally is not feasible to use written tests for those occupations. Yet, personnel laws written many years ago require that all applicants be rated numerically and that selections only be made from the three highest rated. Thus the Commis-

sion must make overly fine distinctions among applicants with virtually the same qualifications when, in fact, no measurable differences exist.

Mr. Chairman, under these conditions, use of category ratings—grouping together of all eligibles with relatively “equal” qualifications into broad classes would be appropriate. The categories would be “outstanding,” “well-qualified,” and “qualified”—which would permit selection for a larger number of eligibles, rather than individual scores. Federal agencies have expressed almost unanimous concern about inflexibilities imposed on their managers by Federal personnel laws, and many have suggested using alternate ranking procedures for Federal job applicants, along the lines of those already in use in State and local public merit systems.

Mr. Chairman, my amendment seeks to provide this needed flexibility. I urge my colleagues to support this amendment.

Mr. SOLARZ. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have great respect for our dearly beloved colleague from Missouri. He has contributed creatively and constructively to the shaping of this legislation, but I must say that this amendment really goes too far. In fairness to him, however, I take note of the fact that he indicated that it was supported by the administration and was presumptively introduced at their request.

I think that our colleagues on the

into the Federal Government, and it is possible that under certain administrations it might work that way. But the fact is that it is also very possible that in the hands of other administrations this amendment would work the other way by making it possible to deny the most qualified jobseekers, particularly if they were black or if they were women or if they came from other minority groups in the population, jobs which, under the current Rules of Three, they would be able to obtain.

I would submit that the Rule of Three has served us well. I think the merit system has served us well. This amendment would go a long way toward gutting the merit system entirely. It is a frontal assault on the merit system and I urge my colleagues on the committee to reject it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. CLAY).

The question was taken; and on a division (demanded by Mr. CLAY) there were—ayes 12, noes 18.

Mr. CLAY. Mr. Chairman, I object to the vote on the ground that a quorum is not present.

The CHAIRMAN. The gentleman cannot object to the vote on the ground in the Committee of the Whole.

Mr. CLAY. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

out the item relating to section 313 and insert in lieu thereof the following:

Sec. 313. Limitation on the number of certain executive positions.

Sec. 314. Effective date.

Mr. JACOBS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. JACOBS. Mr. Chairman, the amendment goes this way. In what I call the GS rich, the GS-14's and above in the civil service, 10 percent of those people, roughly 10 percent leave Government every year—attrition, in other words.

Mr. DERWINSKI. Mr. Chairman, the House is not in order.

Mr. JACOBS. We are not in the House either, I might point out.

Mr. DERWINSKI. The Committee is not in order.

Mr. JACOBS. In any case, 10 percent of these people retire every year. What this amendment calls for is if we replace half the people who leave Government service in the GS-14 and above levels every year we will have this. In my hometown there is the Lilly pharmaceutical firm. Fifty years ago Mr. Lilly conducted a tour through his plant and somebody said: “Mr. Lilly, how many people work here?” And he said: “About half of them.”

What we can do with this is replace

committee should know just a little bit about the history of this amendment. When the President's proposal was submitted to our committee, it contained a recommendation that we reject the Rule of Three, which has historically determined selections within the merit system, and substitute for it instead the so-called Rule of Seven. Our committee, after carefully considering this proposal, rejected it by a substantial majority, on the grounds that a change from the Rule of Three to the Rule of Seven would substantially increase the possibilities for selection to Federal personnel on grounds other than merit.

Having suffered such a defeat in our committee, the administration now comes before the Committee of the Whole and asks us, in effect, to accept an amendment which goes, not from the Rule of Three to the Rule of Seven, but from the Rule of Three to the rule of anyone who is in the category of qualified. That could mean a selection not from the three most qualified, not even from the seven most qualified, but potentially from the 100 or 150 or 200 who were most qualified. I would submit that not since the passage of the Pendleton Act in 1883 has there been such an opportunity to fill the Federal service with as many patronage seekers such as would be provided by the adoption of this amendment. It would open the door to cronyism, to favoritism, to patronage, to racism, and to racism in reverse.

This amendment is presumably being offered in order to make it easier to bring women or minorities or others who have suffered from discrimination in the past

Mr. CLAY. Mr. Chairman, I ask unanimous consent to withdraw the point of order.

The CHAIRMAN. Without objection, the point of order is withdrawn.

There was no objection.

The CHAIRMAN. Does the gentleman ask for a recorded vote?

Mr. CLAY. No, Mr. Chairman, I withdraw my request.

So the amendment was rejected.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS: Page 209, insert after line 12 the following new section:

LIMITATION ON THE NUMBER OF CERTAIN EXECUTIVE POSITIONS

Sec. 313. (a) Notwithstanding any other provision of law, the number of positions in the Federal civil service classified in grades higher than GS-13 shall, by September 30, 1981, not exceed—

- (1) in the case of positions in GS-14, 44,658;
- (2) in the case of positions in GS-15, 21,555;
- (3) in the case of positions in GS-16, 2,906;
- (4) in the case of positions in GS-17, 857; and
- (5) in the case of positions in GS-18, 298.

(b) The Office of Personnel Management shall prescribe regulations necessary to carry out the purpose of this section.

Page 209, line 14, strike out "313." and insert in lieu thereof "314."

Page 129, in the table of contents, strike

about half the people in the GS-14 levels and above who leave Government service every year. That is, nobody would be fired, to quote a Presidential candidate in 1976, nobody would be fired, but they would leave only by attrition.

The best figures I can get are that 82,675 were on the payroll as GS-14's and above in 1977. That is where we just went back to, as Members will recall, by the previous amendment dealing with the subject. We would get over a 3-year period to work our way down to 70,274 employees, the reduction being half or 5 percent in each of those successive years, to a total of 15 percent reduction and a total savings to the taxpayers of something over a third of a billion dollars.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana (Mr. JACOBS).

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, this amendment may well have some appeal with some of the Members. I agree with my friend, the gentleman from Indiana (Mr. JACOBS) that there may be too many supergrade positions, too many highly paid persons in the different departments, but I have not the vaguest idea, at this hour of the night, what is a fair number of GS-14's or what is a fair number of GS-15's or GS-16's. I just think it is unwise to legislate in this way at this time.

Let me tell you what the bill does: We are trying to get at this in the bill and we

are setting up in the bill, a pool. At long last we will have a Government-wide pool of supergrades. On page 217 of the bill there is a formula by which each agency submits its request for supergrades. They come to the Office of Personnel Management which makes the decision: The Congress every 2 years under this new system will fix these limits.

I would hope my friend the gentleman from Indiana (Mr. JACOBS) would be satisfied to let this new system try and work and see if we cannot get control of that problem in that fashion rather than legislating in the blind tonight. Maybe after it has been in effect we can exercise better judgment as to its results, but I do think it would be very unwise to adopt this amendment. That is why I am strongly opposed to it.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, let me say that I concur with the observations of the gentleman from Arizona (Mr. UDALL) to the gentleman from Indiana (Mr. JACOBS). The gentleman from Indiana is rightly concerned over the excessive number of supergrades, but I also concur with the gentleman from Arizona (Mr. UDALL) that this is not the way to approach the problem. Because actually, if we applied this proposal, it would bring administrative disaster to the Government. Because, in this blanket type of approach, it does not give any clues as to what agencies or departments should be involved, and in what manner. Congress is mandating, for example, under the growing Department of Energy certain

order to catch up to the jobs through the procedure that you are suggesting.

As the gentlewoman from Colorado has said, when they come down to testify we do not understand them, they sound like they have feathers in their mouths, and all that, so that you will never do it if you wait until the end of the century this way.

I would say that this is just another way of how Parkinson's law can be repealed if you just choose to repeal it.

Mr. UDALL. I believe we have a formula in this bill to gradually cut down on these supergrades, and the way in which we can get a little better grip and control over the growing ranks of supergrades in the Government if we can get this bill passed tonight and get this section on page 217 on the statute books.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment proposed by the gentleman from Indiana (Mr. JACOBS.)

I would like to take this opportunity to ask the gentleman from Indiana a question. Is the gentleman from Indiana aware of the fact that since the time when Mr. Lilly inspected his plants, the number of supergrade employees at Lilly has increased?

Mr. JACOBS. If the gentleman will yield, Mr. Chairman, that is right, but they could not hold a candle to the Federal Government because Mr. Lilly's people have to pay the bills themselves. They cannot tax somebody to do it.

Mr. STEERS. Mr. Chairman, I agree

percent of his average pay by the years of that service."

(2) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. STEERS. Mr. Chairman, the purpose of this amendment is to provide Federal law enforcement and firefighting personnel with less than 20 years' service, but at least 5, a special 2½ percent of salary per year of service, in recognition of the special hazardous service which they perform. Current law (Public Law 93-530) already extends this credit to those with 20 or more years of service, but failed to provide similar credit to those who serve less than 20 years.

This amendment would correct this inequity by extending the special, hazardous duty retirement rate to all Federal law enforcement and firefighting personnel who retire with between 5 and 20 years of service. A similar amendment has been accepted by the Senate.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I hope that as the evening goes on, we will keep in mind the purpose of the bill we are considering here. The bill is to reform and reorganize

supergrades, but we do not know how this would be affected under any new provisions in the energy bill that is now in the other body.

If you take a look at the practicality of it all, the attractiveness of it on the surface disappears once one takes a look at the administrative impossibility this would create.

Mr. UDALL. Mr. Chairman, what will occur if this amendment is adopted is, I think that every Member in this Chamber is going to be immediately besieged by people from the agencies over which his particular committee has jurisdiction, who will be wanting certain numbers of supergrades in that agency and they will be wanting exemptions to cover their agency and pretty soon we will be having exemptions in the authorization and the appropriation bills for different agencies and we will be right back where we are today.

This bill sets up a good framework, at least along the lines pointed out, so that I believe that the approach taken by the gentleman from Indiana, even though it may be commendable, is not the way to do it.

Mr. JACOBS. Mr. Chairman, if the gentleman will yield, first I want to say that maybe the janitor should assume that position in the Indianapolis office, as the supervisor, but I simply say that when you walk down the cavernous buildings in the city of Washington and see somebody reading a funny book, somebody who is asleep and somebody flirting at the water cooler, it would certainly seem to me that it is going to take until the turn of the century in

that the problem in the Federal Government is not as easily solved as it is in a private enterprise where one can recognize that a company either makes a profit or loses money.

However, I would have to say that just as the Lilly Co. has grown and has done a better job as a result, so has the Federal Government.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. JACOBS).

The question was taken; and on a division (demanded by Mr. JACOBS) there were—ayes 14, noes 24.

So the amendment was rejected.

The CHAIRMAN. Are there further amendments to title III?

AMENDMENT OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Steers: Page 200, line 13, after "308." insert "(a)".

Page 200, after line 20, insert the following new subsection:

(b) (1) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof of the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with less than 20 years, but at least 5 years of service as a law enforcement officer or firefighter, or any combination thereof, as computed under subsection (a) of this section, except that the annuity of such employee is computed with respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½

the overall civil service system.

There is a temptation among the Members to correct old injustices, to find pet peevés that they have about the civil service system, and generally to use this as a vehicle to accomplish a lot of long-sought gains.

This amendment would make a major change in the provisions regarding the pay of firefighters and other people in law enforcement. It is a 2½ percent addition after 20 years of service.

Mr. Chairman, this aim may be meritorious; and if it is, we ought to have hearings and an opportunity to have a bill reported out. We should not be legislating at this hour of the night.

Let me give my colleague just one statistic. The unfunded liability of the civil service system today is \$110 billion. This little old amendment we are asked to adopt on a couple moments of debate will only add \$5 billion to the unfunded liability.

Mr. Chairman, I do not think it is responsible to take that kind of action at this time of night on this kind of record, and I urge that the amendment be defeated.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words. I rise to associate myself with the comments of the gentleman from Arizona (Mr. UDALL) and point out that this would set a precedent. The next thing we would know is that we would have a rash of such amendments. The bill would be out of control, and the deficit noted in the retirement system is something that should be kept in mind.

The CHAIRMAN. The question is on

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the amendment offered by the gentleman from Maryland (Mr. STEERS).

The amendment was rejected.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS: Page 203, strike out line 7 and all that follows down through line 25 and insert in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed service is receiving retired pay and is employed in a position, such member's pay for such employment shall be reduced—

"(1) by an amount computed under subsection (b) (1) of this section in the case of any member or former member who has engaged in combat with an enemy of the United States while serving as a member of a uniformed service and who is serving in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule; and

"(2) by an amount computed under subsection (b) (2) of this section in the case of any member or former member who has not engaged in combat with an enemy of the United States while serving as a member of a uniformed service.

The amounts of such reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) (1) The amount of each reduction

two refreshing dips from the U.S. Treasury while working for the Federal Government and collecting a pension from that same Federal Government. That is about it.

Mr. Chairman, I yield back the remainder of my time.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Arizona (Mr. UDALL) wish to be heard on his point of order?

Mr. UDALL. Mr. Chairman, I insist on the point of order. The section involving the Jacobs amendment has already been acted on by the House in connection with the Schroeder amendment.

I am concerned about the double-dipping situation myself, and we took the beginning action in the committee.

The gentlewoman from Colorado (Mrs. SCHROEDER) struck out and rewrote the entire section to which the Jacobs amendment would apply and, therefore, it is subject to a point of order.

The CHAIRMAN. Does the gentleman from Indiana (Mr. JACOBS) wish to be heard on his point of order?

Mr. JACOBS. Mr. Chairman, I am not sure I understand the point of order. It is a matter of first impression with me. I simply ask the Chair to consider whether the title is open for amendment at any point and whether that relates to the gentleman's point of order.

The CHAIRMAN (Mr. DANIELSON). The Chair is prepared to rule.

It is true the title is open for amendment at any point. However, it is also

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Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title IV, and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

under subsection (a) (1) of this section for any pay period in connection with employment in a position shall be equal to the retired pay allocable to the pay period, except that the amount of the reduction may not result in the amount payable for the pay period, when combined with the retired pay allocable to the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.

"(2) The amount of each reduction under subsection (a) (2) of this section for any pay period in connection with the employment of any member or former member in a position shall be equal to the lesser of—

"(A) the member's retired pay allocable to such pay period; or

"(B) the member's pay for such employment for such pay period."

Mr. JACOBS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

Mr. UDALL. Mr. Chairman, I reserve a point of order on the amendment.

Mr. JACOBS. Mr. Chairman, this amendment deals with the so-called double-dipping issue. The bill itself provides in essence, I guess, that a double-dipper cannot get more from the taxpayers than about \$47,000. This provides that one cannot double-dip at all, but one can double-dip—a veteran—up to \$47,000 if that veteran has actually been engaged in combat.

I am reminded of Bill Mauldin's cartoon—no, I am not reminded of it; I was reminded of it this afternoon, and I have it written down here—about the hairy trooper, and that is the fellow who is too far forward to shave, and too far back to get shot. This would exclude that individual from the privilege of taking

true that section 311 was earlier amended and rewritten by the gentleman from Colorado (Mrs. SCHROEDER). The gentleman's proposed amendment would seek to amend the same section and, therefore, it is not in order.

The point of order is sustained.

Are there other amendments to title III? If not, the Clerk will read title IV.

The Clerk read as follows:

TITLE IV—SENIOR EXECUTIVE SERVICE
GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executive Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a) (2) of this title)."

(b) Section 2102(a) (1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;"

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or Senior Executive Service".

(d) Section 2103(3) of title 5, United States Code (as amended in section 302 of this Act), is further amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"but does not include applicants for, or members of the Senior Executive Service."

(e) The analysis for chapter 21 of title 5,

The CHAIRMAN. Are there amendments to title IV?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 209, strike out line 21 and all that follows down through line 13 on page 263, and insert in lieu thereof the following new title:

TITLE IV—SENIOR EXECUTIVE SERVICE
GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executive Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a) (2) of this title)."

(b) Section 2102(a) (1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;"

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or the Senior Executive Service".

(d) Section 2103(3) of title 5, United States Code, is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following: "but does not include applicants for, or members of the Senior Executive Service."

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"2101a. The Senior Executive Service."

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112, as added by this Act, the following new subchapter:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"§ 3131. The Senior Executive Service

"(a) It is the purpose of this subchapter to establish a Senior Executive Service in order to ensure that the 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. The Senior Executive Service shall be administered so as to—

"(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent career senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on managerial success which is to be measured on the basis of individual and organizational performance (including such factors as improvements in quality of work or service, cost efficiency, and timeliness of performance);

"(3) recognize exceptional accomplishment;

"(4) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(b) provide for severance pay, retirement benefits, and placement assistance for career senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

"(c) supervises the work of employees other than personal assistants;

"(3) 'career senior executive' means an individual in a Senior Executive Service position whose appointment to such position or previous appointment to another Senior Executive Service position was based on—

"(A) approval by the Office of Personnel Management of the managerial qualifications of such individual; and

"(B) selection through a competitive staffing process consistent with Office of Personnel Management regulations;

"(b) An agency may file an application with the Office of Personnel Management, setting forth reasons why it, or a unit thereof, should be excluded from any provision or requirement of this subchapter. The Office of Personnel Management shall—

"(1) review such application and stated reasons,

"(2) undertake such other investigation as it considers appropriate to determine whether the agency or unit should be excluded from any provision or requirement of this subchapter, and

"(3) upon completion of its review, recommend to the President whether the agency or unit should be so excluded from any provision or requirement of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from any provision or requirement of this subchapter, the President may, on written determination, make such exclusion to such extent and for such period as the President determines appropriate.

"(c) The Office of Personnel Management may at any time recommend to the President that any exclusion previously granted to an agency or unit under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion

mitted in such form, and shall be based on such factors, as the Office of Personnel Management shall prescribe.

"(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed the total number of positions authorized under subsection (c) of this section for such fiscal year plus 5 percent of such total number.

"(c) Appointments to the Senior Executive Service may be made by appropriate appointing authorities of agencies subject to the requirements and limitations of this title.

"§ 3134. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each even-numbered calendar year, a report on the Senior Executive Service. The report shall include—

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) a description of each exclusion in effect during the then current fiscal year under section 3132(c) of this title;

"(3) the percentage of career senior executives at each pay rate and the distribution and amount of performance awards, in the aggregate and by agency; and

"(4) such other information regarding the Senior Executive Service as the Office of Personnel Management considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress each odd-numbered year, an interim report showing changes in matters required

"(6) protect career senior executives from arbitrary or capricious actions;

"(7) provide for both program continuity and policy advocacy in the management of public programs;

"(8) maintain a merit personnel system free of improper political interference;

"(9) ensure accountability for honest, economical, and efficient Government;

"(10) ensure compliance with all applicable civil service laws, rules, and regulations including those relating to equal employment opportunity, political activity, and conflicts of interest; and

"(11) provide for the initial and continuing systematic development of highly competent career senior executives.

"§ 3132. Definitions and exclusions

"(a) For the purpose of this subchapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, except that such term does not include—

"(A) a Government corporation;

"(B) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; and

"(C) the General Accounting Office;

"(2) 'Senior Executive Service position' means any position in an agency which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which (other than a position in the Foreign Service of the United States) is not required to be filled by an appointment by the President, by and with the advice and consent of the Senate, and in which an employee—

"(A) directs the work of an organizational unit;

"(B) is held accountable for the success of one or more specific programs or projects; or

made under subsection (c) of this section.

"(d) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (d) of this section,

the Office of Personnel Management, shall within 80 days after such action, transmit to the Congress a report concerning the exclusion or revocation.

"§ 3133. Authorization of positions; authority for appointment

"(a) On or before December 31 of each odd-numbered calendar year, each agency shall—

"(1) examine its needs for Senior Executive Service positions for each of the two fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall be based on—

"(1) the anticipated type and extent of program activities of the agency for each of the two fiscal years involved;

"(2) such other factors as may be prescribed from time to time by the Office of Personnel Management.

"(c) The Office of Personnel Management, upon consultation with the Office of Management and Budget shall review the request of each agency and shall authorize, for each of the two fiscal years covered by requests required under subsection (b) of this section, a specific number of Senior Executive Service positions for each agency.

"(d) (1) The Office may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be sub-

to be reported under subsection (a) of this section.

"§ 3135. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter."

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section."

(c) The chapter analysis of chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

"Chapter 31—AUTHORITY FOR EMPLOYMENT

"SUBCHAPTER I—EMPLOYMENT AUTHORITIES"; and

(2) by inserting at the end thereof the following:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"Sec.

"3131. The Senior Executive Service.

"3132. Definitions and exclusions.

"3133. Authorization of positions; authority for appointment.

"3134. Biennial report.

"3135. Regulations."

EXAMINATION, CERTIFICATION AND APPOINTMENT

Sec. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3391. Definitions

"For the purpose of this subchapter,

'agency', 'Senior Executive Service position', and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in such agency and shall be in accordance with requirements established by the Office of Personnel Management.

"(b) An individual may be appointed to a Senior Executive Service position only if the appointing authority has determined in writing that the individual meets the qualification requirements of such position.

"(c) If a career senior executive is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule such executive may elect (at such time and in such manner as the Office of Personnel Management may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, and retirement apply as if such executive remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

"(1) to the extent provided under regulations prescribed by the Office, and

"(2) so long as such executive continues to serve under such Presidential appointment.

"§ 3393. Career senior executive appointments

"(a) Each agency shall establish a recruitment program in accordance with

"(B) consideration of successful participation in a career executive development program which is approved by the Office of Personnel Management; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of managerial success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career senior executive shall become final only after such individual has served a 1-year probationary period as a career appointee.

"§ 3394. Reassignment and transfer within the Senior Executive Service

"(a) A career senior executive in an agency—

"(1) may be reassigned to any Senior Executive Service position in the same agency for which the executive is qualified; and

"(2) may transfer to a Senior Executive Service position in another agency for which the executive is qualified, with the approval of that agency.

"(b) A career senior executive in an agency may not be involuntarily reassigned within 120 days after an appointment of the head of such agency.

"§ 3395. Development for and within the Senior Executive Service

"(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of career senior executives or require agencies to establish such programs, which meet criteria prescribed by the Office of Personnel Management.

"(b) The Office of Personnel Management shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the imple-

3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for this purposes of subparagraph (B) of this paragraph.

"(3) (A) Any career senior executive in an agency may be granted sabbatical leave under this subsection only if such executive agrees, as a condition of accepting such sabbatical leave, to serve with such agency upon the completion of such leave, for a period of two consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career senior executive fails to carry out such agreement (except for good and sufficient reason as determined by the head of the agency involved) such executive shall be liable to the United States for payment of all expenses (including salary) of such sabbatical leave. Such amount shall be treated as a debt due the United States.

"§ 3396. Regulations

The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter."

(b) The chapter analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VII—APPOINTMENT REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"3391. Definitions.

"3392. General appointment provisions.

"3393. Career appointments.

"3394. Reassignment and transfer within the Senior Executive Service.

"3395. Development for and within the Sen-

guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career senior executives from—

"(1) all groups of qualified individual applicants within the civil service; or

"(2) all groups of qualified individual applicants whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of such agency from among employees of such agency. It is the function of such boards, in accordance with competitive staffing requirements established by the Office of Personnel Management, to—

"(1) review the qualifications of candidates for appointment as career senior executives; and

"(2) make written recommendations concerning such applicants to the appropriate appointing authorities.

"(c) (1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate, the members of which shall be appointed by the Director from within and outside the civil service on the basis of their knowledge of public management and other appropriate occupational fields. It is the function of such boards to certify the managerial qualifications of candidates for entry as career senior executives into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management.

"(2) The Office of Personnel Management shall, in consultation with the various qualification review boards, prescribe criteria for establishing managerial qualifications for appointment to the Senior Executive Service. Such criteria shall provide for—

"(A) consideration of demonstrated managerial experience;

mentation of such programs. If the Office of Personnel Management finds that any agency's program under subsection (a) is not in compliance with the criteria prescribed under such subsection, it shall require such agency to take such corrective action as may be necessary to bring such program into compliance with such criteria.

"(c) (1) An agency head may grant a sabbatical leave to a career senior executive for not to exceed 11 months in order to permit such executive to engage in study or uncompensated work experience which will contribute to the executive's development and effectiveness. Such leave shall not result in loss of, or reduction in, pay, leave to which the executive is otherwise entitled, credit for time or service, or performance or efficiency rating. The agency head may authorize in accordance with chapter 57 of this title such travel and per diem costs as such agency head may determine to be essential for such study or experience.

"(2) Sabbatical leave under this subsection may not be granted to any career senior executive—

"(A) more than once in any ten-year period;

"(B) unless such executive has completed 7 years of service—

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions; except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

"(C) if such executive is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section

for Executive Service.

"3396. Regulations."

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or a member of the Senior Executive Service."

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"§ 3591. Definitions

"For purposes of this subchapter, 'agency', 'Senior Executive Service position', and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) A career senior executive may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the one year period of probation under section 3393(d) of this title; or

"(2) at any time for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career senior executive may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which such executive is qualified if—

"(1) such executive has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) such executive left the Senior Executive Service for reasons other than misconduct, neglect of duty, or malfeasance, or less than fully successful managerial performance by such executive as determined under subchapter II of chapter 43 of this title.

"(b) A career senior executive who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves such position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the executive applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career senior executive who was appointed from a civil service position under a career or career-conditional appointment (or an appointment of equivalent tenure), as determined by the Office of Personnel Management, and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position in any agency other than a Senior Executive Service position.

"(b) A career senior executive—

"(1) who has completed the probationary period under section 3393(d) of this title;

"(2) who has not completed in the aggregate, 5 years of service in the Senior Executive Service; and

"(3) who is removed from the Senior Executive Service for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position in any agency other than a

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

Sec.

"3591. Definitions.

"3592. Removal from the Senior Executive Service.

"3593. Reinstatement in the Senior Executive Service.

"3594. Guaranteed placement in other personnel systems.

"3595. Regulations."

PERFORMANCE RATING

Sec. 405. Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"§ 4311. Definitions

"For the purpose of this subchapter, 'agency' and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 4312. Senior Executive Service performance appraisal systems

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

"(1) provide for systematic appraisals of performance of career senior executives;

"(2) encourage excellence in performance by career senior executives; and

"(3) provide a basis for making eligibility determinations for Senior Executive Service retention and performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

"(1) that, on or before the beginning of each rating period, performance require-

"(A) is made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) is conducted at least annually, subject to the limitation of paragraph (3) of this subsection;

"(C) may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) is based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency conducting such appraisal determines that an adequate basis exists on which to appraise and rate the executive performance;

"(2) any career senior executive receiving a rating at any of the fully successful levels under subsection (a) (1) of this section may be given a performance award as prescribed in section 5384 of this title;

"(3) any career senior executive receiving an unsatisfactory rating under subsection (a) (3) of this section shall be reassigned or transferred within the Senior Executive Service, or separated from the Senior Executive Service, except that any executive who receives 2 such unsatisfactory ratings in any period of 5 consecutive years shall be separated from the Senior Executive Service; and

"(4) any career senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be separated from the Senior Executive Service.

"(c) Each agency shall establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards, as appropriate. It is the function of such boards to make recommendations to the appropriate appointing authority of such agency relating to the performance of career senior executives in such agency. The members of such a board

Senior Executive Service position.

"(c) (1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career senior executive is placed under such subsections shall be a permanent, full-time position at GS-15 or above of the General Schedule, or an equivalent position;

"(B) any career senior executive placed under subsection (a) or (b) shall be entitled to receive basic pay at the higher of—

"(i) the maximum rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of such placement for the position such executive held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for such executive immediately before being placed under subsection (a) or (b); and

"(C) the placement of any career senior executive under subsection (a) or (b) may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B) (i) or (ii) of this subsection is entitled to have such basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position to which such employee is placed under subsection (a) or (b) until such rate is equal to the rate in effect under paragraph (1)(B) (i) for the position to which such employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this subchapter."

(b) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

ments for each career senior executive in such agency are established in consultation with such executive and communicated to such executive;

"(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each career senior executive in such agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing to such appraisal and rating and have such appraisal and rating reviewed by an employee in a higher managerial level in such agency before such appraisal and rating becomes final.

"(e) If the Office of Personnel Management determines that an agency performance appraisal system does not comply with the requirements of this subchapter or regulations under this subchapter, the Office of Personnel Management shall order the agency to take such corrective action as may be necessary to bring such system into compliance.

"§ 4313. Criteria for performance appraisals

"Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performers, taking into account such factors as—

"(1) improvements in quality of work or service;

"(2) cost efficiency; and

"(3) timeliness of performance.

"§ 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that—

"(1) any appraisal and rating under such system—

shall be appointed by the head of such agency from among employees of such agency other than career senior executives with respect to which recommendations are being made by such board. In making any such recommendation with respect to a career senior executive, such a board shall include at least 1 career senior executive.

"§ 4315. Regulations

"The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter."

(b) The chapter analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end of the chapter analysis the following:

"SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"4311. Definitions.

"4312. Senior Executive Service performance appraisal systems.

"4313. Criteria for performance appraisals.

"4314. Ratings for performance appraisals.

"4315. Regulations."

AWARDING OF RANKS

Sec. 406. (a) Chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 4507. Awarding of ranks in the Senior Executive Service

"(a) For the purpose of this section, 'agency' and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"(b) Each agency shall forward annually to the Office of Personnel Management any recommendation of career senior executives in such agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The Office of Personnel Management shall review such recommendations and pro-

vide to the President recommendations as to which of the agency recommended executives should receive such rank.

"(c) During any fiscal year, the President may, subject to subsection (d), award to any career senior executive recommended by the Office of Personnel Management the rank of—

"(1) Meritorious Executive, for sustained accomplishment, or

"(2) Distinguished Executive, for sustained extraordinary accomplishment.

"(d) During any fiscal year—
 "(1) the number of career senior executives awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

"(2) the number of career senior executives awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

"(e) (1) Receipt by a career senior executive of the rank of Meritorious Executive entitles such individual to a lump-sum payment of \$2,500.

"(2) Receipt by a career senior executive of the rank of Distinguished Executive entitles such individual to a lump-sum payment of \$5,000."

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item: "4507. Awarding of ranks in the Senior Executive Service."

PAY RATES AND SYSTEMS

Sec. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"§ 5381. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position',

supersede any prior rates of basic pay for the Senior Executive Service.

"§ 5383. Setting individual executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each career senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a career senior executive for any fiscal year under sections 4507, 5382, and 5384 of this title exceed 95 percent of the annual rate payable for positions at level II of the Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any career senior executive may not be adjusted more than once during any 12-month period.

"§ 5384. Performance awards for the Senior Executive Service

"(a) (1) To encourage excellence in performance by career senior executive performance awards shall be paid to career senior executive in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

"(b) (1) No performance award under this section shall be paid to any career senior executive whose performance was determined to be less than fully successful at the time of such executive's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the

(2) by amending section 5541(2) by striking out "or" after paragraph (xiv), by striking out the period after paragraph (xv) and inserting "; or" in lieu thereof, and by adding the following paragraph at the end thereof:

"(xvi) member of the Senior Executive Service."; and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595 (a) (2) (1).

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Sec. 409. (a) Section 5723 (a) (1) of title 5, United States Code, is amended by striking out "; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5752. Travel expenses of Senior Executive Service candidates

"Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency."

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

"5752. Travel expenses of Senior Executive Service candidates."

LEAVE

Sec. 410. Chapter 63 of title 5, United States Code, is amended by inserting in subsection (a) of section 6304 "(e), and (f)" in lieu of "and (e)," and by adding at the end of such section the following new subsection:

"(f) Annual leave accrued by an individual while serving in a position in the Senior

and 'career senior executive' have the meanings given such terms under section 3132(a) of this title.

"§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

"(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each career senior executive shall be paid at one of such rates. Such rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS-16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of such rates shall not be subject to the pay limitation of section 5308 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100), equal to the percentage of such rate of basic pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.

"(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall

agency need but may not exceed 20 percent of the career senior executive's rate of basic pay.

"(3) The number of career senior executives in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This subsection shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"§ 5385. Regulations

"The Office of Personnel Management shall prescribe such regulations as are necessary to carry out the purpose of this subchapter and may provide guidance to agencies concerning the proportion of funds available for Senior Executive Service salary expenses which may be used for performance awards."

(c) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"SUBCHAPTER VII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"Sec.

"5381. Purpose; definitions.

"5382. Establishment and adjustment of rates of pay for the Senior Executive Service.

"5383. Setting individual executive pay.

"5384. Performance awards for the Senior Executive Service.

"5385. Regulations."

PAY ADMINISTRATION

Sec. 408. Chapter 55 of title 5, United States Code, is amended—

(1) by inserting "other than an employee or individual excluded by section 5541(2) (xvi) of this section" immediately before the period at the end of section 5504(a)(B);

Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section."

DISCIPLINARY ACTIONS

Sec. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.

"7541. Definitions.

"7542. Actions covered.

"7543. Cause and procedure."; and

(2) by adding the following after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501 of this title.

"§ 7542. Actions covered

"This subchapter applies to removal from the civil service or suspension for more than 14 days, but does not apply to a suspension or removal under section 7532 of this title or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days advance written notice unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the individual affected upon such individual's request.

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive

(2) The employee shall be notified in writing that such employee's position has been brought into the Senior Executive Service and what the employee's options are under subsection (d) of this section. The employee shall be given 90 days from the date of such notification to elect one of the options.

(d) Each employee who has elected an automatic appointment conversion, is serving immediately before the effective date in a position designated as a Senior Executive Service position, and is currently under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service as determined by the Office of Personnel Management;

shall receive an appointment to that position in the Senior Executive Service not subject to section 3393 (c) and (d) of title 5, United States Code.

(e) Employees whose actual base pay at the time of conversion exceeds the pay of the rate to which they are converted shall retain their pay. If there are comparability increases under section 5305 of title 5, United States Code, these employees will receive half of each comparability increase until the base pay equals the established Senior Executive Service rate.

(f) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. The regulations shall provide a right of appeal to the Merit Systems Protection Board for an employee who believes such employee's agency has violated the employee's rights under this section. An agency shall take the corrective action that the Merit Systems Protection Board orders in its decision on an appeal under this subsection.

LIMITATION ON EXECUTIVE POSITIONS

SEC. 414. (a) (1) (A) Subsections (b) through (g) of section 5108 of title 5, United

the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director of the Office of Personnel Management.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title)."

(C) Subsection (c) of such section 3104 is amended—

(i) by striking out "(c)" and inserting in lieu thereof "(b)"; and

(ii) by striking out "to establish and fix the pay of positions under this section and" and inserting in lieu thereof "to fix under section 5361 of this title the pay for positions established under this section".

(3) (A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director of the Office of Personnel Management—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of provisions which may be placed in GS-16, GS-17, and GS-18, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b) (1) Section 5311 of title 5, United States Code, is amended by inserting "(a)" before "The Executive Schedule," and by adding at the end thereof the following new subsection:

"(b) (1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office

Service who is separated from the Senior Executive Service for less than fully successful performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity."

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336(d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) During the period beginning on the date of the enactment of this title and ending on the effective date of this title, each agency under the guidance and review of the Office of Personnel Management and the definitions in chapter 31 of title 5, United States Code, as amended by this title, shall designate those positions which are to be incorporated into the Senior Executive Service.

(b) Each agency shall also submit a request for total Senior Executive Service position allocations. The Office of Personnel Management shall establish interim authorizations in accordance with section 3133 of title 5, United States Code, as amended by this Act.

(c) (1) Each employee serving in a position at the time it is designated as a position in the Senior Executive Service may elect to—

(A) decline conversion and remain in a position under such employee's current appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with career and career-conditional appointment; or

(B) convert to a Senior Executive Service appointment according to the automatic appointment conversion provisions of subsection (d) of this section.

The placement of an employee because of an election under subparagraph (A) shall not cause the separation or reduction in grade of any other employee.

States Code, relating to special authority to place positions at GS-16, GS-17, and GS-18 of the General Schedule, are hereby repealed.

Notwithstanding the provisions of any law (other than section 5108 of such title 5), the authority granted to an agency (within the meaning of section 5102(a) (1) of such title 5) under any such provisions to place one or more positions in GS-16, GS-17, or GS-18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows: "The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of) which may at any one time be placed in—

(1) GS-16, GS-17, and GS-18 of the General Schedule; and

(11) the Senior Executive Service, in accordance with section 3133 of title 5, United States Code (as added by this Act).

A position may be placed in GS-16, GS-17, or GS-18 of the General Schedule, only by action of the Director of the Office of Personnel Management.

(2) (A) Notwithstanding the provisions of any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (within the meaning of section 5102(a) (1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) (1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed) for carrying out research and development functions which require

of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on such date of enactment, and shall publish such determination in the Federal Register. Effective beginning on the date of such publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title; except that such position does not include any Senior Executive Service position, as defined in section 3132(a) of this title."

(2) The President shall transmit to 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.

CRITERIA FOR EXCEPTED POSITIONS

SEC. 415. (a) Section 3302 of title 5, United States Code, is amended to read as follows: "§ 3302. Competitive service; rules

"The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7152, 7153, 7321, and 7322 of this title. Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules."

(b) Subchapter I of chapter 33 of title 5,

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United States Code, is amended by inserting after section 3302 the following new section: "§ 3302a. Positions excepted from the competitive service

"(a) The President may, by regulation, except any position from the competitive service if he determines that—

"(1) the duties of such position—

"(A) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

"(B) require significant participation in the determination of major policies of such administration, or

"(C) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

"(2) it would be impracticable to apply competitive examination procedures in the filling of such position because of—

"(A) national security,

"(B) statutory or other significant requirements establishing special employment conditions,

"(C) the unusual nature of the duties of such position,

"(D) duration and frequency of service,

"(E) work location, or

"(F) inadequate number of applicants."

(c) The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3302 the following new item:

"3302a. Positions excepted from the competitive service."

EFFECTIVE DATE

SEC. 416. The provisions of this title shall take effect 9 months after the date of the enactment of this title with the exception of

ice the administration should have the authority to put a political appointee in that position. This is a tremendous departure from the existing system and one that I think strikes at the very heart of the viability of this bill. If in fact the civil service system has been designed to prevent the politicization of the system, it is in this title IV that we have opened it up to said politicization.

Mr. Chairman, I am offering a substitute to title IV, the title creating the new Senior Executive Service.

First, I want to emphasize that under my substitute, the key features and purposes of the proposed Senior Executive Service would not be changed. It retains the pay and performance evaluation provisions of the committee bill. The main concepts—pay for performance, mobility among agencies, flexibility in assignments, and management accountability—would remain.

It covers the same levels as the committee bill, GS-16 through executive level IV supervisory and managerial positions.

Basically, my substitute does two things: First, it stipulates that the Senior Executive Service would consist only of career employees; and second, it puts into law the standards now used to exempt a position from the career competitive service—for example, advocacy of administration programs, confidential assistant, national security.

My objection to the proposal under the bill is that the type of appointment—competitive or excepted—has no bearing

(c) the unusual nature of the duties of such position,

(d) duration and frequency of service,

(e) work location, or

(f) inadequate number of applicants.

My substitute would place these standards in the law; the effect would be the same as the current practice. The difference is that Congress would be providing clear direction and controls over which positions are political and which are career.

I believe my amendment goes to the heart of civil service "reform," a popular slogan that could be dangerously perverted under this bill. Politicizing the bureaucracy is not reform, in my view. There is a place for political appointments in the top layers of Government. But this bill leaves too many loopholes.

It was not that long ago that we saw political manipulation ripple throughout the bureaucracy under the guise of "getting control of the government." The taxpayer wants to know that Federal laws and programs are administered impartially, that decisions are made on principle, not politics. This is my goal, and I believe this amendment would accomplish that. I hope my colleagues will support it.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

(By unanimous consent, Mr. HARRIS was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Mr. Chairman, what we do if we do not adopt this substitute is open up a system where all top man-

section 413, regarding conversion procedures, which shall take effect immediately upon enactment.

Page 2, revise the table of sections accordingly.

Mr. HARRIS (during the reading). Mr. Chairman, this is a complicated amendment, but I ask unanimous consent that we consider the amendment as read and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Chairman, this amendment appears to be fairly lengthy because it is a rewriting of Title IV with one purpose in mind, and that purpose is to contain in Title IV all of those items that the administration and the committee in fact say that they need for Senior Executive Service, with the exception that we make sure that the Senior Executive Service is limited to career employees and does not contain political appointees.

Mr. Chairman, I think that we should recognize that we are dealing here with a relatively small group of top management officials, about 9,200. What the bill purports to do is set up a system that would permit the appointment of, the transfer of, and the removal of such officials.

We have been told that as an important element of this in any one of these positions of the Senior Executive Serv-

on the responsibilities of the job. Agency heads who are political appointees, designate which positions are career and which are political. The bill has numerical limits on the number of political hirings, but these numbers are arbitrary. They have no relationship to the duties of the position.

I believe that some positions can legitimately be filled by political appointees, particularly those high-level jobs requiring advocacy or development of administration policies. But many positions should be filled by persons competitively hired, such as the head of a division handling tax returns, grants, or contracts.

My substitute is similar to current practice which is governed by regulation. Currently, under the Civil Service Commission rules if a position meets certain standards, it can be excepted from the competitive service. Those standards provide that the President may except certain positions if he determines that—

- (1) the duties of the position—
 - (a) requires significant involvement in the advocacy of Presidential administration programs;
 - (b) require significant participation in the determination of major policies of such administration, or
 - (c) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such personal assistant or advisor; or
- (2) it would be impractical to apply a competitive staffing process in the filling of such position because of—
 - (a) national security,
 - (b) statutory or other significant requirements establishing special employment conditions,

agement jobs could by Presidential decision be filled by political appointment. It means that anyone entering into the senior executive service where pay increases are not automatic under the theories of this bill would be in competition with political appointees with respect to such merit pay. We would be setting up a system diametrically opposed to the current system.

We are throwing out with this bill one of the concepts, one of the underlying principles of the civil service plan that we have developed over the last 80 or 90 years. We should not do this casually.

I urge my colleagues to adopt this substitute so we can give the administration the new vitality, the flexibility that they want, the mobility that they want, but not allow them to mix up political appointees and civil service merit employees in the same positions. If we do, I predict we will rue the day we do this probably as much as we rue the day we accepted the Postal Reform Act a few years ago.

Mr. Chairman, I urge we adopt this amendment.

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the amendment.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I would like to point out that I consider the facts of life in a Government as huge as ours, that any President has to have a few people in office that are politically loyalists and share the philosophy of the administration.

We cannot have a President come into

office and have a totally neuter Federal civil service. That is really the philosophy behind the argument of the gentleman from Virginia (Mr. HARRIS).

But the facts of life are these: That these new Senior Executive Service people will be the troubleshooters, the management experts, and the key people who keep Government working. It stands to reason some outside expertise and some new blood—a transfusion, if you will—will be needed.

It also stands to reason that when they draw some assignments in areas where there might be some controversial administration programs, there be a certain commonsense factor relating to political loyalties. If anyone thinks we can run a government as large as ours and not have at least a handful of people with honest-to-goodness political loyalties, then they have their heads buried in the sand.

Basically, we provide the procedure whereby only 10 percent of these people will come in without competitive examinations, and the real concept of it is that at least those civil servants who are excellent administrators and who will voluntarily accept these assignments will not as such then be subject to political label if the next administration then comes in and inherits the program.

This amendment was thoroughly debated in committee. It was subjected to real good, sharp, clean debate. The political facts of life are that the mix we envision is necessary for the proper functioning of Government and the re-

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Chairman, I am really surprised, after all these months of discussions concerning this bill, to hear anyone still saying only 10 percent of the Senior Executive Service will be political. That is not factual. The fact is 100 percent may be political appointees. Ten percent need not be qualified.

We can take our uncles who are carrying the trash today and make them part of the Senior Executive Service in that 10 percent. The other 90 percent is required to be qualified. Nevertheless all 100 percent could conceivably be political. That is quite different, and we should understand that.

I know that there was an amendment in the committee which our good colleague, the gentleman from New York, offered, limiting political appointees to no more than 25 percent in each agency but it did not pass the Senate. Since it did not, we cannot be sure it will survive in conference. As the bill came to us from the administration, it provided for a 100-percent political possibility—9,200 employees.

But what concerns me about this section is that this could very well be the beginning of the end of the separation of powers between the various branches of Government.

concentration of authority in the Director of the Office of Personnel Management, is the danger of the politicization of the Career Executive Service posed by title IV.

The gentleman from Virginia's substitute would alleviate this concern, a concern, I might add, which is shared by a number of the Members of this body, by insuring that only career executives would be appointed to positions within the SES.

Why is this necessary?

Title IV would give to Presidential appointees absolute power to significantly reduce the responsibilities and pay of career executives, including reassignment to an unwanted location, without any stated reasons or possibility of review by an impartial body. There is no restraint against ill-considered and arbitrary action. But perhaps even more important, this power in the hands of Presidential appointees will have the effect of denying to the American people the kind of responsible sharp criticism from career executives that over the years has been essential to both determining and serving the public interest when proposed policies, programs, and priorities are being debated within the agencies.

The Presidential appointees who would exercise this new power are for the most part exceptionally able and highly dedicated to the national interest. They constitute for our democratic process the vital link between the decisions of the electorate in choosing a President and the overall direction and management of

sponse of the bureaucracy to the President of the United States.

Mr. Chairman, I as a Republican strongly urge we reject this amendment and give the present President an opportunity to mix with the career civil servants an occasional political loyalist to do a tough job in a tough situation.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, the gentleman from Illinois (Mr. DERWINSKI) has stated the case against the amendment very accurately, and I associate myself with his remarks.

The heart of this bill is the career senior executive civil servant. The gentleman from Virginia (Mr. HARRIS) very vigorously represents the feelings of many of his constituents on this subject.

We debated this amendment thoroughly, and it was a major amendment offered in committee. The vote for the amendment was 2, and the votes against it were 21.

The present bill for the first time would limit political appointments to not more than 10 percent of the total positions in the executive service, and this would be the first time that such a limit existed. So we are not turning it all wide open; we are saying 90 percent would be career and 10 percent would be people who could be brought in from the outside.

Mr. Chairman, it would be a very dangerous blow to this legislation and it would drastically harm it if this amendment were adopted. I, therefore, urge its defeat.

Let us consider what would happen if a President were to call on each of us for 20 very well qualified people whom he would then appoint. Then each time we disagreed with him, we would get a call and be reminded that some of our appointees were in danger of being fired. "It would be well," the President would urge, "for you to reconsider your decision to oppose my program."

Just a couple of weeks ago the Secretary of Agriculture was quoted as saying that some of the Members of Congress might find that, if they do not get into line behind the President, that their political appointees will be fired. I am happy to say that the President hastened to deny that he would do that, and I am also happy to say that the Secretary of Agriculture hastened to disclaim those words. But somewhere in the future there may very well be a President who would believe in doing just that, or a Secretary of Agriculture, or whatever, who would feel that this would be the way to conduct the business of the Government.

So I warn my colleagues that we really ought to take a long, hard look at this situation.

There is no reason why we cannot have really good qualified people carrying out the business of the Government without creating a spoils system which we might someday regret.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman from Virginia's substitute to title IV.

In my opinion, the most worrisome aspect of this legislation, next to the over

the agencies. But is a plain fact that many such appointees lack experience in public policymaking and in managing large organizations, and their initial perceptions of problems and alternative solutions are often cloudy, if not faulty. As the pressures and problems daily test the political-career relationships, it is important for the public interest that political appointees not have suffocating power over career executives: power that could be used intemperately, or to satisfy a special interest, or to provide a scapegoat for a poor decision made at a higher level. And we should have no doubt that when Presidential appointees have this power, even the vast majority who are well intentioned and competent will be subjected to pressure from many sides, often irresistible, to use the power to serve special interests rather than the public interest.

Career executives represent an important national resource which the Federal Government develops at considerable cost; their central commitment is to nonpartisan professional advice and the impartial administration of the laws, and both would be jeopardized by such a grant of authority.

The argument is made that this unrestricted power to reassign and reduce pay and responsibilities is needed for management flexibility and is no change from the present. But no evidence has been provided as to the widespread existence of real and important problems that this extraordinary grant of power would solve. Further, it is specious reasoning to argue that the unrestricted authority to reassign exists now and that

there is no change. Title IV would combine five separate grades—GS-16, 17, and 18, and executive levels V and IV—into one Senior Executive Service without grades. Under existing law the Presidential appointee's absolute power applies only to reassignments from one position to another in the same grade and rank. This is completely different from authority to reassign to any job within the proposed Senior Executive Service. For example, unrelated to performance and simply to put someone else in the job who is more to his personal liking, the proposed unlimited power would permit a Presidential appointee to reassign a career executive from a position of Bureau Director in Headquarters now at level V or GS-18 to the position of Deputy Regional Director now at GS-16 and located some hundreds or thousands of miles from Washington. At the same time, the Presidential appointee could reduce the annual pay of the career executive by up to \$8,000.

Advocates for this grant of power argue that top executives in large corporations have it, and so should Presidential appointees in order to encourage responsiveness. But the analogy is meaningless because no corporation could be successful if it lost its top three levels of executives every 2 to 4 years as the Federal agencies lose their Presidential appointees. This underscores the need for professionalism, objectivity, competence, and continuity of career executives to assure reasonable stability in the

Mr. SOLARZ. Mr. Chairman, I will be brief. This is a technical amendment. I think it has the support of the majority and minority managers of the bill. The legislation before us provides that at any given time at least 70 percent of the people in the Senior Executive Service have to serve 5 years in the Federal Government before being appointed to that position.

This amendment would provide instead that at any given time 70 percent of the people in the Senior Executive Service had to have served for 5 years in the Federal Government, period.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, this cleans up and clarifies what we were trying to do in committee, and moves a little bit in the direction of the concerns of the gentleman from Virginia (Mr. HARRIS). I think it is a good amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLARZ).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STEERS: Page 262, strike out line 16 and all that follows down through line 6 on page 263 and insert in lieu thereof the following:

(3) The amendments made by sections 401 through 413 of this title shall cease to have

up the system. We are trying to attract into it the permanent career people, and we are telling them to cut their moorings, leave all they have and join this exciting new innovative service, and the whole thing is going to go down the drain in 2 years.

It will take at least 4 or 5 years to give this a fair trial. We went along in committee with a somewhat similar amendment offered by Mrs. SPELLMAN. This, in my judgment, destroys it. There would be no chance of getting the kind of people we want in the Senior Executive Service if it is a 2-year trial. It would hardly be on the way.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. STEERS).

The amendment was rejected.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: On page 258, line 7: strike out 10,920 and insert in lieu thereof "10,780".

On page 258, line 13: strike out "Management" and insert in lieu thereof the following: "Management, except that the Director of the Federal Bureau of Investigation, without regard to any other provision of this section, may place a total of 140 positions in the Federal Bureau of Investigation in GS-16, GS-17 and GS-18."

Mr. COLLINS of Texas. Mr. Chairman, I submit this amendment with Mr. LEVITAS of Georgia and Mr. VOLKMER of Missouri.

operations of Federal agencies.

Presidential appointees in the agencies occupy their positions for relatively short periods, and in their eagerness to exercise leadership by making changes in policies and operations, many often are impatient with career executives who disagree with them by identifying weak or undesirable elements in their ideas. They have a tendency, particularly in the first year or two of a new administration, to characterize such disagreement, or even questions, as evidence of unresponsiveness. The proposed new power for presidential appointees would send a clear signal to many career executives that if they do not want to be shipped out, they should not question or disagree with the views of their bosses. We would substitute a new generation of "agreeable" career executives for the constructively critical and politically neutral professionals who now serve this Nation well. A new quietness at the crucial point where political and career appointees should debate proposed policies, programs, and procedures would serve the Nation badly.

For these reasons, Mr. Chairman, I urge my colleagues to adopt the gentleman's substitute.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLARZ: Page 223, line 23, strike the words "before appointment to such positions".

effect on or after the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to the Congress under paragraph (2) unless both Houses of the Congress have adopted a concurrent resolution which states in substance that the Congress favors the continuation of the Senior Executive Service.

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. STEERS. Mr. Chairman, what this amendment does is terminate sections relating to the Senior Executive Service at the end of 2 years. Notice that at present the bill provides that the Senior Executive Service and the rest of the bill will be extended unless terminated. What this amendment would do is terminate unless extended.

I would like to point out to those Members present that this is an example of sunset legislation which many of us have at least given lip service to. Here is a chance to vote for it. Of course, we can always reconsider the matter, but this amendment will require us to reconsider the Senior Executive Service; it will give us the opportunity to put it out of existence.

I, of course, feel it should be put out of existence as soon as possible.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

This would be a disaster to the Senior Executive Service concept. It is going to take about a year to 15 months to set

By reason of its unique responsibilities, the FBI has historically been afforded a measure of exemption from overview of the Civil Service Commission regarding personnel policies and authorizations. At present the FBI and all positions therein are in the excepted service (title 28 U.S.C. 536) and the Director is authorized to place up to 140 positions in the Bureau into grades GS-16, GS-17 and GS-18 (title 18 U.S.C. 5108 c2). Further, it has been the policy of the Department of Justice that the Director have complete latitude in managing the personnel policies and functions of the Bureau below the rank of Assistant Director, subject only to post-audit and correction by the Assistant Attorney General for Administration (title 28 CFR X, 0.137).

The effect of the FBI's excepted status is to remove it from the purview of the Civil Service Commission in such areas as recruitment, qualification standards, promotional requirements, internal placement, career and career-conditional employment, and temporary assignments. The authorization afforded to the Director to manage the executive manpower of the FBI, its supergrade employees, is central to this degree of independence. It insures that the FBI may respond in a prompt, flexible, and unfettered manner to the investigative priorities provided it by the Attorney General without need to obtain concurrence of other agencies or authorities.

Given the demanding, sensitive, and unique responsibilities of the FBI, particularly its role as the primary investigative arm of the Department of Justice, there is ample rationale for providing it

as great a degree of insulation with regard to its personnel function as is practical. This consideration is most important when consideration is afforded the role of the FBI as the Department of Justice's primary investigative arm for 78 public integrity violations of the criminal statutes of the United States.

Since these violations, by definition, involve misconduct on the part of officials of the U.S. Government the most prudent course for the future would appear to be to insure that the FBI is not dependent upon other agencies in such important matters as executive staffing levels. To do otherwise detracts from the ability of the Attorney General to fully utilize the investigative capabilities of the FBI in a manner he believes best serves the interests of the United States.

This amendment is fair and consistent. It places the FBI on the same basis as the CIA, the National Security Agency, Defense Intelligence, and the GAO. For our national security, I ask your full support for the FBI amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the FBI is a good organization, a good professional organization, and it has been beleaguered in recent years. I know many Members have been concerned about it and many people have been lobbied by the FBI and their friends on these amendments.

I was determined today in this debate that nobody was going to have any legitimate ground to complain that the FBI had not been given everything they were

Then the next agency would come in, NIH, the Smithsonian, or the Labor Department, and they will all want their own little pools.

Today about 80 percent of the supergrade positions are outside the pool and the pool is really a joke because under existing law we give special exemptions to the FBI, to the GAO, the Library of Congress, the Secretary of Defense, the Immigration Service, NASA, Bureau of Prisons, Railroad Retirement, OSHA, the Law Enforcement Administration, the Tax Court, IRS, EEOC, they all have their own little supergrade pool.

So the bill before us would abolish all of them and we would just have one governmentwide pool. Each one of the agencies will come in, and they will say here is what we need. Then the Office of Personnel Management will evaluate the need.

But now, in this amendment, it is proposed that we give the FBI a special pool of 140 supergrades, and as of now, they will be the only agency in the whole bill that has been separately singled out, and the Members will say why single the FBI out, why not the defense agencies, the Defense Department and everybody else? They will all be in one separate pool, but the FBI will be treated separately.

So, I repeat, if we accept this amendment, I guarantee that before the evening is out, I think that every one of you will be on your feet trying to single another agency out because there is not a Member in the whole House who does

ber of the subcommittee that also has jurisdiction and oversight of this agency, and also as one who has been involved in law enforcement, I have a great feeling for this agency. I realize that this agency must remain independent.

I must disagree with the gentleman from Arizona in that respect, and, in my opinion, if this amendment is not adopted, there will be a backing away from the independence of the FBI and thus cause harm to the criminal law enforcement in our Federal Government. I say that because the FBI is the one that investigates all of the other agencies of the Federal Government such as we have right now going on with the GSA.

It is the one agency that investigates the wrongdoings in the Federal Government, the white-collar crimes. If such a thing would occur, let us say, within the Civil Service Commission itself, then it would be investigated by the FBI. So, in my opinion, this could jeopardize that agency.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. Yes, I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I agree with everything that the gentleman is saying about the special role of the FBI. It is a good, honest agency, and I will praise it and I will defend it, but why, can the gentleman give me one reason why this agency out of all of the other agencies, not even the defense departments, not OSHA, not NASA, should have its own separate pool of super-

entitled to and had been given all the exemptions they needed to perform their mission.

This morning I accepted an amendment that gave the FBI, I thought, everything they could ask for within reason. The FBI has been totally exempted from the Senior Executive Service and they have been given a total exemption from title VI, which had concerned them about demonstration practices and experimental efforts. We gave the President authority to exempt them from the standard personnel practices and standard provisions of the Personnel Act, and the President will exercise that.

We gave them the special authority this morning, in an amendment I agreed to, to let the President set up their own whistle-blower system so that appeals would not be to the outside but to the Attorney General.

Now they want it all. I do not think they are entitled to this amendment.

What are we talking about here? We are talking about supergrades. One of the worst things that has happened in the last few years is the end runs around the supergrade pool. The idea was to have one supergrade pool for all Government, and when an agency completes its mission and may not need all the supergrades it had, then those executives would transfer to another agency. Or an agency may need an increase. They could move them around. But what has happened is this. If we were dealing, for instance, with the Park Service, we would say to them that notwithstanding the pool they get 140 supergrades in this service here.

not have his own special agency and who thinks they ought to have their own pool, forever and ever, world without end, amen.

So, if we are going to do this and get this problem settled, then let us do it right, and let us not start eroding it with the FBI, let us start out with a supergrade Government-wide overall pool, and with all of the agencies and their supergrades treated alike.

We have done that in this bill. I repeat, let us start with a good supergrade proposal. But, if we start out by singling out one particular department, and get that chain in the door, then we will not be able to stop the flood.

Mr. VOLKMER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. COLLINS).

(Mr. VOLKMER asked and was given permission to revise and extend his remarks.)

Mr. VOLKMER. Mr. Chairman and members of the committee, I do not plan to take the full 5 minutes in support of this amendment, however, as one who has tried to keep up with this legislation because of its known importance to this Nation and make it possible to restore public confidence in our National Government, and the operation of that Government by the separate individuals in it, and also to get better and still better operations through our public employees, and our Federal Government, as I say, I have tried to keep up with it, and specifically in this one area, and I have done so because I have been a mem-

grades? Why should this one agency be treated differently?

Mr. VOLKMER. That is because they are the agency that does the investigating of wrongdoings within the Federal Government.

Mr. UDALL. But what does the number of supergrades in that agency have to do with its ability to investigate wrongdoings?

Mr. VOLKMER. So that it will not depend on any other agency which it may have to investigate, including the Civil Service Commission.

I had been informed, and as a result of what happened this morning, I had discussed this matter with the man on the staff of the gentleman from Arizona, the man sitting next to him during the debate on that substitute, because I was concerned specifically about this point.

It was my understanding this morning when it was first brought up it included this provision. It was not until after that was all done that I determined that it did not, and I was greatly upset about it.

I had discussed it with our Attorney General. He is greatly upset about it, about the fact that this is not included.

I discussed it today with him. I have also been informed by another source, which I feel to be very reliable, that the Chairman of the Civil Service Commission has no objection to this amendment.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Michigan.

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Mr. FORD of Michigan. Mr. Chairman, I just came back on the floor. I am shocked.

Is the gentleman saying that Attorney General Griffin Bell discussed with him amendments to the President's civil service reform bill?

Mr. VOLKMER. I will emphatically say yes, y-e-s.

Mr. FORD of Michigan. Is the gentleman saying that the Attorney General is lobbying amendments into this bill?

Mr. VOLKMER. No, I am not saying that he is lobbying at all. I called him up. We discussed it among other things in which I am interested.

Mr. FORD of Michigan. The gentleman said that he is upset about the contents of the amendment this morning?

Mr. VOLKMER. Yes, because this was not included. I thought it was.

I talked to the staff man of the gentleman from Arizona. He is sitting right next to him. There was a misunderstanding there because when the gentleman answered me, at my request—and I am not blaming him—there was a misunderstanding. When he spoke to me he said it was the same as in the bill. It was my understanding that it was the same as in the present law.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, there was an obvious misunderstanding.

I gave them everything they want, their independence and their exemptions

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, may I pose this question: What do I say and how is the gentleman going to vote when the gentleman from Oregon wants to give the Forest Service its pool of supergrades?

The gentleman from California contacted me last week. He is on the board of the Smithsonian, and they want their own pool. What am I going to say to the CIA when somebody from the Committee on Intelligence gets up tonight and says that they are a special agency and they want their own allocation?

Will the gentleman join me in voting for all those amendments, or does he think the FBI is a special agency and it alone has to have a carved-out pool of supergrades?

Mr. GOLDWATER. I would agree with the gentleman in saying that the FBI is unique in the mission which they are set up to do.

Mr. UDALL. Does the accomplishment of the mission of the FBI depend on whether the President says they can get by with 135 supergrades or whether they have to have 140?

Why should this one agency alone, in the accomplishment of its mission, be dependent on having this number carved out for it, world without end, with no limit on it?

Mr. GOLDWATER. I would suggest to my friend, the gentleman from Arizona,

As I understand the supporters of the amendment, they seem to feel that we are going to put 140 misfits into the FBI. That is not the case at all. All that is going to happen is that the FBI under this reformed structure will in fact request the number of supergrade slots it wishes to have designated. They will be FBI agents, the agents in charge, for example, in the major cities, and we are not going to send a diet technician from Walter Reed Hospital to be the agent in charge of Phoenix, Ariz. He will be a career FBI law enforcement officer there. So the Members are reading into this a lot of things that are not there. But the point the gentleman from Arizona (Mr. UDALL) has made is one we should all follow. For example, our friend, the gentleman from Oregon, is going to take care of the Forest Service. Then there might be those Members who are interested in protecting the chief judge of the U.S. Tax Court. He has five supergrades. Why not let the chief judge rather than his pool handle that? What about the Commodity Futures Trading Commission? That is one of our newest little bureaucracies. They have 20 supergrades. Why should they not be excluded, and just have the farm interests? We go on and on and on.

So I would suggest the point the gentleman from Arizona (Mr. UDALL) is making is a sound one. What we have here is legitimate control of total numbers. The allocation will be practical. The allocation will take into account the expertise needed in the departments, and in

from the system. What I cannot understand is of all of these dozens of agencies in the Government, this one agency has to have supergrades when we are trying to set up a system under which no one has.

Mr. VOLKMER. It is so that it remains solely independent as a law enforcement agency, as it should.

Mr. GOLDWATER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I think there is ample precedent here to exclude the FBI from this provision, especially in the higher grades we are talking about.

The FBI has a very unique mission with respect to law enforcement. These individuals are not just civil servants. They are very specialized. They are very narrowly categorized. They require a very special kind of training, and their mission is of the highest order. Certainly their responsibility and authority are important activities which we are dependent upon, not only for our security, but also for internal vigilance.

Mr. Chairman, it just seems to me that it makes a lot of commonsense that if we are going to continue the type of organization which we expect the FBI to be, that agency should have full control and authority over the type of personnel whom they are going to be relying upon for life and death and the security of this country and certainly for the internal vigilance which we expect. It just seems to me that this makes a lot of commonsense. I think we ought to support the amendment.

that this agency's mission is of the highest priority as far as national security, as far as internal vigilance, and as far as law enforcement is concerned. It is a prime and singular agency. It does nothing else but pursue that particular mission.

Mr. UDALL. How is the accomplishment of that mission dependent upon the number of supergrades it has?

Mr. GOLDWATER. It depends on the quantity and the quality of personnel. I think that is that we are talking about here, and I think only those who have that responsibility of directing the FBI and its people really know and understand what is needed in this area. I think it is going to be completely confusing if we interject another sector such as OPA into it. I urge support of the amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

I have a feeling that this debate is getting totally out of control in the sense of our all appreciating precisely what the amendment does and precisely what classifications of positions are involved.

The gentleman from Arizona (Mr. UDALL) has properly pointed out that heretofore every committee, every subcommittee, has played around like little crown princes knighting people and sending them off as supergrades. As a result, all through Government in every appropriation and authorization bill we are creating supergrades. Nobody has a hold on them—not even the President or the Office of Management and Budget—nobody. So what we have got in this bill is an attempt to pull them all together.

the case of the FBI we are going to have the FBI in effect redesignate—and it is 140 or even more, if they can justify it—and they are not going to be square pegs in round holes. They are going to be good, loyal law enforcement officers, and the fear that somehow the FBI is going to be directed or administered by a bunch of locomotive engineers, not all law enforcement officers, just is not the case.

I appreciate the superconcern about the FBI. I do not want the FBI politicized. I do not want the FBI mishandled. I do not want it criticized, but I think we have greatly exaggerated the presumed danger of the FBI in the arguments against the position the gentleman from Arizona (Mr. UDALL) enunciated.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. I thank the gentleman for yielding.

On page 213, just for clarification, it has been said that only the FBI is concerned. On the top of page 213 it refers to the exclusion. It sets up the terms, definitions, and exclusions, and it says the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency. They talk about the security agencies.

Mr. UDALL. Mr. Chairman, will the gentleman yield to me?

Mr. DERWINSKI. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding.

The gentleman from Texas (Mr. COLLINS) is making my precise point. In the

bill as it came out of the committee we excluded the CIA. We said they are not even in the Senior Executive Service. This morning we did that for the FBI. We gave them complete exclusion from the SES. We excluded them from titles I and II. We took them out of the whistle-blower, and the only thing left here is whether they are going to have carved out a specific number of supergrades that will go to the President, and the pool will get all they need. But they should not be singled out forever to have an allocation. The thing the gentleman is talking about was taken care of in the amendment this morning. The FBI is the same as the CIA.

Mr. COLLINS of Texas. If the gentleman from Illinois would yield further to me, is the gentleman telling me in these categories they have no supergrades at all in any of these agencies?

Mr. UDALL. Nobody would have an allocated permanent pool of supergrades under this rule, and we are trying to hold that line.

Mr. DERWINSKI. What we are speaking of here is the Senior Executive Service. The Senior Executive Service will not be running the FBI.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. COLLINS of Texas. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order

Coleman
Collins, Tex.
Crane
Cunningham
Daniel, Dan
Daniel, R. W.
Dent
Devine
Dornan
Duncan, Tenn.
Edwards, Okla.
English
Fountain
Fowler
Frenzel
Gaydos
Gephardt
Gilman
Ginn
Goldwater
Gradison
Gudger
Guyer
Hall
Hammer-
schmidt
Harris
Harsha
Hillis
Hubbard
Hyde
Ichord
Johnson, Calif.
Jones, N.C.
Kelly

Abdnor
Akaka
Ambro
Anderson,
Calif.
Anderson, Ill.
Andrews, N.C.
Ashley
Aspin
AuCoin
Baldus
Baucus
Beard, R.I.
Bedell
Bellenson

Kindness
Lagomarsino
Leach
Lederer
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Lott
McClory
McDonald
McEwen
Madigan
Marriott
Martin
Mathis
Miller, Ohio
Minish
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Mottl
Murtha
Myers, Gary
Myers, John
Neal
O'Brien
Quillen
Regula
Roberts
Robinson
Rooney
Rose

NOES—217

Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Gammage
Garcia
Gialmo
Glickman
Goodling
Gore
Grassley
Green

Runnels
Buppe
Satterfield
Schulze
Shuster
Sikes
Skelton
Slack
Lloyd, Calif.
Smith, Iowa
Snyder
Spellman
Spence
Stangeland
Stanton
Steers
Steiger
Symms
Taylor
Treen
Tucker
Vanik
Volkmer
Waggonner
Walsh
Wampler
Watkins
Wolf
Wydler
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki

Ullman
Van Deerin
Vento
Walgren
Walker
Waxman

Weaver
Weiss
Whalen
White
Whitehurst
Whitley

Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Yates

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—90

Addabbo
Ammerman
Armstrong
Biaggi
Bingham
Boland
Bonker
Breaux
Brown, Mich.
Brown, Ohio
Burgener
Burke, Calif.
Burke, Fla.
Burleson, Tex.
Burton, Phillip
Byron
Cavanaugh
Chappell
Chisholm
Clawson, Del
Cochran
Cohen
Codyers
Corcoran
Delaney
Dickinson
Diggs
Eckhardt
Emery
Evans, Colo.
Evans, Del.

Fary
Fish
Flood
Flowers
Flynt
Forsythe
Fraser
Frey
Fuqua
Gibbons
Hagedorn
Hanley
Hansen
Harrington
Holt
Huckaby
Ireland
Jenkins
Johnson, Colo.
Kasten
Kemp
Krueger
Latta
Lehman
Lujan
Mikva
Miller, Calif.
Mitchell, Md.
Moffett
Moorhead,
Calif.

Moss
Pettis
Quie
Rangel
Richmond
Rinaldo
Risenhoover
Rodine
Rousselot
Rudd
Ryan
Sarasin
Shipley
Sisk
Smith, Nebr.
St Germain
Stratton
Stump
Teague
Traxler
Tsongas
Vander Jagt
Whitten
Wiggins
Wilson, Bob
Wright
Young, Alaska
Young, Tex.
Zeferetti

Messrs. BROOKS, STOKES, and ABDNOR changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to

that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee of the Whole appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Texas (Mr. COLLINS) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 124, noes 217, answered "present" 1, not voting 90, as follows:

[Roll No. 750]

AYES—124

Alexander
Andrews,
N. Dak.
Annunzio
Applegate
Archer
Ashbrook
Badham

Baffalis
Barnard
Bauman
Beard, Tenn.
Bowen
Brinkley
Broomfield
Broyhill

Buchanan
Burke, Mass.
Butler
Carter
Cederberg
Clausen,
Don H.
Cleveland

Benjamin
Bennett
Bevill
Blanchard
Blouin
Boggs
Bolling
Bontor
Brademas
Breckinridge
Brothead
Brooks
Brown, Calif.
Burlison, Mo.
Burton, John
Caputo
Carney
Carr
Clay
Collins, Ill.
Conable
Conte
Corman
Cornell
Cornwell
Cotter
Coughlin
D'Amours
Danielson
Davis
de la Garza
Dellums
Derrick
Derwinski
Dicks
Dingell
Dodd
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Ellberg
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fascell
Fenwick
Findley

Hamilton
Hannaford
Harkin
Hawkins
Heckler
Hefner
Hefter
Hightower
Holland
Hollenbeck
Holtzman
Horton
Howard
Hughes
Jacobs
Jeffords
Jenrette
Jones, Okla.
Jones, Tenn.
Jordan
Kastenmeier
Kazen
Keys
Kildee
Kostmayer
Krebs
LaFalce
Le Fante
Leggett
Long, La.
Long, Md.
Luken
Lundine
McCloskey
McCormack
McDade
McFall
McHugh
McKay
McKinney
Maguire
Mahon
Mann
Markey
Marks
Marlenee
Mattox
Mazzoli
Meeds
Metcalfe
Meyner
Michel

Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Perkins
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Pursell
Quayle
Rahall
Rallsback
Reuss
Rhodes
Roe
Rogers
Roncalio
Rosenthal
Rostenkowski
Roybal
Russo
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sharp
Simon
Skubltz
Solarz
Staggers
Stark
Steed
Stockman
Stokes
Studds
Thompson
Thone
Thornton
Trible
Udall

strike the requisite number of words.

Mr. Chairman, I think we can finish this bill this evening in a couple of hours. We are on title IV. The bill has eleven titles, but most of the remaining controversy is in title VII, the labor-management section.

Therefore, Mr. Chairman, I ask unanimous consent that all debate on title IV and all amendments thereto close at 9:45 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. DUNCAN of Oregon. I will be glad to reconsider after we see how many of the pending amendments are affected, but for now I object.

Reserving the right to object, Mr. Chairman, how many more amendments are pending, if the gentleman knows?

Mr. UDALL. There are a large number of amendments which have been noticed. I do not think that very many of them will be offered. I have no way of telling.

I think that the amendments which Members seriously want to offer will get an opportunity to be offered in this period of time. Most Members with major amendments have already printed them in the CONGRESSIONAL RECORD, and they would be outside the limitation, in any event.

Mr. DUNCAN of Oregon. They would be outside the limitation with respect to the 5 minutes which the sponsor is entitled to.

Mr. Chairman, until we can get some

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more information as to the number pending and going to be considered, if there is a large number pending, I think a half hour is unreasonable on a bill of this magnitude.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN of Oregon. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I especially appreciate that there has been a kind of bipartisan support and opposition to this bill. However, I have looked over all of the pending amendments; and really, as the gentleman from Arizona indicated, the gut issues are in title VII. The remaining amendments to titles IV, V, and VI may be important to some individual Member, but they are not going to alter the direction of the Republic.

Mr. Chairman, I really think we could expedite the relatively noncontroversial titles, and we could do a good job on the one tough title remaining.

Mr. DUNCAN of Oregon. Further reserving the right to object, Mr. Chairman, I am interested, as I know a number of other Members are, in a specific amendment which I think should be relatively noncontroversial. If the chair and the ranking minority member would study it and give us some assurance that it would be accepted, I should think in that instance a half hour would be plenty of time.

Mr. UDALL. If the gentleman will yield, Mr. Chairman, I will say to the gentleman that I do not think I am go-

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(1) is a noncareer appointee; and
"(ii) has the authority to reassign such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314 (b) (3) of this title; or

(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment.

Page 232, line 12, strike out "A career appointee" and insert in lieu thereof "Except as provided in subsection (b) of this section, a career appointee".

Page 232, after line 19, insert the following:

"(b) (1). Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of such agency; or

"(B) within 120 days after the appointment in such agency of such career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and
"(ii) has the authority to remove such career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314 (b) (3) of this title or;

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment."

Page 232, line 20, strike out "(b)" and insert in lieu thereof "(c)".

the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection to not consent to such a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal such personnel action to the Merit Systems Protection Board.

Page 215, strike out lines 4 through 11 and insert in lieu thereof the following:

"(8) 'career reserved position' means a Senior Executive Service position which is designated under subsection (b) of this section as a position to which a career appointee may be appointed;

"(9) 'general position' means any Senior Executive Service position which is not a career reserved position.

Page 215, beginning on line 15, strike out "career reserved positions." and all that follows down through "Government." beginning on line 19, and insert in lieu thereof "Senior Executive Service positions to which career appointees may be appointed."

Page 215, line 21, strike out "career reserved" and insert in lieu thereof "such".

Page 215, line 24, insert after "appointee." the following: "Any other Senior Executive Service position may be filled only by a noncareer appointee, limited term appointee, or limited emergency appointee."

Page 219, line 4, strike out "noncareer appointments" and insert in lieu thereof "general positions".

Page 219, beginning on line 6, strike out "employment of noncareer appointees" and insert in lieu thereof "general positions".

Page 219, beginning on line 11, strike out "authority to employ a specific number of noncareer appointees" and insert in lieu thereof "a specific number of general positions".

ing to accept the amendment he refers to. However, we can process it very quickly. It is not complicated. I think that in 3 or 4 minutes the Members will be able to make a sensible decision on it.

Mr. DUNCAN of Oregon. Mr. Chairman, I will be constrained to withdraw an objection at a later time, but at this point I am constrained to object.

The CHAIRMAN. Objection is heard.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer five amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives," and insert in lieu thereof "executives;"

Page 212, insert after line 23 the following:

"(12) insure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) insure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by non-career appointees, political appointments to such positions are minimized to the maximum extent possible."

Page 228, strike out lines 10 through 12 and insert in lieu thereof the following:

"(c)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

Page 227, line 3, insert "(1)" after "(a)".
Page 227, line 4, strike out "(1)" and insert in lieu thereof "(A)" and insert ", subject to paragraph (2) of this subsection," after "may".

Page 227, line 7, strike out "(2)" and insert in lieu thereof "(B)".

Page 227, after line 10, insert the following:

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of such reassignment—

"(A) at least 15 days in advance of such reassignment; and

"(B) containing a statement of the critical reasons for such reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal such violation to the Merit Systems Protection Board."

Page 245, after line 15, insert the following:

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of such reduction—

"(1) at least 15 days in advance of such reduction; and

"(2) containing a statement of the critical reasons for such reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal such violation to the Merit System Protection Board.

Page 228, insert after the line 12 the following:

"(f) A career appointee may be transferred only if—

"(1) he consents to the transfer; and

"(2) the transfer is part of a program designed to enlarge the responsibilities of

Page 219, strike out lines 13 through 18 and insert in lieu thereof the following:

"(b) The number of general positions in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency for such positions, except that the total number of general positions in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

Page 219, strike out "Senior Executive Service" on line 19 and all that follows down through "appointees" on line 20 and insert in lieu thereof "general positions".

Page 222, in the matter following line 15, strike out "noncareer appointments" in the item relating to section 3134 and insert in lieu thereof "general positions".

Page 223, line 9, insert "career reserved position," before "general position".

Page 227, beginning on line 4, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, beginning on line 7, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, line 13, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 227, line 18, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 254, line 25, strike out "(title)," and insert in lieu thereof "(title)", and such position shall be considered a career reserved position."

Page 256, line 7, strike out "position," and insert in lieu thereof "position, and such position shall be considered a career reserved position."

Page 258, line 19, strike out "appointment;" and insert in lieu thereof "appointment, and such position shall be considered a general position."

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GILMAN. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I am offering five amendments to title IV.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, if the gentleman will save us a little time by not making a speech on the amendments, I am prepared to accept them.

Mr. GILMAN. Mr. Chairman, I appreciate the gentleman's kind offer. I think, though, for the benefit of the House there should be just a brief explanation of the five amendments so that we will know what the amendments are.

My first amendment establishes three important principles in the administration of the Senior Executive Service.

Section 3131 of title IV sets forth 11 principles to guide the administration of

ment of an agency head, admits a loophole. This provision should relate to the time of appointment of a Presidential appointee to whom the career official reports and not to the agency head, because most career officials report to a Presidential appointee under an agency head.

My second amendment amends subsection 3395(e) to provide that a career appointee may not be involuntarily reassigned or removed from the Senior Executive Service within 120 days after an appointment of the head of his or her agency, or within 120 days following the appointment of a Presidential appointee to whom the career appointee reports, whichever is later in time.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield for an observation?

Mr. GILMAN. I am pleased to yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

I think the gentleman is on the verge of getting a unanimous vote for his series of amendments. I have read those statements earlier, and I can assure the Members that these are fine amendments. Let us accept his amendments.

Mr. GILMAN. I thank the gentleman for his kind remarks, but I do think that since this is such an important measure to the administration and since the acting chairman has indicated that there is a sense of urgency in adopting this measure, that it is important to the House to know exactly what the measures are that they are voting upon. Accordingly, if I may proceed:

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GILMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FISHER: Page 225, strike out line 15 and all that follows down through line 24 and insert in lieu thereof the following:

"(c) (1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management. Of the members of each board—

"(A) At least one-half shall be appointed from among career appointees; and

"(B) Up to one-half may be appointed from outside the civil service.

Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and other appropriate occupational fields of the intended appointee.

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

the Senior Executive Service. I propose to add three new principles to his section. Principle No. 12 would insure that career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices. The purpose of this is to bring the Senior Executive Service under the umbrella of protections accorded employees by virtue of section 2302 of title I which enumerates specific practices which may not be engaged in and for which an individual shall be disciplined if these prohibited actions occur.

Principle No. 13 represents a policy statement advocating maximum utilization of career service employees. H.R. 11280 authorizes a ceiling of 10 percent for the placement of political appointees. The 10-percent ceiling should not become a goal of each administration. I hope the goal of placement in the Senior Executive Service will center on individual qualifications for Government service. Therefore, maximum placement of career employees will be in the best public interest.

The final principle states a goal for the Senior Executive Service. I believe that statement is self-explanatory and self-supporting. The change establishes as Senior Executive Service policies: "Goals for a professional management system and the necessity to assure career members protection from prohibited personnel practices."

Subsection 3395(e), which provides that a career appointee may not be involuntarily reassigned or transferred within 120 days following the appoint-

My amendment makes clear that corrective action initiated under subsection 4323(b)(3) prior to changes in supervisory personnel may continue or any disciplinary action initiated before such appointment.

This amendment was suggested by the National Academy of Public Administration and is along the lines of an amendment suggested by the administration:

My third and fourth amendments would have the effect of precluding arbitrary action by a Presidential appointee against a career appointee in the SES involving a change in either the career appointee's reassignment or reduction in pay by insuring that any such change, first, be preceded by 15 days' notice; second, be accompanied by a statement detailing the critical reasons for the reassignment or reduction in pay; and third, if timely notice is not accorded the career executive, the career executive would be permitted to complain of such action to the Special Counsel or the MSPB.

My fifth amendment limits the right of the Director of OPM or an executive department or agency to transfer a career appointee. First, a career appointee may not be involuntarily transferred. Second, if a transfer is proposed and consented to by a career appointee, the transfer must be part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the SES.

Mr. Chairman, in the interests of further perfecting this measure, I urge my colleagues to adopt these amendments.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, I will be very brief. I believe there is no objection to this amendment. It would make some improvement in the way the Qualification Review Board operates.

Mr. Chairman, these qualification review boards play a key role in the SES. They certify the managerial qualifications of candidates for the SES. Knowledge of Government management is the primary qualification for appointment. Because persons who have had experience in the civil service really know the most about the requirements of SES positions, I believe it would be desirable that half the members of the qualification review boards be career employees.

This is at the critical level where SES persons are selected. Knowledge and experience in the career service are essential. I urge a vote for this amendment.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, we accept the amendment.

The CHAIRMAN. Without objection, the amendment offered by the gentleman from Virginia (Mr. FISHER) is agreed to.

Mr. BAUMAN. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The question is on the amendment offered by the gentleman from Virginia (Mr. FISHER).

The question was taken; and on a division (demanded by Mr. SYMMS) there were—ayes 59, noes 11.

Mr. BAUMAN. Mr. Chairman, I de-

mand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred seventeen Members are present, a quorum.

The pending business is the demand of the gentleman from Maryland (Mr. BAUMAN) for a recorded vote.

A recorded vote was refused.

So the amendment was agreed to.

The CHAIRMAN. Are there further amendments to title IV?

AMENDMENTS OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, with some trepidation, I offer a series of amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Page 238, line 8, strike out "service" and insert in lieu thereof the following: "service, including any significant reduction in paperwork".

Page 266, line 9, strike out "service" and insert in lieu thereof the following: "service, including any significant reduction in paperwork".

Page 267, line 21, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 268, line 6, insert after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, insert after line 16 the following new section:

INCENTIVE AWARDS AMENDMENTS

SEC. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paper-

have pending two amendments, to titles IV and V, which would make reduction in paperwork one of the criteria for eligibility in the various incentive programs for Federal employees that exist in present law and that would also be established by this bill.

There can be no doubt that we all are aware of both the facts about the extent of Federal paperwork and the public's feelings about that situation. According to OMB, Americans spend a total of 785 million hours a year filling out 4,987 different Federal forms. The Commission on Federal Paperwork estimates that Federal forms cost about \$100 billion a year to file and process, or \$500 for every American citizen. Broken down, this works out to annual expenditures of from \$25 to \$32 billion by industry, \$8.7 billion by individuals, \$5 to \$9 billion by State and local governments, and \$43 billion by the Federal Government itself. The worst-case example might well be the filing of an application to operate a nuclear powerplant, which can take more than 55,000 hours, or the work of 27 people working 40-hour weeks for a year.

Clearly, this excessive paperwork does not gain us anything. I think, then, that it makes sense to build into the civil service system an incentive to reduce paperwork. My amendments would do this by including paperwork as a criterion for eligibility for the merit pay and cash bonus awards established in the bill for the GS levels 13 through 15 and as a criterion for the achievement ratings to be conducted under the new Senior Executive Service, for GS levels 16 through

that underlies the sense of apathy or alienation that we each see so frequently in our capacities as representatives. If we can do anything to alleviate or even reverse that trend, we will have made a real achievement indeed.

It is my feeling that by giving every Federal civil servant from GS-1 to Executive Schedule V a reminder that she or he has a responsibility to try to reduce paperwork and an incentive to do so that we have a real chance to do just that.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, as far as these amendments are concerned, I wish they would have been presented in committee. They would have been adopted by a wide vote margin.

The amendments will use paperwork as a criterion for the bonus, and they make available the criteria for determining performance, since we are going to take into account innovative ways to save paperwork.

Mr. Chairman, I think these amendments are a good addition, and I am strongly in favor of them.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, some years ago our committee produced a work called "The Paperwork Jungle," and it was so thick that most Members developed eyestrain trying to read it.

Mr. Chairman, these are practical amendments and I think they will be

work".

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

Page 270, line 18, strike out "Section 502." and insert in lieu thereof "Sec. 503."

Page 272, line 19, strike out "Sec. 503." and insert in lieu thereof "Sec. 504."

Page 130, in the table of contents, strike out the items relating to sections 502 and 503 and insert in lieu thereof the following: Sec. 502. Incentive awards amendments.
Sec. 503. Technical and conforming amendments.

Sec. 504. Effective date.

Mr. PANETTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

(Mr. PANETTA asked and was given permission to revise and extend his remarks.)

Mr. PANETTA. Mr. Chairman, I wish to commend the committee for its hard work on this very complex bill. Clearly, this is an important issue and one that demands close and careful scrutiny. This truly is our golden opportunity to reform the civil service system and we must be sure to do all that we want to and nothing that we do not want to do.

It is in this spirit that I ask the House to consider making a reduction in the level of Federal paperwork part of the goals of the civil service reform bill. I

18 and for the executive levels through level V. In addition, I would amend the existing incentive awards program to make paperwork reduction an eligibility determinant.

I believe this approach, rather than a new regulatory statute, emphasizes individual initiative, the way America has traditionally solved so many of its pressing problems in the past. Although conceivably we would be expending some funds in the recognition of paperwork reduction, it is certain that he long-term benefits and savings would more than justify any small payment to a Federal employee. The savings would come first from reduced Federal printing costs, then reductions in handling and processing of the paper; in addition, of course, the person dealing with the paperwork would be saved excessive expenditures to file the materials.

Most importantly, perhaps, the resultant reduction in paperwork would help restore people's faith that the Government serves them, rather than the other way around. The most frequent point of contact between citizens and the Federal Government is the exchange of paper, whether it is in the filing of tax returns, the application for a Federal grant, or the application for some benefit, such as medicare or social security. The tremendous load of paper involved in each of these transactions plays a key part in discouraging people, in making them feel that the Government has lost touch with the needs of people and has become too involved in regulation and meaningless detail. It is precisely this feeling

helpful to the bill and to the operation of our Federal Government. They are fine amendments and should be adopted.

The CHAIRMAN. The question is on the amendments offered by the gentleman from California (Mr. PANETTA).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. WEAVER

Mr. WEAVER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WEAVER: On page 219, between lines 3 and 4, insert the following:

"(f) (1) Not later than one hundred and twenty days after the date of the enactment of the Civil Service Reform Act of 1978, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director of the Office of Personnel Management shall establish, by rule issued in accordance with section 1103 (b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of such Act, that are to be career reserved positions. Except as provided in paragraph (2), the number of positions required by this subsection to be career reserved positions shall not be less than the number of positions which, prior to such date of enactment, were authorized to be filled only through competitive civil service appointment.

"(2) The Director of the Office of Personnel Management may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) only if he determines it necessary to designate as a general position a position which—

"(A) involves policymaking responsibilities which require the advocacy or manage-

ment of programs of the President and support of controversial aspects of such programs;

“(B) Involves significant participation in the major political policies of the President; or

“(C) requires the executive to serve as a personal assistant of, or adviser to, a Presidential appointee or other key political figure. The Director shall provide a full explanation for his determination in each case.

“(3) All positions in and hereafter established in the senior executive service shall be designated as career reserved positions for the Fish and Wildlife Service, the Bureau of Land Management, and the Park Service of the Department of the Interior and the Forest Service and Soil Conservation Service of the Department of Agriculture.”

Mr. WEAVER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. WEAVER. Mr. Chairman, although the administration proposes that at any one time, no more than 10 percent of all executive positions could be occupied by political appointees, with the exception of a relative small group of career reserved positions, all other positions could be filled by a career or noncareer appointee. The Senate in their consideration of the legislation had a similar concern and adopted an amendment—CONGRESSIONAL RECORD August 24, 1978, S14292-S14294—which provides that within 120 days of the effective

ment. Policy formation should continue to be met at the Assistant Secretary and above levels.

My amendment would not preclude reassignment of high-level employees of those agencies. But their replacements, who could be appointed to meet an administration's policy objectives, would be required to be selected from those with career status. The amendment would provide the administration an opportunity to select top agency personnel having compatible philosophy while at the same time assuring that they possess strong professional background and experience in the resources disciplines. I strongly urge the adoption of my amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have been preaching here all day that if we are going to have a Government-wide personnel system, we must have basic principles that are not waived for particular agencies. I said that those of us in charge of legislation might see our colleagues seeking an exemption as with the FBI a little while ago, and now the gentleman is in my ballpark again. Here we are talking about the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and so forth.

And here again, the Department has been lobbying its friends. The gentleman from Oregon is a very valuable member of my committee and the Committee on Agriculture. These people say now, “We are special,” just as the FBI said they were special. And the amend-

cepted and inserted in the bill in the Senate.

The chairman points out, quite correctly, that the amendment does reserve all of these senior executive positions in these five specific natural resource agencies for career people. But he says it as though there were something wrong with it, and I ask you: What is wrong with that? In these natural resource agencies which we have created to protect the land from which all wealth flows, why should not they be managed by professional career people instead of political appointments who can be put into these senior executive slots. And you might say that that cannot happen, that it will not happen. I would only have to refer the Members back two administrations, to a point where it did happen, and Mr. Erlichman, and all of the rest of his assistants, were in the process of politicizing the civil service.

Mr. Chairman, I think this is a very, very important segment of this bill. I think this amendment is one way we can strike a blow for having professional civil service people running these natural resource agencies on which we depend in so many of our districts.

The chairman suggested it is just like the amendment we just defeated. It is not. That amendment reserved for ever and ever, world without end, 140 positions for the FBI. This has no specific numbers for these natural resource agencies. The provision is made in this amendment that these people can be transferred freely, just as other career senior executive people can. The only

date of the Civil Service Reform Act, the Director of the Office of Personnel Management, by rule and in accordance with the rulemaking provisions of the Administrative Procedure Act, must specify the number of positions in the Senior Executive Service that are to be career reserved positions. That number can be no less than the number of positions that can today be filled only through competitive civil service appointment. This means that the Director of the OPM will designate approximately 5,100 of the almost 9,000 positions in the Senior Executive Service that will be career reserved. The Director of the OPM is given the authority in the amendment to reduce the number of career reserved positions by designating them general positions under certain specific conditions. I endorse and offer a similar amendment.

I have however added one additional provision to the amendment, a provision to provide for career reserved status for positions in the Senior Executive Service responsible for directing public lands and resources programs in the National Park Service, Fish and Wildlife Service, Bureau of Land Management, Forest Service, and the Soil Conservation Service.

Successful natural resources management requires skilled coordination of many professional disciplines. Because of their long-term nature, natural resources programs must have continuity of support and direction. I firmly believe that this best can be accomplished by clear separation of the policy formation and policy implementation levels in Govern-

ment provides that all positions—not 90 percent or 95 percent, but all positions—in this agency are reserved for career positions in these particular departments. I think we open the door here, and other Members will have special agencies who feel they are career agencies and should not have any infusion of outside people or non-career people. I think we should draw the line and say that we are going to have a Government-wide executive service and we should not make these exemptions. I am going to take this position in speaking for my own committee's jurisdiction, the Committee on the Interior, and for that reason I regretfully oppose the amendment.

Mr. DERWENSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to point out that the observation and the analysis of the gentleman from Arizona is practical. It explains the situation just as it realistically is. If you want an absolute attack on personnel administration you should support the amendment. But consistent with the vote on the earlier amendment, I urge the rejection of this amendment.

Mr. DUNCAN of Oregon. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I support this amendment and I urge the Members here tonight to support it.

I would like to say that almost all of this amendment has already been ac-

thing is, when you move someone back into there agencies you would have to move a civil service career-oriented person. The morale in these agencies is very important. Every forester, every biologist who starts out ought to be able to look forward to being the chief of the service or head of the Bureau of Fisheries. I think this is a very, very important amendment. I can take the points the chairman has made, turn them around, and say that every argument he has made is an argument in support of this. I do not see how it affects the bill. I do not see how it affects the overall purpose of the administration. They can move them around. They can reduce the number. All it says is that about 5,000 of these 9,000 jobs are going to be pulled out for the people who have spent their lifetimes serving each one of our constituents and the American people.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN of Oregon. I yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I agree so much with what the gentleman said. I can well agree with him that we ought to have professional people running these programs with regard to our land and water and our forests and our natural resources. Some of the words seemed familiar. I was wondering if it did not make good sense also to have professional people running our health programs.

Mr. DUNCAN of Oregon. If I had drafted this amendment, I would agree with the gentleman. I think the same

thing really ought to apply to the doctors in the Veterans Administration and to the scientists in the National Institutes of Health. I think this provision in the bill as it came out of committee is the Achilles heel of the bill. I think it is one of the weakest policies, and we can help the bill a little with this amendment.

Mr. HARRIS. Did my colleague support my amendment that did this about a half hour ago?

Mr. DUNCAN of Oregon. I am sorry, I was not on the floor at the time.

Mr. HARRIS. I am too. I thank the gentleman.

Mr. DUNCAN of Oregon. I just would like to reiterate that it is in the Senate bill. I do not know whether the administration accepted it over there or not. I would say that if they did, they accepted it reluctantly.

I would tell the Members that I just visited with them out there in the hall, and was told, no, they would not accept it; they wanted to strike it out. To me, that is an insult to the House of Representatives, and I felt humiliated to have to go out in the hall and ask the consent of the executive branch of Government for action to be taken by the House of Representatives.

Mr. LEACH. Mr. Chairman, I move to strike the requisite number of words.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Very, very briefly, Mr. Chairman, let me just point out that

from the Fish and Wildlife Service, Land Management, the Department of the Interior, the Forest Service; they are not going to be moving people in there who have been street inspectors in Brooklyn. They are, in fact, going to be their people.

The only controversy here is whether there shall be proper control of Government-wide supergrades. That is the issue, May I say, with all due respect to the gentleman, because as I recall he once pursued a position in the other body, arguing that just because the other body adopted an amendment does not really make it all that much of an asset, because we know legislative-wise there are many, many more mistakes made across in the other body than there are in this body.

Mr. DUNCAN of Oregon. There are not only mistakes made in the other body, but there are a lot of mistakes made on the way to the other body, as I can testify to myself.

The point which the gentleman makes with respect to the limitation on numbers just does not exist in this amendment. If that is all, that is not what this amendment does. The other point the gentleman makes when he says that we need not fear streetcar conductors being moved in.

If we do not intend to do it, then why should the gentleman have any objection to putting it in the law—stating that it cannot be done—because I do not have the same confidence in the continued benevolence and good will of the executive branch of the Government. I share

“(8) ‘career reserved position’ means a Senior Executive Service position which is designated under subsection (b) of this section as a position to which a career appointee may be appointed;

“(9) ‘general position’ means any Senior Executive Service position which is not a career reserved position.

Page 215, beginning on line 15, strike out “career reserved positions.” and all that follows down through “Government.” beginning on line 19, and insert in lieu thereof “Senior Executive Service positions to which career appointees may be appointed.”

Page 215, line 21, strike out “career reserved” and insert in lieu thereof “such”.

Page 215, line 24, insert after appointee.” the following: “Any other Senior Executive Service position may be filled only by a non-career appointee, limited term appointee, or limited emergency appointee.”

Page 219, line 4, strike out “noncareer appointments” and insert in lieu thereof “general positions”.

Page 219, beginning on line 6, strike out “employment of noncareer appointees” and insert in lieu thereof “general positions”.

Page 219, beginning on line 11, strike out “authority to employ a specific number of noncareer appointees” and insert in lieu thereof “a specific number of general positions”.

Page 219, strike out lines 13 through 18 and insert in lieu thereof the following:

“(b) The number of general positions in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency for such positions, except that the total number of general positions in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

Page 219, strike out “Senior Executive

the gentleman from Oregon made a wonderful, impassioned plea. Can the Members imagine, now, every other Member getting up and making the same type of impassioned plea for a unit of Government for which he has special affection?

This is the very problem we feared an hour ago. The same arguments that basically prevailed in the Collins amendment are here.

The only thing they will have to do is look for their supergrade slots from a central pool. I am sure that with this administration, there is going to be enough allocation of supergrades.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. There is nothing in this amendment, if the gentleman will study it, that says that these agencies do not have to go to the same pool. The only thing it says is that pool is going to have to be made up of a certain number of career civil service people—only about 5,000 out of 9,000. It also says with respect to these agencies that out of that central pool those who are going to be assigned are going to have to be out of that pool represented by those career civil service people.

Mr. DERWINSKI. Let me reclaim my time. That is not exactly what is going to happen.

Mr. LEACH. I yield to the gentleman from Illinois.

Mr. DERWINSKI. The facts are, from the standpoint of administration personnel, they are not going to take people

the same apprehension with respect to it as you have with respect to the Senate.

Mr. DERWINSKI. The gentleman may argue that point, but the fact is that through this amendment this is a back door approach to guarantee for these five special units of Government absolute control of their supergrades. The gentleman is going through the back door rather than by a frontal attack.

Mr. DUNCAN of Oregon. Would the gentleman please find out where, in this amendment, it says that, because it just does not. It says the same authority exists to move people around as with the other agencies.

It does not change the total number of career service employees. It does not set a ceiling for these agencies. All it says is a certain number of senior executive service will be professional civil service people and that when those movements are made from these agencies the replacements must likewise be civil service.

[Mr. FORD of Michigan addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon (Mr. WEAVER).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. GILMAN

Mr. GILMAN. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. GILMAN: On page 215, strike out lines 4 through 11 and insert in lieu thereof the following:

Service" on line 19 and all that follows down through "appointees" on line 20 and insert in lieu thereof "general positions".

Page 222, in the matter following line 15, strike out "noncareer appointments" in the item relating to section 3134 and insert in lieu thereof "general positions".

Page 223, line 9, insert "career reserved position," before "and 'general position'".

Page 227, beginning on line 4, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, beginning on line 7, strike out "Senior Executive Service position" and insert in lieu thereof "career reserved position".

Page 227, line 12, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 227, line 18, strike out "Senior Executive Service position" and insert in lieu thereof "general position".

Page 254, line 25, strike out "title)." and insert in lieu thereof "title), and such position shall be considered a career reserved position."

Page 256, line 7, strike out "position." and insert in lieu thereof "position, and such position shall be considered a career reserved position."

Page 256, line 19, strike out "appointment;" and insert in lieu thereof "appointment, and such position shall be considered a general position."

Mr. GILMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. GILMAN asked and was given

permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, simply stated, my amendment insures that the 90:10 ratio of career appointees to non-career appointees within the Senior Executive Service (SES), a goal chosen by the administration itself, is preserved. This is accomplished within the amendment by causing "career reserved positions" and "general positions" to be mutually exclusive. That is, only career appointees can be designated to fill career reserved positions, and conversely, only non-career appointees, limited term appointees, or limited emergency appointees could be employed in general positions. My amendment then restricts the total number of general positions in all agencies to 10 percent of the total number of SES positions in all agencies.

You may well inquire if this amendment is really necessary and/or if it is too restrictive. Both questions are fairly asked, and I will do my best to answer them.

Among the many controversial aspects of this legislation, the most controversial, in my opinion, has been the allegation put forth by several of the witnesses and a number of our colleagues in Congress that the administration's proposal for the SES is a back-handed attempt to politicize the merit system, or at the very least, to restore the patronage system at the upper levels of Federal management.

Let us briefly review the administration's proposal, in light of these charges, and the oft-pronounced claim of the

their official discretion in subtle ways to serve partisan and special interests, rather than the public interest, in hopes of being looked on favorably as they seek advancement in the SES.

Will this administration appoint significant numbers of non-career executives to the SES? The answer lies in their own admission that only a small proportion of the 8,000 career executive positions need to be filled by career executives "to preserve public confidence in the impartiality of certain functions of Government." In other words, most of the positions within the SES would be filled by non-career appointees because there is no compelling need to preserve public confidence in the impartiality of most of the functions of the executive branch.

To return to my original question, then—is my amendment necessary? My answer is, indeed it is, if we hope to avert a return to the spoils system, and if we truly believe there is a compelling need to preserve public confidence in the impartiality of our SES. And to quote from U.S. News & World Report of August 28, 1978,

No one alleges that Jimmy Carter lusts after power. But his reforms would enable any future political dictator to reach down through the levels and take the whole organization captive. Members of the Senior Executive Service would work close to the administration. In turn 72,500 intermediate managers, the GS-13s, 14s and 15s, bereft of automatic raises, would depend largely on SES review for their rewards. And the lower grade, finding appeal more difficult than at present, would have to please the middle

Mr. GILMAN. I am pleased to yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I want to applaud my colleague, the gentleman from New York (Mr. GILMAN), for the amendment. It is actually a good backup type of amendment.

The CHAIRMAN. The time of the gentleman from New York (Mr. GILMAN) has expired.

(On request of Mr. HARRIS and by unanimous consent, Mr. GILMAN was allowed to proceed for 2 additional minutes.)

Mr. HARRIS. Mr. Chairman, will the gentleman yield further?

Mr. GILMAN. I am pleased to yield to the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, I thank the gentleman for yielding. I would like to applaud his efforts here.

His amendment is actually a good backup amendment since we were not able to pass the basic amendment to eliminate political appointees from the Senior Executive Service. I believe my colleague's amendment at least tries to make certain that the 10 percent limitation on political appointees is a meaningful limitation which actually applies to the Senior Executive Service, and that they will not find any backdoors to get additional political appointees in.

Mr. Chairman, I think by placing this amendment in statute, at least we have made the bill more honest in that regard, in that the 10-percent limitation does, in fact, act as a meaningful limitation on the number of political appointees that

administration that political appointees within the SES will approximate the present number of political appointees in the executive branch.

Currently there are about 9,000 executive positions in the Federal service, other than those filled by Presidential appointees. About 10 percent or 900 of these are designated as specific positions to be filled politically. The administration proposes to change this so that most of the 9,000 positions could be filled by political appointment, although at any time no more than 10 percent of all executive positions could be occupied by political appointees. How could this be accomplished?

First, while it is true that political appointees are limited to 10 percent of the total SES corps, there is no similar cap on limited term appointees or limited emergency appointees. Second, limited term appointees or limited emergency appointees can be and very probably will be pseudonyms for political appointees, thus greatly increasing the 10-percent figure. Third, since the 10-percent cap is governmentwide, a large portion of the general positions could be placed in an agency that was deemed necessary to control with "favorable" executives. And fourth, once it is established that politics, and not impartiality and nonpartisanship, is the criteria for selection for general positions within the SES, the baser elements of human nature will flourish. We can assume that significant numbers of noncareer appointees will be encouraged and some, unfortunately, will be tempted to use

managers in whatever shades of political control the managers transmit.

This still leaves unanswered the other question as to whether this amendment is too restrictive, a change generally leveled by the gentleman from Arizona to other amendments I have offered. The answer is, of course, no.

Section 3132, subsection (c) on page 129 of the committee print provides that agencies may apply to the Office of Personnel Management for exclusion of the entire agency or a part of it from being required to place positions in the Senior Executive Service. The reasons justifying the exclusion must be included in the application, but the range of possible justifications is not limited in the act. After review and investigation, as appropriate, the Office of Personnel Management will recommend to the President inclusion or exclusion of the agency or component. If the President makes a written determination of exclusion, the agency or component will be excluded from being required to place positions in the Senior Executive Service.

Thus, we see that the OPM has wide flexibility to exempt agencies for any number of reasons from the 10-percent cap on general positions.

In closing, I urge my colleagues to adopt this amendment, and I assure you that without the benefit of this amendment increased politicization is inevitable.

Mr. Chairman, I move my amendment.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

may infiltrate the top ranks of Government.

Do I understand my colleague's amendment correctly?

Mr. GILMAN. Mr. Chairman, I thank the gentleman for his contribution. The gentleman is precise in his definition of the objective and goals of this amendment, and, I thank the gentleman for his support.

Mr. UDALL. Mr. Chairman, I raise in opposition to the amendment.

Mr. Chairman, at this hour of the night I am not going to try to describe the technical effect of this amendment.

Let me say that it guts the bill. It guts this key section of title IV of the bill. That is why it makes my friend, the gentleman from Virginia (Mr. HARRIS), happy. He has never been very pleased with title IV.

Mr. Chairman, let me tell the Members what is involved here. We are talking about the Senior Executive Service. We are talking about 10,000 positions. There are about three million Federal employees if we count political workers and everybody else, so that we are talking about one-third of one percent of the Federal work force. There are the top executives. These are the people who would be vice presidents in charge of major divisions of very large companies.

Mr. Chairman, one of the central purposes of this bill is to give a President of any party who is elected to carry out his own program, who has some ideas, and who has made some campaign promises the machinery so that he can have in this career executive service 10 percent of noncareer people who would be

brought in, out in the open, and labeled as such. He will be able to move them around and get them to respond, and that is what it is all about.

We have had a whole series of amendments, and I guess we will have some more, which are trying to undercut this principle and violate it and get away with it. This is as bad as any amendments offered to this title; it ought to be defeated.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I concur with the observations made by the gentleman from Arizona (Mr. UDALL). Let me say there is no doubt as to the nonpolitical thrust of our effort and that I would support this very bill with every minute detail even if the gentleman from Arizona (Mr. UDALL) were in the White House at the present time.

Mr. Chairman, under the Gilman amendment all positions in the Senior Executive Service are divided into two categories: First, career reserved position; and second, general position.

Career reserved positions are those to which only a career executive may be appointed.

General positions are those to which noncareer, limited term, and limited

**TITLE V—MERIT PAY
PAY FOR PERFORMANCE**

Sec. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

“Chapter 54.—MERIT PAY AND CASH AWARDS

“Sec.

“5401. Purpose.

“5402. Merit pay system.

“5403. Cash award program.

“5404. Reports.

“5405. Regulations.

“§ 5401. Purpose

“It is the purpose of this chapter to provide for—

“(1) a merit pay system which shall—

“(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

“(B) use performance appraisals as the basis for determining merit pay adjustments; and

“(C) regulate the costs of merit pay by establishing appropriate control techniques; and

“(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

“§ 5402. Merit pay system

“(a) In accordance with the purpose set forth in section 5401 (1) of this title the Office of Personnel Management shall establish a merit pay system which shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-13, 14, or 15 of the General Schedule described in section 5104 of this title.

“(b) The merit pay system established under subsection (a) of this section shall

title during such fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered.

“(d) (1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the percentage of the annual rate of pay which corresponds to the percentage generally applicable to positions in the same grade as the position.

“(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

“(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

“(e) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

“(f) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

“§5403. Cash award program

“(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee

emergency executives may be appointed. The amendment then limits the total number of general positions to 10 percent Government-wide and 25 percent in any one agency.

The first effect of the amendment is to freeze 90 percent of all Senior Executive Service positions so that only a career person could be appointed. The administration bill would permit the agency to decide whether a particular position should be filled on a career or noncareer basis. Provided that the 10-percent or 25-percent limitation is not exceeded and provided it is not one of the positions designated as career reserved.

The second effect is to reduce the number of political appointees in the SES because from the general-position pool must come all noncareer (political), limited term, and limited emergency appointees. On the other hand, if an administration were to initially use the 10 percent pool for all noncareer, then there would be no flexibility for limited term or emergency appointees.

Under the administration bill, the 10-percent limitation applies only to non-career appointees and the limited term and emergency appointees would come from the career pool.

Mr. UDALL. I thank the gentleman. The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. GILMAN).

The amendments were rejected.

The CHAIRMAN. Are there further amendments to title IV? There being none, the Clerk will read title IV.

The Clerk read as follows:

provide for a range of basic pay for each grade to which it applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each such grade under chapter 53 of this title.

"(c) (1) Under regulations prescribed by the Office of Personnel Management, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this subsection—

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as—

"(i) any improvement in efficiency, productivity, and quality of work or service;

"(ii) cost efficiency; and

"(iii) timeliness of performance;

"(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

"(D) shall be made in accordance with regulations issued by the Office of Personnel Management which relate to the distribution of increases authorized under this subsection.

"(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

"(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of each such fiscal year by the Office of Personnel Management, after consultation with the Office of Management and Budget. The funds available to any agency shall be determined by the Office of Personnel Management on the basis of the amount estimated by the Office to be necessary to reflect within-grade step increases and quality step increases, which would have been paid under subchapter III of chapter 53 of this

covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, his heirs, or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to an agency cash award under sub-

section (a) of this section. The President shall determine the amount to be controlled by each activity to a Presidential award under subsection (b) of this section.

"(e) (1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

"§ 5404. Reports

"The Office of Personnel Management shall submit to the appropriate committees of each House of the Congress on or before January 1, 1982, a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

"(1) a statement, together with supporting facts, as to whether the purpose of this chapter has been met during the period covered by the report, including, to the extent practicable, quantitative measures of costs and accomplishments of the merit pay system and the cash award program; and

"(2) any recommendations for legislation to amend the provisions of this chapter relating to the merit pay system or the cash award program considered necessary by the

(2) by adding at the end thereof the following new subsection:

"(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent."

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,"

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,"

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new chapter:

"54. Merit Pay and Cash Awards.....5401".

EFFECTIVE DATE

SEC. 503. The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title V and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there amendments to title V?

continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application with respect to the merit pay system and the cash award program shall cease to have effect and the amendments made by this title relating to such system and such program shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to the Congress under paragraph (2), unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of such system and such program. If such a resolution is adopted with respect to such system and such program before such date, then the provisions of such regulations and such amendments relating to such system and such program shall cease to have effect on such 90th day (or, if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

Mr. FISHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Mr. Chairman, I ask unanimous consent that the amend-

Office.

“§ 5405. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.”

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 502. (a) Section 4501(2)(A) of title 5, United States Code, is amended by striking out “title; and” and inserting in lieu thereof “title, but does not include an employee covered by the merit pay system established under section 5402 of this title; and”.

(b) Section 4502(a) of title 5, United States Code, is amended by striking out “\$5,000” and inserting in lieu thereof “\$10,000”.

(c) Section 4502(b) of title 5, United States Code, is amended—

(1) by striking out “Civil Service Commission” and inserting in lieu thereof “Office of Personnel Management”;

(2) by striking out “\$5,000” and inserting in lieu thereof “\$10,000”; and

(3) by striking out “the Commission” and inserting in lieu thereof “the Office”.

(d) Section 4506 of title 5, United States Code, is amended by striking out “Civil Service Commission may” and inserting in lieu thereof “Office of Personnel Management shall”.

(e) The second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after “applies” the following: “, except an employee covered by the pay system established under section 5402 of this title.”.

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended—

(1) in paragraph (2) of subsection (c), by inserting “, or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount,” after “step”; and

AMENDMENTS OFFERED BY MR. FISHER

Mr. FISHER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FISHER: Page 270, beginning on line 1, strike out “January 1, 1982, a report on the operation” and insert in lieu thereof the following: “January 1, 1986, and biennially thereafter, a report on the operation during the preceding 2 fiscal years”.

Page 272, strike out lines 19 through 24 and insert in lieu thereof the following:

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

Sec. 503. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981.

(b)(1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial, experimental application of the amendments made by this title, which shall begin on the first day of the first applicable pay period which begins on or after October 1, 1981. Such regulations shall provide that the merit pay system and the cash award program will apply with respect to positions only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the merit pay system and the cash award program, including an evaluation of their effectiveness and the manner in which they are administered. The second such report shall include proposed regulations which would provide for adjustments which would be appropriate in the event such system or such program does not

ments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. FISHER. Briefly, Mr. Chairman, the bill establishes a merit pay system for supervisors and managers in Grades GS-13 to 15. My amendment would make the merit pay system an experiment to be carried out in three agencies for 2 years. This would parallel the 2-year experimental provision for the Senior Executive Service which we have accepted. After the 2 years are up, the merit pay system will go into effect government-wide, unless both Houses of Congress veto it. This controversial proposal for attempting to motivate midlevel managers to perform better through monetary incentives should be tested before all managers throughout the Government are brought under the system. I think this is the way to do it.

In discussion with the Chairman of the Civil Service Commission, I find that in his opinion it would take some period of years to launch an effective incentive pay system for these GS-13 to GS-15 middle-level managers, and since it is going to take some time anyway, I think we would all be reassured if my amendment were passed and we said explicitly, as we have with the Senior Executive Service, let us try this out for 2 years on an ample scale and see how it works.

One final word: I am telling the Members from a lot of experience, both personal, in the civil service, and as a Rep-

representative of a district that has more civil servants than any other, that we are now talking about more than 9,200 people. We are reaching into tens of thousands, and it is the express intention that if this works, it would be extended all the way down to—what is it—GS-5.

Then we would be dealing with 1 million employees or more, so I think we ought to go a little slowly here to try to do it, to experiment with it, try it on an ample scale for a couple years, which is what it would take anyway to do it intelligently, and then make up our minds.

In my version of the amendment, the merit raise program would go Government wide, so to speak, unless both Houses of Congress voted to the contrary. If that works, as I hope it does, I think thereafter we can consider extending it farther into the civil service so as to make merit pay characteristic of most of the civil service.

I urge very much that we consider this amendment, although I know it will not meet with the approval of the manager of our bill; but I urge that we consider it carefully and see if we do not want to vote for it as really the best way to go forward here.

I speak now, not as somebody with a lot of civil servants in his district and who is automatically going to vote against this bill. If it can be brought into reasonably good shape, I intend to vote for it and maybe I will vote for it even if this is not passed; but I do urge that we consider this amendment and see if

Mr. UDALL. I tried to say that.

Mr. FISHER. Yes. Second, on the other type of increase, I too, hope we can go in the direction of this bill. I want to see merit pay pervade the government; but I really think we are stepping along too fast if we apply it everywhere in Government without the trial period. We could choose three departments that would represent a large percent of the total Government employment, even more than 50 percent if the administration wanted to.

I am thinking partly of the morale of all this. I am very close to these civil servants. I think I know them almost as well as I know my own family. Whatever we do here, we are still going to have to rely on these same people to run our Government. Anything that supports them and does not tear down their morale, and yet really gets us on rapidly toward a fair and workable merit pay system, I think really ought to be voted for.

Mr. UDALL. I understand; but the Civil Service Commission says it will take about 3 years to implement this; yet the gentleman would have a judgment made on the scheme at the end of 2 years. I think on that basis alone, it is a poor amendment.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I want to congratulate my colleague, the gentleman from Virginia (Mr. FISHER), for making this

need to change the laws if we need to in order to help the administration administer the program.

Mr. Chairman, let us do it properly. I commend the gentleman from Virginia (Mr. FISHER) for his recommendation.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I will use very little time, Mr. Chairman. I would like to point out that one might be tempted to refer to this as an amendment that guts the program, but the gentleman from Virginia (Mr. FISHER) is more of an expert in finesse than he is in gutting. He is not the type that guts; he is smooth, he is effective, he is knowledgeable, and he is scholarly. He has a wonderful approach to legislation.

But the effect of this amendment would really be to limit the program to a 2-year minimum period, and it would be difficult to get an honest evaluation in that time. The best guesses are that it would take anywhere from 3 to 5 years to implement major parts of this law, and it would be unwise to have sunset after 2 years without a fair period of evaluation, given the sheer size of this Government of ours and the obvious time it will take to really understand and see the workings of this new program.

I think limiting the program to just 2 years is too arbitrary. It is just too brief a period. I suggest, using pure common-sense and taking into consideration the headaches of a massive government

we really do not want to vote for it.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment deals with the middle managers in the Federal Government, the GS-13, 14 and 15 people. Today they get an annual comparability raise in October. Most of them get an annual or biannual step increase, so that every year or two you get a raise unless you are so bad that you are fired. More than 95 percent of the Federal employees get raises every year or 2 years, and they get comparability pay.

What we would do is leave the comparability pay in October alone. Everybody would get that. What we will do is use the step increases for merit pay, so that if somebody does a crackerjack job, that person will be recommended by the supervisor. You would be recommended by your supervisor and get a modest increase in pay. By saying we will try it in two or three departments and if it is bad we will cut it out and if it is good we will have the Executive sign it and find out whether it will work or not.

The gentleman from Virginia has been sincere and I know the gentleman is constructive, but I think it is a bad amendment. I urge its rejection.

Mr. FISHER. Mr. Chairman, will the gentleman yield for a very brief colloquy?

Mr. UDALL. I yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, in the first place, my amendment has nothing to do with comparability pay advances or cost-of-living

recommendation. There was a recommendation made, and it was passed in the committee, that this Senior Executive Service be tried in three departments. That represents hundreds of agencies, not three agencies. Hundreds of agencies are involved in three departments.

I might point out that during that 2-year period there would be reports back to the Congress on the progress being made. At the end of 2 years the Senior Executive Service would spread out over the whole Government unless both Houses of the Congress determined that it should be brought to a stop. It would take legislative action to do that.

What we are attempting to do is to prevent the kind of chaos we have had with the Post Office reorganization. Surely we have learned something there, and surely we ought to recognize that if we move just a little more slowly and a little more surely, we will come up with a better product.

That recommendation did pass in committee. To incorporate this pay schedule so that it can be worked in the same way here makes very good sense. We are not limiting this to a small sample of employees. If the President were to select his three largest agencies, Defense, HEW, and Veterans, he would have over 66 percent of the Government covered. Surely 66 percent is a large enough sampling so that the Congress is able to keep an eye on what is going on.

Oversight after chaos is very difficult. It is far better that we monitor what is happening and change the rules if we

structure such as the one we have, the job obviously cannot be done in 2 years, and this amendment is too restrictive.

Mr. FISHER. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. Of course, I will yield to the gentleman from Virginia.

Mr. FISHER. Mr. Chairman, I really think this phrase of "gutting" the program is a bit overdone.

Mr. DERWINSKI. I did not say the gentleman was gutting the program; I said the gentleman was finessing it.

Mr. FISHER. Mr. Chairman, in the gentleman's own fairly smooth and attractive manner, however, that is what he implied.

I have no intention of gutting the program. As I said several times over, it is altogether likely that I will vote for this bill even if it does not contain this amendment along with some of the others. I may be the only Member who comes from a district dominated by Federal employment who is likely to do that.

This does not gut the bill at all. It simply says: Let us try it out on a large scale for 2 years, and then we can make changes. But if we do not do anything, then automatically it goes Government-wide unless both bodies vote to the contrary. In no way can this directly or by implication be thought of as gutting what I consider to be a bill with very, very many important, innovative, and necessary features for the improvement of our Government.

Mr. DERWINSKI. Mr. Chairman, for the record, let me state that I had no intention of stating that the gentleman from Virginia (Mr. FISHER) was gutting

the bill. I want to make it clear that what he is doing is imposing artificial restraints within which the management prerogative we all envision could not logically be properly implemented.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield so that I may ask the gentleman from Virginia a question?

Mr. DERWINSKI. I yield to the gentleman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from Virginia (Mr. FISHER) if he does not have a provision there which says that at the end of the 2 years this program automatically extends over the entire Government unless it is aborted by definite action by the Congress.

Mr. FISHER. That is correct.

Mrs. SPELLMAN. Both Houses of Congress?

Mr. FISHER. That is correct.

Mrs. SPELLMAN. Then it certainly is not a limited program, it is not just a small trial; it is an attempt to move into a new program, and one that is really quite different, at a deliberate pace.

Mr. FISHER. The gentlewoman has stated the matter correctly.

Mrs. SPELLMAN. I thank the gentleman.

Mr. DERWINSKI. But you would, in fact, say it is premature judgment by the Congress because of the lack of time to fully be able to understand and appreciate what is being done?

Mrs. SPELLMAN. If by "premature" the gentleman means before chaos has completely set in, I would hope so.

Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office.

"(2) 'employee' means an individual employed in or under an agency;

"(3) 'eligible' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

"(4) 'demonstration project' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

"(5) 'research program' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

§ 4702. Research programs

The Office of Personnel Management shall—

"(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

"(2) evaluate the research programs established under paragraph (1) of this section;

"(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and

"(C) the number of employees or eligibles to be included, in the aggregate and by category;

"(D) the methodology;

"(E) the duration;

"(F) the training to be provided;

"(G) the anticipated costs;

"(H) the methodology and criteria for evaluation;

"(I) a specific description of any lack of specific authority for any aspect of the project; and

"(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project as proposed;

"(2) publish the plan in the Federal Register;

"(3) submit the plan so published to public hearing; and

"(4) transmit a copy of the plan, taking into account any revision resulting from the hearing, to each House of the Congress.

"(c) (1) Any demonstration project under this section may not be undertaken, or any agreement or contract with respect to such project may not be entered into, unless—

"(A) the plan under subsection (b) of this section for the project is approved by each agency involved;

"(B) a copy of the plan, as so approved, is transmitted to each House of the Congress; and

"(C) the plan is disapproved by either House of the Congress during the first period of 60 calendar days of continuous session of the Congress after the date at which the plan is transmitted to such House.

"(2) For the purpose of paragraph (1) (C) of this subsection—

"(A) the continuity of a session is broken only by an adjournment of the Congress sine die; and

"(B) the days on which either House of the Congress is not in session because of an

Mr. DERWINSKI. No. I am saying before efficiencies will be demonstrated in the civil service, then all of us in a non-political fashion could appreciate it.

Mrs. SPELLMAN. I think we would have a pretty good idea of the route it was taking, and also the administration would be forced to do a better job because the eye of the Congress was upon it.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Virginia (Mr. FISHER).

The question was taken; and on a division (demanded by Mr. FISHER) there were—ayes 9, noes 38.

So the amendments were rejected.

The CHAIRMAN. Are there other amendments to title V?

There being none, the Clerk will read title VI.

The Clerk read as follows:

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

Chapter 47.—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

"Sec.

"4701. Definitions.

"4702. Research programs.

"4703. Demonstration projects.

"4704. Allocation of funds.

"4705. Reports.

"4706. Regulations.

"§4701. Definitions

"For the purpose of this chapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States

facilitating the exchange of information among interested persons and entities; and

"(4) carry out the preceding functions directly or through agreement or contract.

"§ 4703. Demonstration projects

"(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority to take the action contemplated, or by any provision of law in effect which is inconsistent with the action, including any law or regulation relating to—

"(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) the methods of classifying positions and compensating employees;

"(3) the methods of assigning, reassigning, or promoting employees;

"(4) the methods of disciplining employees;

"(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

"(6) hours of work per day or per week;

"(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

"(8) the methods of reducing overall agency staff and grade levels.

"(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office of Personnel Management shall—

"(1) develop a plan for such project which identifies—

"(A) the purposes of the project;

"(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

adjournment of more than 3 calendar days to a day certain are excluded in the computation of the 60-day period.

"(d) No demonstration project under this section may provide for a waiver of—

"(1) any provision of chapter 63 (relating to leave) or subpart G (relating to insurance and annuities) of this title;

"(2) any provision of law—

"(A) referred to in section 2302(b) (1) of this title;

"(B) providing for equal employment opportunity through affirmative action under any such provision of law;

"(C) providing any right or remedy available to any employee or applicant for employment in the civil service under any such provision of law;

"(3) any provision of chapter 15 or subchapter III of chapter 73 of this title (relating to political activity); or

"(4) any rule or regulation issued under the provisions of law referred to in paragraph (1), (2), or (3) of this subsection.

"(e) (1) Each demonstration project shall—

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date of the transmittal to each House of the Congress by the Office of Personnel Management of a copy of the plan for the project under subsection (b) (4) of this section, except that research may continue beyond the date to the extent necessary to validate the results of the project.

* * * * *

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that title VI be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there any amendments to title VI?

AMENDMENT OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLARZ: Page 288, insert after line 11 the following new subtitle:

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

CONGRESSIONAL FINDINGS

SEC. 631. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

- (1) the efficiency of Government operations;
- (2) mass transit facilities and traffic;
- (3) levels of energy consumption;
- (4) service to the public;
- (5) increased opportunities for full-time and part-time employment; and
- (6) individuals and families generally.

(c) The Office shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this subtitle.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) of this section would substantially disrupt the agency in carrying out its functions, such agency head shall request the Office to exempt such agency from the requirements of any experiment conducted by the Office under subsection (a) of this section. Such request shall be accompanied by a report detailing the reasons for such determination. The Office shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Office shall exclude the agency from the experiment until the Office has made its determination or until 180 days after the date the request is filed, whichever first occurs.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS DEFINITIONS

SEC. 641. For the purpose of this part—

- (1) the term "credit hours" means any

functions or is incurring additional costs because of such participation, such agency head may—

- (A) restrict the employees' choice of arrival and departure time,
- (B) restrict the use of credit hours, or
- (C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 643. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 642 of this subtitle—

- (1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other provision of law; or
- (2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 646 of this subtitle or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork shall not be paid to an employee otherwise subject to such section

DEFINITIONS

Sec. 632. For the purpose of this subtitle—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in section 105 and 102, respectively, of title 5, United States Code);

(2) the term "employee" has the meaning set forth in section 2105 of title 5, United States Code;

(3) the term "Office" means the Office of Personnel Management; and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

EXPERIMENTAL PROGRAM

Sec. 633. (a) (1) Within 180 days after the effective date of this section, and subject to the requirements of section 662 of this subtitle and the terms of any written agreement referred to in section 662(a) of this subtitle, the Office shall establish a program which provides for the conducting of experiments by the Office under parts 1 and 2 of this subtitle. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under parts 1 and 2 of this subtitle. Such experiments shall be subject to such regulations as the Office may prescribe under section 665 of this subtitle.

(b) The Office shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Office will study and evaluate experiments conducted under parts 1 and 2 of this subtitle.

hours, within a flexible schedule established under this part, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

FLEXIBLE SCHEDULING EXPERIMENTS

Sec. 642. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday. An election by an employee referred to in paragraph (2) of this subsection shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle—

(1) any experiment under subsection (a) of this section may be terminated by the Office if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) of this section is being substantially disrupted in carrying out its

solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and section 4107(e)(2) of title 38, United States Code, night differential shall not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this part—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours

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of such schedule fall between the hours specified in such section.

HOLIDAYS

Sec. 644. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this part is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office).

TIME-RECORDING DEVICES

Sec. 645. Notwithstanding section 6106 of title 5, United States Code, the Office or any agency may use recording clocks as part of its experiments under this part.

CREDIT HOURS: ACCUMULATION AND COMPENSATION

Sec. 646. (a) Subject to any limitation prescribed by the Office or the agency, a full-time employee on a flexible schedule may accumulate not more than 10 credit hours, and a part-time employee may accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule experiment under this part and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess

(i) which is not included within such experiment,

(ii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle, any experiment under subsection (a) of this section may be terminated by the Office, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

Sec. 653. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) of this section are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same

APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

Sec. 662. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under part 1 or 2 of this subtitle except to the extent expressly provided under a written agreement between the agency and such organization.

(b) The Office or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 643 or 653 of this subtitle, as applicable.

PROHIBITION OF COERCION

Sec. 633. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under part 1 of this subtitle to elect a time of arrival or departure to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 652(b)(1) of this subtitle to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 652(b)(2) of this subtitle.

For the purpose of the preceding sentence, the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES DEFINITIONS

SEC. 651. For the purpose of this part—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

(2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compressed schedule.

COMPRESSED SCHEDULE EXPERIMENTS

SEC. 652. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b) (1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) of this section unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) of this section would impose a personal hardship on such employee, shall—

(A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

(1) which becomes vacant after such determination,

number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), whichever provisions are more beneficial to the employee.

PART 3—ADMINISTRATIVE PROVISIONS ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

SEC. 661. For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under part 1 or 2 of this subtitle, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

(b) Any employee who violates the provisions of subsection (a) of this section shall, upon a final order of the Merit Systems Protection Board, be—

(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Board may prescribe;

(2) suspended without pay from such employee's position for such period as the Board may prescribe; or

(3) disciplined in such other manner as the Board shall deem appropriate.

The Board shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

REPORTS

SEC. 664. Not later than 2½ years after the effective date of parts 1 and 2 of this subtitle, the Office shall—

(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this subtitle, and

(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Office shall prepare a final report with regard to experiments conducted under this subtitle and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

REGULATIONS

SEC. 665. The Office shall prescribe regulations necessary for the administration of the foregoing provisions of this subtitle.

EFFECTIVE DATE

SEC. 666. The provisions of section 633 of this subtitle and parts 1 and 2 of this subtitle shall take effect on the 180th day after the date of the enactment of this Act.

Page 273, insert after line 2 the following: "Subtitle A—Research Programs and Demonstration Projects".

Page 282, insert before line 4 the following: "Subtitle B—Intergovernmental Personnel"

Page 282, line 5, strike out "602." and insert in lieu thereof "611."

Page 284, insert after line 10 the following: "Subtitle C—Mobility Program"

Page 284, line 12, strike out "603." and insert in lieu thereof "621."

Page 130, in the table of contents, strike out the items relating to title VI and insert in lieu thereof the following new items:

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Subtitle A—Research Programs and Demonstration Projects

Sec. 601. Research programs and demonstration projects.

Subtitle B—Intergovernmental Personnel

Sec. 611. Intergovernmental Personnel Act amendments.

Subtitle C—Mobility Program

Sec. 621. Amendments to the mobility program.

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

Sec. 631. Congressional findings.

Sec. 632. Definitions.

Sec. 633. Experimental program.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS

Sec. 641. Definitions.

Sec. 642. Flexible scheduling experiments.

Sec. 643. Computations of premium pay.

Sec. 644. Holidays.

period of time is was reported out by two separate committees in the other body, both of which had jurisdiction over the bill, without any dissenting votes in either of them. And, in fact, it was scheduled to be taken up on the calendar of the other body today. Unfortunately, however, one of the distinguished Members of the other body had an amendment to the bill which clearly was not germane, and the manager of the legislation said he would not call up the bill on the Senate floor if his colleague in the Senate insisted on offering this nongermane amendment.

To the extent that the author of the amendment has indicated his intention to offer this nongermane amendment, which has nothing whatever to do with flexitime itself, it means the other body will probably not take up the flexitime bill during the remainder of the session, despite the fact that it was voted out unanimously by two separate committees in the other body, and no objections to the bill itself have surfaced in the Senate.

Consequently, I am offering it today as an amendment to title VI. So if it is passed by the House today, as I hope and trust it will, it should be accepted by the Senate conferees, and thus become law.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I support the amendment.

Mr. SOLARZ. Mr. Chairman, I appreciate the gentleman's support.

Mr. GILMAN. Mr. Chairman, will the

subchapter II of chapter 71 thereof is amended to read as follows:

* * * * *

H 9453

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title VII, and that it be printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Sec. 645. Time-recordings devices.
Sec. 646. Credit hours; accumulation and compensation.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

Sec. 651. Definitions.
Sec. 652. Compressed schedule experiments.
Sec. 653. Computation of premium pay.

PART 3—ADMINISTRATIVE PROVISIONS

Sec. 661. Administration of leave and retirement provisions.
Sec. 662. Application of experiments in the case of negotiated contracts.
Sec. 663. Prohibition of coercion.
Sec. 664. Reports.
Sec. 665. Regulations.
Sec. 666. Effective date.

Mr. SOLARZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLARZ. Mr. Chairman, I will be very brief. This amendment provides for the establishment of an experimental flexitime program under the supervision of the Civil Service Commission throughout the Federal Government.

It came before the House a few months ago in bill form. At that time it was supported by the administration, by all of the relevant Federal employee unions, and by the majority and minority managers of the bill. Indeed, it passed the House by an overwhelming margin and it was sent over for the consideration of the other body. After a relatively brief

gentleman yield?

Mr. SOLARZ. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Chairman, as I recall, when we passed the flexitime measure, there was also a part-time provision. Does the gentleman's amendment include both part-time and flexitime?

Mr. SOLARZ. No; that was a separate bill. It does not include the part-time provision which passed the House as a separate piece of legislation.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentleman for yielding.

Mr. Chairman, does the gentleman's amendment contain the religious holiday aspects, as passed in the House?

Mr. SOLARZ. No; that was adopted in the committee a few hours ago.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLARZ).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to title VI?

There being none, the Clerk will read title VII.

The Clerk read as follows:

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Sec. 701. So much of subpart F of part III of title 5, United States Code, as precedes

There was no objection.

AMENDMENT OFFERED BY MR. ERLÉN BORN

Mr. ERLÉN BORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLÉN BORN: Page 288, strike line 12 and all that follows thereafter through line 12 on page 348.

(Mr. ERLÉN BORN asked and was given permission to revise and extend his remarks.)

Mr. ERLÉN BORN. Mr. Chairman, I join with the gentleman from Illinois, my colleague (Mr. DERWINSKI) in supporting the basic concept contained in this bill for civil service reform. This itself is a very complex subject, but it is a very laudable and a very necessary goal. The question I think that is given to the House at this point is whether we should at the same time consider another very complex question that will impinge upon and, in some way, affect the goals of civil service reform; that is, to reform our labor-management relations at the same time.

I submit that we should not, that if we are to move from the present labor-management relations controls that are contained in the President's Executive order, it should be done in separate legislation and probably after civil service reform has been enacted and we have had an opportunity to see how that works under the present labor-management rules.

In submitting a civil service reform package in March, the President did not—did not—include legislation to rewrite the Executive order governing labor-management relations, nor even to

take the present Executive order and write it into law. Later, he apparently agreed to make his Executive order statutory. As late as his August 3 forum in Fairfax County, he admitted that a few technical amendments had been worked out with Ken Blaylock, the head of some of the Government unions, and with the union, before the legislation was introduced. That is what is now title VII, the collective-bargaining legislation.

He said that this would in some way expand the Executive order, and I quote, "in ways that I do not understand."

In other words, the President suggested that he did want the Executive order, per se, written into law, and that there were some agreements reached with the union chief that the President himself did not understand. He went on to add that his preference is to limit the collective-bargaining processes of this legislation to what was included in the Executive order.

Now, when administration officials sent to Congress on May 10 a proposed title VII on labor relations, it was headlined as incorporating into law the existing Federal employee labor relations program. Title VII before us, as reported by the committee, is not the Executive order. The changes are not, as the President referred to them, a few technical amendments. I think we had better understand the differences before anyone votes for title VII, because we all know how important a few changes and a few words here and there may be.

provision here in title VII instead makes it merely an unfair labor practice.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLBORN) has expired.

(By unanimous consent, Mr. ERLBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLBORN. Mr. Chairman, under the Executive order an illegal strike by Federal employees causes the union that has been certified as the bargaining agent to lose their status an exclusive agent.

The bill creates a divisive factor in Federal employment between union members and bargaining units and may affect employees who feel no need to affiliate with a labor union in such because under this bill they will be provided a two-track appeals process concerning disciplining of an employee or denial of automatic salary increases or disciplining action.

This also will produce a major incentive to vote for union representation or to join the union if one has been certified so that the individual employee will have this additional appeal alternative.

The bill allows a union with only 10 percent representation in the unit under question to negotiate for a voluntary dues check off, a form of union security. Now this is a strange provision in that a governmental agency as the employer will be required to bargain with a union that represents as little as 10 percent of the members of the bargaining unit for the purpose of check off. Agency dis-

picket line, thus interfering with governmental business? It is altogether possible.

Expanding the scope of the Executive order as title VII will do means that we will need more administrative law judges, probably with all of the attendant personnel such as regional directors and their supporting personnel. Thus title VII will be expanding the Federal bureaucracy and adding to the cost of Government.

If you really want to tell your constituents that you voted for a civil service reform bill that is going to give the Government the flexibility and the abilities that are necessary for effective Government management, I urge you to vote to strike title VII. That will leave the Executive order in place governing labor-management relations and we will be able to get on with the business of civil service reform and if we desire later to change labor-management relations beyond this Executive order, this Congress will have the ability to do so.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I thank the gentleman from Illinois (Mr. ERLBORN) for yielding to me and I believe that he has summed it up well in just suggesting, very plainly, that we should strike this particular section of the bill.

I was impressed with a letter I received from the Chamber of Commerce of the United States.

We should not make it possible for some Federal officials to give a union exclusive recognition, with all that conveys, without an election, but that is in title VII. Members may recall H.R. 77, which was the predecessor to the famous labor law reform bill, contained such a provision, certification of a union as the exclusive bargaining agent for a unit of Government without an election before determining that they are supported by a majority of the employees in that unit.

Even President Carter rejected that concept and before he supported a labor law reform bill insisted that certification without election come out of the bill—and so it did:

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. The gentleman made reference to H.R. 7700. I do not think it is related to this at all.

Mr. ERLBORN. I am sorry. The gentleman misunderstood me. I said H.R. 77. H.R. 77 was in the Education and Labor Committee and was the first of a series of bills labeled labor law reform.

Mr. CHARLES H. WILSON of California. Then the gentleman is not talking about the great bill the gentleman from New York (Mr. HANLEY) and I brought out. I thought that was it.

Mr. ERLBORN. No. It is a different bill altogether.

There is another provision. Under the current law and the Executive order a strike by Federal employees is illegal. The

cretion for withholding dues is removed. That discretion is now current under the Executive order.

The definition of dues is expanded to include assessments, which is extraordinary. That is not true under the Executive order. It is not true under the National Labor Relations Act. It means though that those who have agreed, an employee who has agreed to a check off will also have union assessments taken off his pay automatically. A worker who agrees to dues check off today commits himself only for a 6-month period. Title VII will commit without chance to change to his mind to that employee to a 1-year period.

How does title VII relate to the major objective of this bill, and that is change in the merit system? We do not know, because we have not had time to consider the relationship but it is altogether likely that negotiated contracts under title VII may directly go contrary to the major thrust and objective of the balance of the bill.

To top it off, title VII goes far beyond telling agency managers to meet and confer with unions as the Executive order currently does, it will order the manager to reach an agreement with the union. By adding two words to the definition of labor organization, title VII could allow other than public employee unions to represent Federal employees. Let us say, then, that we have a private sector union that organizes a unit in an agency in the Federal Government. Will then strife in the private sector lead to picketing at the Federal agency and refusal of Federal employees to cross the

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. COLLINS of Texas and by unanimous consent, Mr. ERLBORN was allowed to proceed for 2 additional minutes.)

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman will continue to yield, the letter said:

However, title VII goes so far beyond Executive Order 11491 that an entirely new system is created which clearly ignores the essential differences between private and public sector labor relations.

So what the gentleman has said is that this is not the time or the place or the bill to change this legislation.

I think the gentleman has summed it up well.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I thank the gentleman for yielding. I might say that I am a little bit concerned, I just do not know what the gentleman is referring to about the issue of a strike. And on page 320, it indicates that calling a strike on behalf of a union, constitutes an unfair labor practice.

Mr. ERLBORN. That is right. What I was pointing out is that at the present time it is illegal, not just an unfair labor practice, an illegal strike by Federal employees, supported by their union will lead to the union no longer being allowed to be the exclusive bargaining agent. Now that will be changed, in substance, by this title VII.

Mr. GLICKMAN. If the gentleman will

yield further, participating in or calling an illegal strike, being in violation of any other Federal laws, or perhaps other criminal laws—or does this section supersede anything like that? What I am trying to figure out, does this apply only to an unfair strike, or do other applications of the Federal law still prohibit the strike?

Mr. ERLENBORN. So far as I know this will be the only remedy, the unfair labor practice charge and no longer will it lead to decertification of the union or the union being any longer considered the exclusive bargaining agent for bargaining purposes.

Mr. FORD of Michigan. Mr. Chairman, if the gentleman will yield, I know the gentleman from Illinois (Mr. ERLENBORN) and I are totally in disagreement on some issues, and have been for the past 14 years, we have been in disagreement, but I know the gentleman well enough to know that he would not be wanting to mislead the Members, but the prohibition against Federal employees striking is in a single sentence which prohibits them from joining any organization.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. FORD of Michigan, and by unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, as I was saying, that prohibits them from joining any organization advocating the overthrow of the Government by force or

exclusive bargaining agent of the employees?

Mr. FORD of Michigan. If the gentleman will yield further, Mr. Chairman, title 18 of the United States Code 1918 provides criminal penalties against strikes in violation of 5 United States Code. Five United States Code prohibits the strike. Title 18 makes participating in the illegal strike a crime.

Neither of those titles is affected by any of the provisions in this act.

Mr. ERLENBORN. I thank the gentleman for his contribution.

Let me just wind this up by saying I would hope that the Members would support this motion to strike title VII. It is highly controversial; and if we would strike title VII, we can move on very expeditiously to concluding the consideration of this bill and going home tonight.

Mr. MARRIOTT. Mr. Chairman; will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentleman from Utah.

Mr. MARRIOTT. Mr. Chairman, I just want to ask the gentleman what the Senate did with this particular provision.

Mr. ERLENBORN. The Senate has a title VII that is in substance the incorporation of the Executive order with some few changes. Primarily it is an incorporation into the law of the Executive order. That title is not making the changes contemplated in this title VII.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield for one additional question?

is an unconstitutional impairment of their first amendment rights and that one cannot totally abrogate someone's right to advocate something, such as withholding his labor.

However, the court has in the past, under the National Labor Relations Act, upheld illegal strike advocacy for the wrong purposes at the wrong time; and we are following that kind of pattern.

I do not know why this particular section is picked on by the gentleman from Illinois (Mr. ERLENBORN) or why he does not like it because, very clearly, I will be very happy to strike that provision from the bill. It is an antilabor provision. It is a restraint on labor, a tool to be used against labor unions which does not now exist in the executive order. In fact, this provision of the act is stronger than the Executive order when viewed from the perspective of anyone wanting to see unions challenged on the right to strike.

Mr. ERLENBORN. If the gentleman will yield back, it is very apparent it is not spelled out here. One of the effects of conducting an illegal strike would be the decertification of the union. Under the present practice of the Executive order, if an illegal strike is engaged in, the union that backed such an illegal strike can no longer act as the exclusive bargaining agent of the employees of that unit. Besides, in that definition section we allow a labor organization composed of one unit in whole or in part of Federal employees. In other words, this is an open invitation to mix in the same

violence, or as mentioned, participating in a strike, and the Supreme Court has said that the effect of the strike provision is not enforceable because it is in violation of the first amendment to the Constitution. That statute is not affected by this law at all, or by this bill, rather, so the act of striking will continue to be a violation of Federal law.

The difference is that this bill for the first time will add on top of that a specific procedure available to the Government to go after a labor organization which advocates strike activity by making that an unfair labor practice reachable in the same way that any other unfair labor practice committed by the union or its representatives is reached by the statute, so that, in fact, we did not affect the existing law on strikes. We add a remedy for the Government in the case of someone advocating an illegal strike, which we think meets the court test of still not violating any first amendment rights.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLENBORN) has expired.

(By unanimous consent, Mr. ERLENBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, let me understand this. Is the gentleman suggesting that this bill, being a later enactment, would not be considered to be a repeal of the current law, and is it the gentleman's understanding that besides being an unfair labor practice, and illegal strike will also lead to a decertification of the union or to the union's no longer being able to act as the

Mr. ERLENBORN. I am happy to yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, perhaps the gentleman from Michigan (Mr. FORD) will want to answer this question.

I would like to ask two basic questions, if possible.

Number one, how does this provision in title VII expand on the provisions in the Executive order with respect to calling a strike or engaging in a strike?

Number two, I think unequivocally we need to have it stated whether this title in any way limits the Federal Government's ability to control strikes. Our constituents are concerned about public employees striking and Federal employees striking.

I think those two questions need to be answered. Could the gentleman from Illinois (Mr. ERLENBORN) or the gentleman from Michigan (Mr. FORD) answer them?

Mr. ERLENBORN. I am afraid I was trying to read a note from the staff and did not hear the gentleman's question.

Mr. FORD of Michigan. If the gentleman will yield, Mr. Chairman, the answer to the gentleman's question is that it does not expand on the right to strike. It does not deal with the right to strike except to enumerate the advocacy of strike activity which is not now prohibited by law as an unfair labor practice, so that, in fact, the passage of this law will provide the Government, as management, with a tool it does not now have to go after a union which advocates the right to strike, because the Supreme Court has said that the current prohibition against advocating the right to strike

local employees in the private sector and the public sector.

Again I would point out that this could lead to strife in the private sector, leading to an interruption of work in the public sector. These are only a few. I have pointed out many of the other changes from the Executive order that are in this particular title VII. None of them were specifically backed by the President. The most he has said so far was that he would like possibly to see incorporated into the statute the Executive order. I hope the amendment is adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. I want to say, without any intent to offend my friend, the gentleman from Illinois (Mr. ERLENBORN), that I thought for about 20 minutes there that he was going to filibuster his own amendment, so I will not take much more time. It should be very simple for everyone to understand that there are some trade-offs in legislation of this kind.

We have heard very eloquently, particularly from that side this evening when we were talking about the SES, about all the new power we are giving the executive branch to control the destinies of employees, not just the employees who belong to the bargaining agents, the workers, not only the Indians but the

chiefs as well, all the way to the top. In the process of the giving of this new power and expanded power and authority to management to manage the Federal work force, I think we might understand that the Federal employees become a little restive about where their status quo fits into a future with all this new power coming on one side of the picture. So the committee over a long period of time has tried to work out a balance to reassure the Federal employees that they are in fact going to maintain the status quo.

I wish that I could say to my friends in organized labor that what we have constructed here is a monumental new breakthrough for the future of public employee collective bargaining, but that would not be true. I must say parenthetically that the discussion of the gentleman from Illinois (Mr. ERLNBORN) about striking is all sheer nonsense, because not at any time did we spend 5 seconds talking about the right to strike. No practical person on our committee would have talked about that as a possibility. It has never been in the draft of any legislation. It has never even been whispered in a closet by any member of the committee. We know, I will say to the gentleman from Illinois (Mr. ERLNBORN) that that would be a foolish attempt to make here, and it has never been advocated. For us to spend all of this time talking about the right to strike as if at some time we had it in the bill is sheer nonsense. The bill does not deal with any expanded right in that

Executive order, and I defer to his superior knowledge as a labor lawyer on the National Labor Relations Act.

We are dealing here with an entirely different ball game, I say to the gentleman from Illinois, and there are no dramatic changes from or departures from the existing rights of unions. We are not trying to write a collective bargaining agreement. We are not changing the method by which collective bargaining comes into play. We are drawing a more definitive picture of what the proper subject for collective bargaining would be, what the limitations on the subject matter of collective bargaining might be and the methodology. We are talking about grievance procedures for the first time. We are talking about them in a fashion that we calculate is going to save the Government a great deal of time and money.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(At the request of Mr. FRENZEL, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for yielding.

I would like to inquire if one of those tiny little changes the gentleman is talking about is the installation of a binding arbitration system. That is not in the current Executive order, is it?

gentleman from Michigan (Mr. FORD) that I would not recommend this title, which I consider entirely too restrictive, to State, county, or municipal employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired. (By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, let me say to my colleagues, it comes down to this. The gentleman from Illinois (Mr. ERLNBORN) and I have been arguing for 14 years. I have not persuaded the gentleman from Illinois very much and the gentleman from Illinois has not persuaded me very much.

Let me say, we are wasting our time arguing; but if title VII goes under the Erlernborn amendment, the bill goes, because this is like a balance. It is like a teeter-totter. We are trying to keep a balance with the employees and the new rights we are conferring on management.

You have heard those of us identified with labor tonight consistently fighting those people off who want to give management too many rights. Just a few minutes ago they were helping to try to gut the new management rights we are giving the administration. Who was fighting for them? We were fighting for them, but we were fighting in good faith, relying on the fact that what we had done in writing out agreements for employees would stay in the bill as a balance for what we were giving employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

regard. The bill does not deal with lots of rights that public employees have in the State arena and on the local level across the country. As a matter of fact, this is anything but a model that I would recommend that public employees would want adopted in their States for their States. What it does represent is an attempt to restructure John Kennedy's Executive order of 1962 into the realities of 1978 and the future, as the name of the game is changing and the rules of the game are changed by this civil service reform.

It is true that there are people in this country who would like to have us go home and say, "I voted for civil service reform," and when they say, "What is that?" we have to reply, "Well, that is the way which we use to kick the lazy, no good Federal employees off of their duffs and get them up to work." If we want to demagogue against Federal employees in that fashion, this is a handy vehicle to do it, but we need not at the same time create chaos in the Federal work force by destroying the morale of the employees.

It is absolutely essential that the employees believe, when we get through reforming the system and giving all of the top management these new powers, that the system is at least as fair to them in the exercise of their rights as it was before. And it is true that there is some change made in the language, the familiar language of the Executive order, although I think the gentleman from Illinois has illustrated that he is far more familiar with the National Labor Relations Act than he is with the

Mr. FORD of Michigan. The installation of a binding arbitration system? No; we are not installing a binding arbitration system.

Mr. FRENZEL. We are not? That is not the way I read the act.

Mr. FORD of Michigan. Is the gentleman talking about arbitration of grievances?

Mr. FRENZEL. Yes.

Mr. FORD of Michigan. Not arbitration of contract benefits?

Mr. FRENZEL. I will find it in a minute.

Mr. FORD of Michigan. I hope the gentleman understands the difference.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, first of all, I would like to associate myself with the gentleman's general remarks with respect to this title.

Second, to point out to my friend and colleague from Illinois, whose knowledge of the NLRA is not questioned at all, it seems to me there is a bit of confusion, if anything, here. In addition to the existing regulation emanating from 1962, there is being added by the committee a further restriction heretofore not extant in the form of creating an unfair labor practice where none exists now in the Federal Government. This does not relate at all, and the gentleman knows perfectly well, to the proposed H.R. 7777 relating to public employees, State, county, municipal, and Federal. It is really not in any way similar.

I certainly agree with my friend, the

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, really, if we accept the Erlenborn amendment, it simply ends everything and ends the ball game. We will rewrite this bill in a way that is harmful and there will be a subsequent amendment offered by the gentleman from Arizona (Mr. UDALL) that has been worked out over many months with all kinds of disagreeable choices, pushing and shoving, and finally coming to an agreement that does not make anyone so happy that they can walk away from here claiming a victory; but it is a reasonable legislative solution to our problems.

I just ask those of us who want to support this bill and want to see the President have a chance to put civil service reform into effect to support us in defeating the Erlenborn amendment, because passage of the Erlenborn amendment kills the bill.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, the gentleman said a few minutes ago that no one would offer the right to strike, and that that was not in the bill. I call the attention of the gentleman to his H.R. 1589, which provides the right to strike.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The gentleman from

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Michigan (Mr. FORD) does seek further time. The time of the gentleman has expired.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, the gentleman from Michigan invited me to peruse the bill to find what I consider to be binding arbitration within the bill.

I refer the committee and the gentleman to section 7119 on page 326, et seq., which states as follows:

If the parties do not arrive at a settlement after assistance by the Panel . . .

And this is the Impasses Panel.

Then it states:

Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement . . .

That is No. 1. Now, this is No. 2.

Mr. FORD of Michigan. Mr. Chairman, let me take my time back.

Mr. FRENZEL. Mr. Chairman, it is not the gentleman's time, but I will be glad to yield to him in a minute.

Mr. FORD of Michigan. Does the gentleman want an answer?

Mr. FRENZEL. Let me state the second part first.

The CHAIRMAN. The Chair will state that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

the gentleman from Minnesota misunderstands the situation.

Mr. FRENZEL. It would not be the first time I misunderstood, nor would it be the first time I misunderstood the gentleman from Michigan (Mr. FORD).

How about section 7121? Is that right out of the Executive order, too?

Mr. FORD of Michigan. No; that is grievance arbitration.

Mr. FRENZEL. That is binding arbitration, and that is new law; is it not?

Mr. FORD of Michigan. With respect to wages, hours, and working conditions.

Mr. FRENZEL. Is that not what we grieve over usually?

Mr. FORD of Michigan. No; we do not grieve a contract; we negotiate a contract.

Mr. FRENZEL. Mr. Chairman, I no longer yield.

Mr. Chairman, I think the situation is quite obvious. I think it is quite obvious there is new law, and it is different law. I think a lot of us do not know whether it is good law or bad law, but it seems to me we would be best served to revert to the time-tested Executive order.

Mr. Chairman, I hope the amendment is agreed to.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. DER-

Is that what the gentleman from Illinois (Mr. ERLENBORN) is trying to do?

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Illinois (Mr. ERLENBORN) is a very free gentleman.

Mr. CHARLES H. WILSON of California. No, what I would like to know is this: I think the Democrats should understand who is for who and what is for what. Now, if the gentleman from Illinois (Mr. ERLENBORN) is presenting the Presidential position, I think we should know that.

Mr. DERWINSKI. Mr. Chairman, the gentleman from Illinois (Mr. ERLENBORN) and I are both for civil service reform. We have a difference of opinion on title VII.

Mr. CHARLES H. WILSON of California. Who is for what?

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Missouri?

Mr. CLAY. I thank the gentleman for yielding.

Mr. Chairman, the President recommended the provision that is in this title relating to binding arbitration. The Senate bill also includes this provision. In addition to that, the reason and the basis for this precise procedure is to save the taxpayers money.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

(On the request of Mr. CLAY and by unanimous consent, Mr. FRENZEL was

Mr. FORD of Michigan. Mr. Chairman, I ask the gentleman if he is seriously asking a question. If he is, I will be glad to answer it.

The CHAIRMAN. The Chair will repeat that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, my second point is in relation to section 7121, which is the grievance procedure, found on page 331, et seq., and there, of course, we have binding arbitration of grievances.

Mr. Chairman, I would ask the gentleman from Michigan (Mr. FORD) if that is not true, and I yield to the gentleman for his response.

Mr. FORD of Michigan. Mr. Chairman, it is true, but it is irrelevant, because what the gentleman is reading from on page 326 of the bill is the present Executive order, which the gentleman from Illinois, Mr. JOHN ERLÉN-BORN, has taken to himself as the "Holy Grail."

Mr. FRENZEL. Do we have an im-passes panel in the present Executive order?

Mr. FORD of Michigan. Yes; in the exact language the gentleman just read, and this is taken from the executive order.

Mr. FRENZEL. That is not my understanding.

Mr. FORD of Michigan. It represents no change in the status at all.

Mr. FRENZEL. That is not my understanding. How about the grievance procedure?

Mr. FORD of Michigan. That is this gentleman's understanding, and I think

winski) a question. The gentleman is the administration's supporter of this bill, and I want to know whether he is for this amendment or not.

Mr. FRENZEL. Mr. Chairman, I cannot advise the gentleman on that. I do not know.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I see the gentleman from Illinois (Mr. DERWINSKI) is over here, and I will ask the gentleman, who is the administration's supporter of this bill, whether he is for this amendment.

Mr. DERWINSKI. Mr. Chairman, may I use this microphone?

Mr. CHARLES H. WILSON of California. The gentleman may use any microphone he wants to use.

Mr. FRENZEL. Mr. Chairman, I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, my personal position is that this bill should have as title VII the President's Executive order, which was in fact the action taken in the Senate.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield further?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON. Mr. Chairman, let me ask: Is that what the gentleman from Illinois (Mr. ERLÉN-BORN) is seeking?

Mr. FRENZEL. That is what the gentleman from Illinois (Mr. ERLÉN-BORN) is trying to do.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I will ask the gentleman from Illinois (Mr. DERWINSKI):

allowed to proceed for 1 additional minute.)

Mr. FRENZEL. Mr. Chairman, I yield further to the gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Presently, Mr. Chairman, under the process of appealing through statutory appeals, the Government pays the entire cost of the proviso. Under the provisions of this title, subjecting grievances to binding arbitration, the costs will be shared equally by the Government and the parties who are alleging grievances. And that is one of the provisos for us including it and accepting the recommendation of the administration to include it in the bill.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for his contribution.

I think it is an interesting point and may be a good one. I am not sure it would be pervasive in asking us to accept this new concept, however.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the issue before us is the Erlénborn amendment, which would strike all of title VII. And as my friend, the gentleman from Michigan (Mr. FORD), said a minute ago, if there is no title VII, there simply is-no bill.

The administration came forward early on in this controversy. The original administration's submission had no title VII, had no labor-management title in it at all. We raised questions about this, and the administration finally said, "We are willing to write into this new management rights bill, this new civil service reform bill, something the Federal employee unions have always wanted,"

which was not to be at the whim or the mercy of the President, who, with a stroke of the pen, could undo all of these collective bargaining rights enjoyed since 1963.

We argued a good deal over the last few months about what should be in that title VII, and no one has seriously suggested until tonight that there should be no title VII at all.

A number of my colleagues have asked me where we are in this debate today, and most of the remaining controversy is in title VII. Title VIII is a short title. Title IX and title X have been stricken by a point of order. We can be out of here fairly soon if we decide what we are going to do about title VII.

The first thing to do is to get rid of the Erlenborn amendment and get on with the real issues. There will be an amendment which will be offered by the gentleman from Texas (Mr. COLLINS) which sets up a labor-management framework. It is not at all acceptable to the Federal employee unions. It is acceptable to the administration. I will have a substitute for that amendment which represents the product of long negotiations. My labor friends do not like it very much. The gentleman from Michigan (Mr. FORD) has very limited enthusiasm for it. We have finally reached that limited ground, but we cannot get on with that as long as we are involved with an amendment which strikes out all of the title. I thought we were making good progress until I saw all of the big guns on the Education and Labor Committee

[Roll No. 751]

AYES—125

Abdnor
Andrews, N.C.
Archer
Ashbrook
Badham
Bafalis
Barnard
Bauman
Beard, Tenn.
Bennett
Bowen
Breckinridge
Brinkley
Broomfield
Broyhill
Butler
Carter
Cederberg
Clausen,
Don H.
Collins, Tex.
Conable
Coughlin
Crane
Cunningham
Daniel, Dan
Daniel, R. W.
de la Garza
Devine
Dornan
Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Erlenborn
Ertel
Evans, Ga.
Findley
Flippo
Flynt
Fountain

Akaka
Alexander
Ambro

Frenzel
Ginn
Goldwater
Goodling
Gradison
Grassley
Gudger
Guyer
Hall
Harsha
Hefner
Hightower
Holt
Horton
Hubbard
Hyde
Ichor
Ireland
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Lagomarsino
Leach
Levitas
Livingston
Lloyd, Tenn.
Lott
McClory
McDonald
McEwen
Madigan
Mahon
Marlenee
Marriott
Martin
Mathis
Michel
Milford
Miller, Ohio

NOES—217

Derwinski
Dicks
Diggs

Montgomery
Moore
Myers, Gary
Myers, John
Neal
Nichols
Poage
Preyer
Pritchard
Quayle
Quillen
Regula
Roberts
Robinson
Rose
Runnels
Ruppe
Satterfield
Schatz
Sebelius
Shuster
Snyder
Spence
Stangeland
Stanton
Stockman
Symms
Taylor
Thone
Treen
Trible
Waggonner
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Wilson, C. H.
Winn
Wylder
Wylie

Kostmayer
Krebs
LaFalce

Patterson
Pattison
Pease
Pepper
Perkins
Pickle
Pike
Pressler
Price
Rahall
Rallsback
Reuss
Rhodes
Roe
Rogers
Rooney
Rosenthal
Rostenkowski
Roybal
Russo
Ryan
Santini

Addabbo
Ammerman
Annunzio
Armstrong
Biaggi
Breaux
Brown, Mich.
Brown, Ohio
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burlison, Tex.
Burton, Phillip
Byron
Chappell
Chisholm
Clawson, Del
Cochran
Cohen
Conyers
Corcoran
Delaney
Dickinson
Eckhardt

Sawyer
Scheuer
Schroeder
Seiberling
Sharp
Sikes
Simon
Skelton
Skubitz
Slack
Smith, Iowa
Solarz
Spellman
Staggers
Stark
Steed
Steers
Steiger
Studds
Thompson
Thornton
Tucker

NOT VOTING—90

Flood
Flowers
Forsythe
Fraser
Frey
Fuqua
Giulmo
Gibbons
Hagedorn
Hansen
Harrington
Hawkins
Hollenbeck
Huckaby
Jenkins
Johnson, Colo.
Kasten
Kemp
Krueger
Latta
Lehman
Lujan
McKinney
Meeds
Mikva
Miller, Calif.

Udall
Ullman
Van Deerin
Vanik
Sharp
Volkmer
Walgren
Walsh
Waxman
Weaver
Weiss
Whalen
Wilson, Tex.
Wirth
Wolf
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

Pursell
Quie
Rangel
Richmond
Rinaldo
Risenhoover
Rodino
Roncallo
Roussetot
Rudd
Sarasin
Shipley
Sisk
Smith, Nebr.
St Germain
Stokes
Stratton
Stump
Teague
Traxler
Tsongas
Vander Jagt
Whitten
Wiggins
Wilson, Bob
Wright

rise, but I would hope that at least we could proceed very shortly to get a decision on the Erlenborn amendment which totally strikes all of title VII and, then, so far as I am concerned, we can end the debate.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Illinois.

Mr. ERLBORN. I thank the gentleman for yielding.

Mr. Chairman, as the gentleman knows, I have been waiting patiently since noon to reach title VII. I would like to comment on the gentleman's statement about the Education and Labor Committee. About an hour ago, about 8 or 9 o'clock, several of my colleagues mentioned that the gentleman's committee was making the Education and Labor Committee look good.

Mr. UDALL. I claim full credit for that.

Mr. Chairman, I would hope that we could have a vote now on the Erlenborn amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN).

RECORDED VOTE

Mr. ERLBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 125, noes 217, not voting 90, as follows:

| | | |
|------------------|-----------------|----------------|
| Anderson, Calif. | Dingell | Le Fante |
| Anderson, Ill. | Dodd | Lederer |
| Andrews, N. Dak. | Downey | Leggett. |
| Applegate | Drinan | Lent |
| Ashley | Early | Lloyd, Calif. |
| Aspin | Edgar | Long, La. |
| AuCoin | Edwards, Calif. | Long, Md. |
| Baldus | Ellberg | Luken |
| Baucus | Evans, Ind. | Lundine |
| Beard, R.I. | Fasell | McCloskey |
| Bedell | Fenwick | McCormack |
| Beilenson | Fisher | McDade |
| Benjamin | Fithian | McFall |
| Bevill | Florio | McHugh |
| Bingham | Foley | McKay |
| Blanchard | Ford, Mich. | Maguire |
| Blouin | Ford, Tenn. | Mann |
| Boggs | Fowler | Markey |
| Boland | Gammage | Marks |
| Bolling | Garcia | Mattox |
| Bonior | Gaydos | Mazzoli |
| Bonker | Gephardt | Metcalfe |
| Brademas | Gilman | Meyner |
| Brodhead | Glickman | Mikulecki |
| Brooks | Gonzalez | Mineta |
| Brown, Calif. | Gore | Minish |
| Burlison, Mo. | Green | Mitchell, N.Y. |
| Burton, John | Hamilton | Moakley |
| Caputo | Hammer- | Moffett |
| Carney | schmidt | Mollohan |
| Carr | Hanley | Moorhead, Pa. |
| Cavanaugh | Hannaford | Mottl |
| Clay | Harkin | Murphy, Ill. |
| Cleveland | Harris | Murphy, N.Y. |
| Coleman | Heckler | Murphy, Pa. |
| Collins, Ill. | Heftel | Murtha |
| Conte | Hillis | Myers, Michael |
| Corman | Holland | Natcher |
| Cornell | Holtzman | Nedzi |
| Cornwell | Howard | Nix |
| Cotter | Hughes | Nolan |
| D'Amours | Jacobs | Nowak |
| Danielson | Jeffords | O'Brien |
| Davis | Jenrette | Oaker |
| Dellums | Johnson, Calif. | Oberstar |
| Dent | Jordan | Obey |
| Derrick | Kastenmeier | Otinger |
| | Keys | Panetta |
| | Kildee | Patten |

| | | |
|--------------|---------------|---------------|
| Emery | Mitchell, Md. | Young, Alaska |
| Evans, Colo. | Moorhead, | Young, Tex. |
| Evans, Del. | Calif. | Zeferetti |
| Fary | Moss | |
| Fish | Pettis | |

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Addabbo against.
Mr. Bureson of Texas for, with Mr. Mitchell of Maryland against.

Mr. Teague for, with Mr. Richmond against.

Mr. Lujan for, with Mr. Zeferetti against.

Mrs. FENWICK and Mr. SAWYER changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PREFERENTIAL MOTION OFFERED BY MR. CHARLES H. WILSON OF CALIFORNIA

Mr. CHARLES H. WILSON of California. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. CHARLES H. WILSON of California moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I am not going to take too much time. I think this amending process could go on indefinitely. It is a bad bill. We have not passed the right amendments, and I think it is about time that we went home and started doing other business.

September 11, 1978

CONGRESSIONAL RECORD—HOUSE

H 9459

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the preferential motion.

Mr. Chairman, I appreciate the Members' frustration. I appreciate that some of them are tired, and I appreciate all the complications of the hour.

However, I would like to point out that we have gone about 90 percent of the way with a very difficult, absolutely necessary piece of legislation. I would like to commend all of the Members who have in any way participated in the debate. This has been a good, high class, non-partisan handling of a major national issue.

Mr. Chairman, this is necessary legislation. This is legislation that is good for every Member's constituents. If the Members will just be patient, we are within an hour of wrapping this legislation up properly. The Members are within an hour of casting a vote for what will go down in history as one of their greatest votes as Members of Congress. If they will just stay here, Mr. Chairman, we will pass civil service reform legislation.

Mr. RHODES. Mr. Chairman, would the gentleman yield?

Mr. DERWINSKI. I yield to my distinguished statesmanlike leader.

Mr. RHODES. I do not recognize the description. I would like to differ with the gentleman most respectfully. It seems to me that after the hour of 9 o'clock—and I thought we had agreed upon this—very little is done to save the Republic. I do not recognize the absolute neces-

Mr. CHARLES H. WILSON of California. If the gentleman will yield, why not?

The CHAIRMAN. All time for debate on the motion has concluded. The question is on the preferential motion offered by the gentleman from California. (Mr. CHARLES H. WILSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CHARLES H. WILSON of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 46, noes 286, not voting 100, as follows:

[Roll No. 752]

AYES—46

| | | |
|----------------|-------------|---------------|
| Applegate | Hammer | Rhodes |
| Ashbrook | Ruschmidt | Runnels |
| Barnard | Harris | Sawyer |
| Bauman | Holt | Schulze |
| Breckinridge | Kindness | Sebelius |
| Broomfield | Leggett | Shuster |
| Broyhill | McDade | Snyder |
| Carter | McDonald | Spellman |
| Coleman | McEwen | Stangeland |
| Collins, Tex. | Marlenee | Steers |
| Crane | Mazzoli | Symms |
| Davis | Murtha | Taylor |
| Dornan | Myers, Gary | Waggoner |
| Duncan, Tenn. | Myers, John | Walsh |
| Edwards, Okla. | Quayle | Wilson, C. H. |
| Flynt | Quillen | |

NOES—286

| | | |
|-----------|---------------|---------|
| Abdnor | D'Amours | Harkin |
| Addabbo | Daniel, Dan | Harsha |
| Akaka | Daniel, R. W. | Heckler |
| Alexander | Danielson | Hefner |
| Ambro | de la Garza | Heftel |

| | | |
|----------------|--------------|-------------|
| Mattox | Pike | Steiger |
| Meeds | Poage | Stockman |
| Metcalfe | Pressler | Stokes |
| Meyner | Preyer | Studds |
| Michel | Price | Thompson |
| Mikulski | Pritchard | Thone |
| Miller, Ohio | Rahall | Thornton |
| Mineta | Rallsback | Treen |
| Minish | Regula | Trible |
| Mitchell, N.Y. | Reuss | Tucker |
| Moakley | Roberts | Udall |
| Mollohan | Robinson | Ullman |
| Moore | Roe | Van Deerin |
| Moorhead, Pa. | Rogers | Vanik |
| Motti | Rooney | Vento |
| Murphy, Ill. | Rose | Volkmer |
| Murphy, N.Y. | Rosenthal | Walgren |
| Murphy, Pa. | Rostenkowski | Walker |
| Myers, Michael | Roybal | Wampler |
| Natcher | Ruppe | Watkins |
| Neal | Russo | Waxman |
| Nedzi | Santini | Weaver |
| Nichols | Satterfield | Weiss |
| Nix | Scheuer | Whalen |
| Nolan | Schroeder | White |
| Nowak | Seiberling | Whitehurst |
| O'Brien | Sharp | Whitley |
| Oakar | Sikes | Winn |
| Oberstar | Simon | Wirth |
| Obey | Skelton | Wolf |
| Ottinger | Skubitz | Wydler |
| Panetta | Slack | Wylie |
| Patten | Smith, Iowa | Yates |
| Patterson | Solarz | Yatron |
| Pattison | Spence | Young, Fla. |
| Pease | Staggers | Young, Mo. |
| Pepper | Stanton | Zablocki |
| Perkins | Stark | |
| Pickle | Steed | |

NOT VOTING—100

| | | |
|---------------|----------|-------------|
| Ammerman | Flood | Pettis |
| Annunzio | Flowers | Pursell |
| Armstrong | Forsythe | Quie |
| Biaggi | Fraser | Rangel |
| Breaux | Frey | Richmond |
| Brown, Calif. | Fuqua | Rinaldo |
| Brown, Mich. | Gibbons | Risenhoover |
| Brown, Ohio | Gonzalez | Rodino |
| Buchanan | Hagedorn | Roncalio |
| Burgener | Hansen | Russelot |

sity of passing this bill tonight. It seems to me that we have many days left, and some say we are even going to come back after the election. It seems to me, if the gentleman will yield further, that this might be a very propitious time to shut down the proceedings of the House tonight. I just do not believe that it is necessary for us to consider a bill of this importance—and it is of great importance—in this type of a situation. With all of the regrets and my great respect for the gentleman from Illinois (Mr. DERWINSKI) and my good friend, the gentleman from Arizona (Mr. UDALL), I hope that the motion of the gentleman from California (Mr. CHARLES H. WILSON) will be adopted.

Mr. DERWINSKI. No; just a minute. Do not hope that much. The gentleman from California is moving to strike the enacting clause, and I am sure my distinguished leader, the gentleman from Arizona, is just referring to the Committee's rising for the evening.

Mr. RHODES. If the gentleman would yield further, actually, if the committee votes to strike the enacting clause, we would go back into the House, and then, before the House agrees to the recommendation of the Committee we could adjourn, if we want to adjourn. We cannot adjourn from the Committee of the Whole. That is the main reason I think the gentleman's motion is well taken.

Mr. DERWINSKI. I realize that, but we do not want anybody in the well to think that our distinguished minority leader is momentarily in the embrace of the gentleman from California (Mr. CHARLES H. WILSON).

Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Archer
Ashley
Aspin
AuCoin
Badham
Bafalis
Baldus
Baucus
Beard, R.I.
Beard, Tenn.
Bedell
Bellenson
Benjamin
Bennett
Bevill
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Brinkley
Brodhead
Brooks
Burlison, Mo.
Butler
Caputo
Carney
Carr
Cederberg
Clausen,
Don H.
Clay
Cleveland
Collins, Ill.
Conable
Conte
Corman
Cornell
Cornwell
Cotter
Coughlin
Cunningham,

Dellums
Dent
Derrick
Derwinski
Devine
Dicks
Diggs
Dodd
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Ellberg
English
Erlenborn
Ertel
Evans, Ind.
Fascell
Fenwick
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frenzel
Gammage
Garcia
Gaydos
Gephardt
Glaimo
Gilman
Ginn
Glickman
Goldwater
Goodling
Gore
Gradison
Grassley
Green
Gudger
Guyer
Hall
Hamilton
Hanley
Hannaford

Hightower
Hillis
Holland
Holtzman
Horfon
Howard
Hubbard
Hughes
Hyde
Ireland
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kastenmeier
Kazen
Kelly
Keys
Kildee
Kostmayer
Krebs
Legomarsino
Le Fante
Leach
Lederer
Lent
Levitae
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Luken
Lundine
McClory
McCloskey
McCormack
McFall
McHugh
McKay
Madigan
Maguire
Mahon
Mann
Markey
Marks
Marriott
Martin

Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burton, John
Burton, Phillip
Byron
Cavanaugh
Chappell
Chisholm
Clawson, Del
Cochran
Cohen
Conyers
Corcoran
Delaney
Dickinson
Dingell
Eckhardt
Emery
Evans, Colo.
Evans, Del.
Evans, Ga.
Fary
Fish
Harrington
Hawkins
Hollenbeck
Huckaby
Ichord
Jenkins
Johnson, Colo.
Kasten
Kemp
Krueger
LaFalce
Latta
Lehman
Lujan
McKinney
Mathis
Mikva
Milford
Miller, Calif.
Mitchell, Md.
Moffett
Montgomery
Moorhead,
Calif.
Moss

Rudd
Ryan
Sarasin
Shipley
Sisk
Smith, Nebr.
St Germain
Stratton
Stump
Teague
Teaxler
Tsongas
Vander Jagt
Whitten
Wiggins
Wilson, Bob
Wilson, Tex.
Wright
Young, Alaska
Young, Tex.
Zeferetti

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have had a long and difficult day, and I must say that it has been a very productive day. The Members have been cooperative, and we have not had the kind of dilatory tactics some had feared. But the hour is late, and I am not sure we can be productive much longer. We do have a number of important amendments left.

Mr. Chairman, I am going to make a unanimous-consent request in just a moment, and if it is agreed to, at that point I would move that the Committee rise. I am told by the leadership that we

will come back on this bill perhaps on Wednesday, but not tomorrow.

Mr. Chairman, my unanimous-consent request is that the remaining time for debate on title VII, and all amendments thereto—that is the title we are now considering—be limited to a total of 2 hours.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, this is just title VII?

Mr. UDALL. If the gentleman will yield, this is title VII only.

Mr. CHARLES H. WILSON of California. Further reserving the right to object, the gentleman is not asking that the entire bill be limited to 2 hours?

Mr. UDALL. No.

The remaining titles are not very controversial and are not very long. I am assuming that after we finish title VII, in a very rapid pace we could finish up the bill. But the pending request relates to title VII only.

Mr. CHARLES H. WILSON of California. I thank the gentleman.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. ASHBROOK. Mr. Chairman, I reserve the right to object. Could I be informed as to how many amendments are pending on title VII?

Mr. UDALL. It has been anticipated at this point that the gentleman from Texas (Mr. COLLINS) would offer a complete

Udall substitute, which is an administration amendment, in effect, to the Collins amendment, which is the Senate title VII. So, the differences between the two positions are not extreme.

Mr. ASHBROOK. I thank the gentleman, and withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. GARY A. MYERS. Mr. Chairman, reserving the right to object, I do so make inquiry on parliamentary procedure. It is normal parliamentary procedure upon such a request for Members to stand and request time. Is it the Chairman's intent that the time to be divided be divided tonight?

The CHAIRMAN. The Chair would advise the gentleman that the Chair would not intend to divide the time tonight, but that subject will be taken up at the time we reconvene in connection with this bill.

Mr. GARY A. MYERS. I thank the Chair, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, as I understand it, there will be two substitutes posed, and a number of Members have amendments in the Record. They are, of course, amendments to the bill and not to the substitutes. I wonder if the Chair could tell me how we could protect the amend-

amendments thereto be limited to 2 hours for that debate purpose when we resume.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

● Mrs. SCHROEDER. Mr. Chairman, I want to make a few comments regarding the effect of the two amendments offered by Mr. BOLAND and Mr. COLLINS of Texas as they affect the "whistleblower" provisions of H.R. 11280.

First. Generally, the merit system principles apply throughout Government to all executive agencies, including CIA, FBI, and everybody else. The President is required to take action to implement these principles, including section 2301 (c) (9) which requires the protection of whistleblowers.

Second. Generally, although Government corporations, CIA, FBI, and GAO are exempted from prohibited personnel practices, other existing law prohibits discrimination, Hatch Act violations, and nepotism in these agencies. With the exception of the whistleblower protection, the prohibited personnel practices are merely the codification of existing law. As to whistleblower protection, the FBI is specifically brought in under the Collins-Udall compromise, and the President will act as Special Counsel. For other agencies, the merit system principles, as implemented by the President will cover them.

Third. Generally, although the Special Counsel is only required to receive com-

substitute for title VII. Immediately after that, I was going to offer a substitute for that substitute, which represents a compromise we have put together over here.

The gentleman from Illinois (Mr. ERLBORN) indicated that he had a number of amendments to my substitute, and that he would offer them in a fairly prompt fashion. At the close of that we would choose between the Collins substitute and the Udall substitute. If either one of them carries, that is the end of title VII.

Mr. ASHBROOK. Further reserving the right to object, those do sound like very substantial amendments. Does the gentleman know whether there are any other amendments?

Mr. UDALL. I am not aware of any major amendments to title VII except those that have been proposed by the distinguished gentleman from Illinois (Mr. ERLBORN). It might be that there are perfecting amendments to either the Collins or Udall substitutes. I doubt that there would be any besides that. In any event, the Members who have printed amendments in the RECORD would be protected.

Mr. DERWINSKI. Mr. Chairman, I am the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. DERWINKI. Mr. Chairman, I am sure the gentleman from Ohio will be pleased to know that the amendment to be offered by the gentleman from Texas is identical to title VII in the Senate passed bill, so that what we are down to is really a narrow difference between the

ments which are now filed so that they would be in order and have time under the proposal that the gentleman suggests, to either of the substitutes.

The CHAIRMAN. The Chair advises the gentleman that the amendments which have been printed in the RECORD would be protected under our rules.

Mr. FRENZEL. Will we be able to make the amendments to the substitute, Mr. Chairman?

The CHAIRMAN. Yes. If they can be redrafted to pertain to the substitute, and placed in the RECORD, the answer is in the affirmative.

Mr. FRENZEL. I thank the Chair.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, to further demonstrate the absolute cooperation that is developing, the gentleman from Illinois (Mr. ERLBORN) has filed his amendments in the RECORD so that the record of what we are going to get to is clear. We think we are moving on an open basis toward final solution.

Mr. FRENZEL. I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, I object to the unanimous-consent request.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on title VII and, all

plaints and guarantee anonymity to employees in agencies covered by Prohibited Personnel Practices, nothing precludes the Special Counsel from receiving complaints and guaranteeing anonymity to anyone. He cannot, however, ever receive foreign intelligence or counterintelligence information nor can he order an agency investigation where the complaint does not come from an agency covered by prohibited personnel practices, whether or not the complaint concerns the agency in which the individual is employed.

Fourth. With regard to the FBI, the President's regulations required for the FBI must protect the same sort of information as the bill protects. What the President can vary is the enforcement of those principles. He can, but need not, give the enforcement power to the Special Counsel. The President's regulations must include some employee complaint handling mechanism, although the current procedures are satisfactory to meet this requirement.

Fifth. Generally, under the Special Counsel's general investigatory powers, as modified, the Special Counsel has the basic power to investigate allegations of arbitrary or capricious withholdings of information under the Freedom of Information Act, regardless of whether court-ordered discipline is required under section 552(a)(4)(F), unless the request deals with foreign intelligence or counter-intelligence information.

Sixth. Generally, the Special Counsel, under 1206(g)(1)(A) to seek disciplinary action against offending employees as the

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result of any investigation in the section, including investigations prompted by employee complaints to the Special Counsel.* * *

Seventh. Generally, the basic thrust of the whole section dealing with employee complaints is to encourage, but not require, internal attempts at revolving the wrongdoing. The goal is to rout wrongdoing out of the Federal Government as much as to protect the first amendment rights of employees.●

● Mr. FRENZEL. Mr. Chairman, the President has a rather low batting average in converting ideas into law. Partly it is his fault; but partly it is ours. When he has a good proposal, we ought to pass it even if it disturbs our personal comfort zones.

The President's civil service reform is a good idea. The American people think so, too. So did ex-President Ford who submitted a similar proposal. The need for tightening up the Federal bureaucracy, and for making it more responsive and manageable, is obvious.

The administration's plan was basically a good one. It still is. It addresses not all, but many, of the most glaring problems. Even our hard-to-please colleagues in the other body have passed it overwhelmingly.

Our Post Office and Civil Service Committee, has, however, made many changes which I deem inappropriate and unacceptable. The original bill was designed to make the civil service more manageable. The committee amend-

ments, in some cases, make it the opposite. A case in point is the expanded scope of collective bargaining. These changes, made by the committee should be eliminated, and the original language, essentially retaining the provisions of the Executive order covering labor-management relations, should be restored.

Perhaps the most controversial section of the bill deals with the preference accorded to veterans in Federal employment. There is a real problem here. Women and minorities are not advancing as quickly as most of us would like in the Federal service. Nevertheless, a good, clear-cut case has not been made that veterans' preferences are a major retardant. I am unwilling, at this time, to take away the rights and preferences now accorded to veterans, and therefore intend to support the Hanley amendment to restore current preferences. However, there is some justice in what the President is saying and I would suggest a thorough study of this whole subject by the committee. At this point, we should not hold up, or jeopardize the passage of the bill because of this item.

The other highly controversial change made by the committee is the repeal of the Hatch Act. It is not germane to this bill and should be removed in a point-of-order. If not, I shall certainly support a motion to strike it.

The Hatch Act does need revision. But Federal employees need its protection. It should not be repealed in any case, and it should not be a part of this bill at all.

Some of my colleagues in the Republican minority are concerned about the increase in high-level, appointed jobs in the bureaucracy. Some concern is justified; but I endorse the position of the distinguished gentleman from Illinois (M. DERWINSKI) that any Chief Executive needs his own people to manage and motivate the bureaucracy. President Carter, like his predecessors, and like his successors, needs the authority to put capable managers of his own choosing into his government if it is to be run well.

When the bad amendments are removed the House should promptly pass civil service reform. The President has made a good recommendation. This is one issue on which he has strong and justified popular support. Support here in Congress ought to be bipartisan, and it ought to be just as strong.●

● Mr. GARCIA. Mr. Chairman, I rise in support of the Civil Service Reform Act of 1978. I believe the time for change is long overdue. And I know there is much room for improvement in the functioning of the Federal civilian work force—for both those in labor and those in management.

In fiscal year 1977, \$46,247,517,000 was spent on the Federal civilian employees' payroll. Presently, this payroll is averaging out to around \$4,052,817,148 per month. That is an awful lot of money for the American people to pay for something that is less than the best. I welcome civil service reform because I think it is a major step toward giving us the

best.

I, as one of the newest Members of Congress, am very pleased to have had the opportunity to be assigned to the committee which handled this major piece of legislation. It has been an honor for me to work long, hard hours with such fine colleagues on this committee to bring us to where we are right now. I would especially like to commend the gentleman from Arizona (Mr. UDALL) and the gentleman from Illinois (Mr. DERWINSKI) for their leadership throughout the entire process.●

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, (Mr. DANIELSON), Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.



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of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124

WASHINGTON, WEDNESDAY, SEPTEMBER 13, 1978

No. 142

CIVIL SERVICE REFORM ACT
OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, to reform the civil service laws.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 328, nays 5, not voting 99, as follows:

[Roll No. 762]

YEAS—328

Abdnor
Addabbo
Akaka
Alexander
Anderson,
Calif.
Andrews, N.C.
Andrews,
N. Dak.
Annunzio
Applegate
Archer
Ashbrook
Aspin
AuCoin
Badham
Bafalis
Baldus
Barnard
Baucus
Bauman
Beard, Tenn.
Bedell
Benjamin
Bennett
Bevill
Blaggi
Bingham
Blanchard
Boggs
Boland
Bonior
Bonker
Bowen
Brademas
Breckinridge
Brinkley
Brooks
Brown, Mich.
Brown, Ohio
Broyhill

Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Ellberg
Emery
English
Erlenborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Flood
Florio
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Gammage
Gaydos
Gephardt
Gilman
Ginn
Gilckman
Goldwater
Gonzalez
Goodling
Gore
Gradison

Kostmayer
Krebs
Lagomarsino
Latta
Le Fahte
Leach
Lederer
Livingston
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCormack
McDade
McEwen
McFall
McHugh
McKay
Madigan
Maguire
Mahon
Mann
Markey
Marks
Marlenee
Marriott
Martin
Mazoli
Metcalfe
Meyner
Michel
Mikva
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley

Burgener
Burke, Mass.
Burleson, Tex.
Burison, Mo.
Burton, John
Burton, Phillip
Butler
Carney
Carr
Carter
Cederberg
Chappell
Clausen,
Don H.
Clay
Cleveland
Cohen
Coleman
Collins, Tex.
Conte
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Delaney
Dent
Derwinski
Devine
Dicks
Dodd
Downey
Drinan
Duncan, Oreg.

Grassley
Green
Gudger
Guyer
Hagedorn
Hall
Hamilton
Hammer-
schmidt
Hanley
Hannaford
Hansen
Harkin
Harris
Harsha
Heckler
Hefner
Hightower
Hillis
Holland
Holt
Holtzman
Horton
Howard
Hubbard
Hughes
Hyde
Ichord
Ireland
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness

Moffett
Mollohan
Montgomery
Moore
Moorhead,
Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Myers, John
Myers, Michael
Natcher
Neal
Nedzi
Nichols
Nix
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Perkins
Pettis
Pickle
Fike
Poage
Price
Pritchard
Pursell
Quillen
Rahall
Rallsback
Rangel
Regula
Reuss
Rhodes

Rinaldo
Roberts
Robinson
Rodino
Rogers
Rooney
Rosenthal
Rostenkowski
Rousselot
Roybal
Rudd
Runnels
Russo
Ryan
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shuster
Sikes
Simon

Siak
Skelton
Skubitz
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spence
Staggers
Stangeland
Stanton
Stark
Steed
Steers
Steiger
Stockman
Stokes
Stratton
Studds
Symms
Taylor
Thone
Thornton
Traxler
Treen
Trible
Tucker

Udall
Vanik
Vento
Volkmer
Walgreen
Walker
Walsh
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Wilson, Tex.
Winn
Wirth
Wolf
Wright
Wylder
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zerferetti

NAYS—6

Lloyd, Calif.
Myers, Gary

Quayle
Wilson, Bob

Wilson, C. H.

NOT VOTING—39

Ambro
Ammerman
Anderson, Ill.
Armstrong
Ashley
Beard, R.I.
Bellenson
Blouin
Bolling
Breaux
Brodhead
Broomfield
Brown, Calif.
Buchanan
Burke, Calif.
Burke, Fla.
Byron
Caputo
Cavanaugh

Fascell
Flowers
Fraser
Frenzel
Frey
Fuqua
Garcia
Glambo
Gibbons
Harrington
Hawkins
Heffel
Hollenbeck
Huckaby
Jacobs
Johnson, Colo.
Kasten
Keys
Krueger

Mitchell, Md.
Moes
Murphy, N.Y.
Nolan
O'Brien
Pepper
Pressler
Preyer
Quie
Richmond
Risenhoover
Roe
Roncallo
Rose
Ruppe
Sarasin
Slack
Spellman
St Germain

line 12 of page 288, and ending on line 12 of page 348) and insert in lieu thereof the following new title:

TITLE VII—LABOR-MANAGEMENT RELATIONS

LABOR-MANAGEMENT RELATIONS

SEC. 701. (a) Subpart F of part III of title 5, United States Code, is amended by adding after chapter 71 the following new chapter:

“CHAPTER 72—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“7201. Findings and purpose.

“7202. Definitions; application.

“7203. Federal Labor Relations Authority; General Counsel.

“7204. Powers and duties of the Authority and of the General Counsel.

“SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES, AGENCIES AND LABOR ORGANIZATIONS

“7211. Employees rights.

“7212. Recognition of labor organizations.

“7213. National consultation rights.

“7214. Exclusive recognition.

“7215. Representation rights and duties.

“7216. Unfair labor practices.

“7217. Standards of conduct for labor organizations.

“7218. Basic provisions of agreements.

“7219. Approval of agreements.

“SUBCHAPTER III—GRIEVANCES AND IMPASSES

“7221. Grievance procedures.

“7222. Federal Service Impasses Panel; negotiation impasses.

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

“7231. Allotments to representatives.

“7232. Use of official time.

“7233. Remedial action.

“(A) is employed in an agency;

“(B) is employed in a nonappropriated fund instrumentality described in section 2105(c) of this title;

“(C) is employed in the Veterans' Canteen Service, Veterans' Administration, and who is described in section 5102(c)(14) of this title; or

“(D) is an employee (within the meaning of subparagraph (A), (B), or (C)) who was separated from the service as a consequence of, or in connection with, an unfair labor practice described in section 7216 of this title;

but does not include—

“(1) an alien or noncitizen of the United States who occupies a position outside the United States;

“(ii) a member of the uniformed services (within the meaning of section 2101(3) of this title);

“(iii) for purposes of exclusive recognition or national consultation rights unless authorized under the provisions of this chapter, a supervisor, a management official, or a confidential employee;

“(3) labor organization' means any lawful organization of employees which was established for the purpose, in whole or in part, of dealing with agencies in matters relating to grievances and personnel policies and practices or in other matters affecting the working conditions of the employees, but does not include an organization which—

“(A) except as authorized under this chapter, consists of, or includes, management officials, confidential employees, or supervisors;

“(B) assists, or participates, in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

“(C) advocates the overthrow of the constitutional form of government of the United

Chisholm
Clawson, Del
Cochran
Collins, Ill.
Conable
Conyers
Dellums
Derrick
Dickinson
Diggs
Dingell
Dornan
Eckhardt
Fary

LaFalce
Leggett
Lehman
Lent
Levitas
McCloskey
McDonald
McKinney
Mathis
Mattox
Meeds
Mikulski
Milford
Miller, Calif.

Stump
Teague
Thompson
Tsongas
Ullman
Van Deertin
Vander Jagt
Waggonner
Waxman
Whalen
Whitten
Wiggins
Young, Alaska
Young, Tex.

Mr. BONIOR changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, September 11, 1978, the Clerk had read through line 12 on page 348.

Pursuant to the motion agreed to on Monday, September 11, 1978, all debate on title VII and all amendments thereto is limited to 2 hours.

Are there any further amendments to title VII?

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on

77234. Subpenas.

"7235. Regulations.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7201. Findings and purpose

"(a) The Congress finds that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

"(b) The Congress also finds that, while significant differences exist between Federal and private employment, experience under Executive Order Numbered 11491 indicates that the statutory protection of the right of employees to organize, to bargain collectively within prescribed limits, and to participate through labor organizations of their own choosing in decisions which affect them—

"(1) may be accomplished with full regard for the public interest,

"(2) contributes to the effective conduct of public business, and

"(3) facilitates and encourages the amicable settlement between employees and their employers of disputes involving personnel policies and practices and matters affecting working conditions.

"(c) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal government subject to the paramount interest of the public and to establish procedures which are designed to meet the special requirements and needs of the Federal government in matters relating to labor-management relations.

"§ 7202. Definitions; application

"(a) For purposes of this chapter—

"(1) 'agency' means an Executive agency other than the General Accounting Office;

"(2) 'employee' means an individual who—

States; or

"(D) discriminates with regard to the terms or conditions of membership because of race, color, religion, national origin, sex, age, or handicapping condition;

"(4) 'agency management' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this chapter;

"(5) 'Authority' means the Federal Labor Relations Authority established under section 7203 of this title;

"(6) 'General Counsel' means the General Counsel of the Federal Labor Relations Authority;

"(7) 'Panel' means the Federal Service Impasses Panel established under section 7222 of this title;

"(8) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor-Management Relations;

"(9) 'confidential employee' means an employee who assists, and acts in a confidential capacity to, individuals who formulate and carry out management policies in the field of labor relations;

"(10) 'management official' means an employee having authority to make, or to influence effectively the making of, policy with respect to personnel procedures or programs which is necessary to an agency or an activity;

"(11) 'supervisor' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical

cal nature, but requires the use of independent judgment;

"(12) 'professional employee' means—

"(A) any employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or in a hospital, as distinguished from work requiring knowledge acquired from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical process;

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character and not routine mental, manual, mechanical or physical work; and

"(iv) which is of such a character that the measurement of the output produced, or of the result accomplished, cannot be standardized by relating it to a given period of time; or

"(B) any employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) and who is performing related work under the direction or guidance of a professional employee to qualify the employee to become a professional employee.

"(13) 'agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(14) 'collective bargaining', 'bargaining', or 'negotiating' means the performance of the mutual obligation of the representatives of the agency and the exclusive representative as provided in section 7215 of this title;

"(15) 'exclusive representative' includes any labor organization which has been—

face of General Counsel and the Federal Service Impasses Panel.

"(d) The head of an agency may, in the agency head's sole judgment and subject to such conditions as he may prescribe, suspend any provision of this chapter with respect to any agency, installation, or activity located outside the United States if the agency head determines that such suspension is necessary for the national interest.

"(e) Employees engaged in administering a labor-management relations law who are otherwise authorized by this chapter to be represented by a labor organization shall not be represented by a labor organization which also represents other employees covered by such law or which is affiliated directly or indirectly with an organization which represents such employees.

"§ 7203. Federal Labor Relations Authority; Office of General Counsel

"(a) There is established, as an independent establishment of the executive branch of the Government, the Federal Labor Relations Authority.

"(b) The Authority shall consist of three members, not more than two of whom may be adherents of the same political party and none of whom may hold another office or position in the Government of the United States except as provided by law or by the President.

"(c) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, and shall be eligible for reappointment. The President shall designate one member to serve as Chairman of the Authority. Any member of the Authority may be removed by the President.

"(d) The term of office of each member of the Authority is 5 years, except that a member may continue to serve beyond the expiration of the term to which appointed until

"(2) supervise elections to determine whether a labor organization has been selected by a majority of the employees in an appropriate unit who cast valid ballots in the election;

"(3) decide questions with respect to the eligibility of labor organizations for national consultation rights; and

"(4) decide unfair labor practice complaints.

"(c) The Authority may consider, in accordance with regulations prescribed by it, any—

"(1) appeal from any decision on the negotiability of any issue as provided in subsection (e) of section 7215 of this title;

"(2) exception to any arbitration award as provided in section 7221 of this title;

"(3) appeal from any decision of the Assistant Secretary issued pursuant to section 7217 of this title;

"(4) exception to any final decision and order of the Panel issued pursuant to section 7222 of this title; and

"(5) other matters it deems appropriate in order to assure it carries out the purposes of this chapter.

"(d) The Authority shall adopt an official seal which shall be judicially noticed.

"(e) The Authority shall maintain its principal office in or about the District of Columbia but it may meet and exercise any or all of its powers at any time or place. Subject to subsection (g) of this section, the Authority may, by one or more of its members or by such agents as it may designate, make any inquiry necessary to carry out its duties wherever persons subject to this chapter are located. A member who participates in such inquiry shall not be disqualified from later participating in a decision of the Authority in the same case.

"(f) The Authority shall appoint an Executive Director, such attorneys, regional di-

"(A) selected pursuant to the provisions of section 7214 of this title as the representative of the employees in an appropriate collective bargaining unit; or

"(B) certified or recognized prior to the effective date of this chapter as the exclusive representative of the employees in an appropriate collective bargaining unit;

"(16) 'person' means an individual, labor organization, or agency covered by this chapter; and

"(17) 'grievance' means any complaint by any person concerning any matter which falls within the coverage of a grievance procedure.

"(b) Except as provided in subsections (c), (d), and (e) of this section, this chapter applies to all employees of an agency.

"(c) This chapter shall not apply to—

"(1) the Federal Bureau of Investigation;

"(2) the Central Intelligence Agency;

"(3) the National Security Agency;

"(4) any agency not described in paragraph (1), (2), or (3), or any unit within any agency, which has as a primary function intelligence, investigative, or national security work, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with national security requirements and consideration;

"(5) any unit of an agency which has as a primary function investigation or audit of the conduct or work of officers or employees of the agency for the purpose of insuring honesty and integrity in the discharge of official duties, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with the internal security of the agency;

"(6) the United States Postal Service;

"(7) the Foreign Service of the United States;

"(8) the Tennessee Valley Authority; or

"(9) officers and employees of the Federal Labor Relations Authority, including the Of-

the earlier of—

"(1) the date on which the member's successor has been appointed and has qualified, or

"(2) the last day of the session of the Congress beginning after the date the member's term of office would (but for this sentence) expire.

"(e) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member such individual replaces.

"(f) The Authority shall make an annual report to the President for transmittal to the Congress and shall include in such report information as to the cases it has heard and the decisions it has rendered under this chapter.

"(g) There is established within the Authority an Office of General Counsel. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be appointed for a term of 5 years and may be reappointed to any succeeding term. The General Counsel may be removed by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law or by the President.

"§ 7204. Powers and duties of the Authority and of the General Counsel

"(a) The Authority shall administer and interpret the provisions of this chapter, decide major policy issues, prescribe regulations, and disseminate information appropriate to the needs of agencies, labor organizations, and the public.

"(b) The Authority shall, in accordance with regulations prescribed by it—

"(1) decide questions submitted to it with respect to the appropriate unit for the purpose of exclusive recognition and with respect to any related issue;

rectors, administrative law judges, and other officers and employees as it may from time to time find necessary for the proper performance of its duties and may delegate to such officers and employees authority to perform such duties and make such expenditures as may be necessary.

"(g) All of the expenses of the Authority, including all necessary traveling and subsistence expenses outside the District of Columbia, incurred by members, employees, or agents of the Authority under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Authority or by an individual it designates for that purpose and in accordance with applicable law.

"(h) (1) The Authority is expressly empowered and directed to prevent any person from engaging in conduct found violative of this chapter. In order to carry out its functions under this chapter, the Authority is authorized to hold hearings, subpoena witnesses, administer oaths, and take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas requiring the production and examination of evidence as provided in section 7234 of this title relating to any matter pending before it and to take such other action as may be necessary. In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of regulations or other policy directives promulgated by the Office of Personnel Management in connection with a matter before the Authority for adjudication.

"(2) If a regulation or other policy directive issued by the Office of Personnel Management is at issue in an appeal before the Authority, the Authority shall timely notify the Director, and the Director shall have standing to intervene in the proceeding and shall have all the rights of a party to the proceeding.

"(3) The Director may request that the Authority reopen an appeal and reconsider its decision on the ground that the decision was based on an erroneous interpretation of law or of a controlling regulation or other policy directive issued by the Office of Personnel Management.

"(1) In any matter arising under subsection (b) of this section, the Authority may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take such remedial action as it considers appropriate to carry out the policies of this chapter.

"(j) (1) The Authority shall maintain a record of its proceedings and make public any decision made by it or any action taken by the Panel under section 7222 of this title.

"(2) The provisions of section 552 of this title shall apply with respect to any record maintained under paragraph (1).

"(k) The General Counsel is authorized to—

"(1) investigate complaints of violations of section 7216 of this title;

"(2) make final decisions as to whether to issue notices of hearing on unfair labor practice complaints and to prosecute such complaints before the Authority;

"(3) direct and supervise all field employees of the General Counsel in the field offices of the Authority; and

"(4) perform such other functions as the Authority prescribes.

"(1) Notwithstanding any other provision of law, including chapter 7 of this title, the decision of the Authority on any matter within its jurisdiction shall be final and conclusive, and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus on appeal of that decision or by any other

meets the requirements for such recognition or consultation rights under this chapter.

"(b) Recognition of a labor organization, once accorded, shall continue as long as the organization meets the requirements of this chapter for recognition.

"(c) Recognition of a labor organization shall not—

"(1) preclude an employee, regardless of whether the employee is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation or from choosing the employee's own representative in a grievance or appellate action, except when the grievance or appeal is covered by and pursued under a negotiated procedure as provided in section 7221 of this title;

"(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees in connection with veterans preference; or

"(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional, or other lawful association not qualified as a labor organization with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

Consultations and dealings under paragraph (3) shall not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interest of other employees.

"§ 7213. National consultation rights

"(a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the

identifiable community of interest among the employees concerned and will promote effective dealings and efficiency in the agency's operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

"(1) except as provided in section 701(b) (1) of the Civil Service Reform Act of 1978, any management official, confidential employee, or supervisor;

"(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

"(3) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Any question with respect to the appropriate unit may be referred to the Authority for decision.

"(c) All elections shall be conducted under the supervision of the Authority or persons designated by the Authority and shall be by secret ballot. Employees eligible to vote shall be provided the opportunity to choose the labor organization they wish to represent them from among those on the ballot and, except in the case of an election described in paragraph (4), the opportunity to choose not to be represented by a labor organization. Elections may be held to determine whether a labor organization should—

"(1) be recognized as the exclusive representative of employees in a unit;

"(2) replace another labor organization as the exclusive representative;

"(3) cease to be the exclusive representative;

"(4) be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be

means, except that nothing in this section shall limit the right of persons to judicial review of questions arising under the Constitution of the United States.

"SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES, AGENCIES AND LABOR ORGANIZATIONS

"§ 7211. Employees' rights

"(a) Each employee shall have the right freely and without fear of penalty or reprisal to form, join, or assist any labor organization, or to refrain from such activity, and each employee shall be protected in exercising such rights. Except as otherwise provided under this chapter, such rights include the right to—

"(1) participate in the management of a labor organization,

"(2) act for the organization in the capacity of a representative,

"(3) present, in such representative capacity, the views of the organization to agency heads and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(4) bargain collectively, subject to the title, through representatives of their own choosing.

"(b) This chapter does not authorize—

"(1) a management official, a confidential employee, or a supervisor to participate in the management of a labor organization or to act as a representative of such an organization, unless such participation or activity is specifically authorized by this chapter, or

"(2) any employee to so participate or act if such participation or activity would result in any conflict of interest, or appearance thereof, or would otherwise be inconsistent with any law or the official duties of the employee.

"§ 7212. Recognition of labor organizations

"(a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which

Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit if a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights shall not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights if the labor organization ceases to qualify under the established criteria.

"(b) If a labor organization has been accorded national consultation rights, the agency shall notify representatives of such organization of proposed substantive changes in personnel policies that affect employees such organization represents and provide an opportunity for such organization to comment on the proposed changes. Such organization may suggest changes in the agency's personnel policies and have its views carefully considered. Representatives of such organization may consult, at reasonable times, with appropriate officials on personnel policy matters and may, at all times, present in writing the organization's views on such matters. An agency is not required to consult with any such organization on any matter on which it would not be required to negotiate if the organization were entitled to exclusive recognition.

"(c) Any question with respect to the eligibility of a labor organization for national consultation rights may be referred to the Authority for decision.

"§ 7214. Exclusive recognition

"(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

"(b) A unit may be established on an agency, plant, installation, craft, functional, or other basis which will assure a clear and

recognized in the existing separate units.

An election not be held to determine whether an organization should become, or continue to be recognized as, the exclusive representative of the employees in any unit, or subdivision thereof, during the 12-month period after a valid election has been held under this chapter with respect to such unit.

"§ 7215. Representation rights and duties

"(a) If a labor organization has been accorded exclusive recognition, such organization shall be—

"(1) the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit;

"(2) responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership; and

"(3) given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

"(b) An agency and an exclusive representative shall have a duty to negotiate in good faith and in exercising such duty shall—

"(1) approach the negotiations with a sincere resolve to reach an agreement;

"(2) be represented at the negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters;

"(3) meet at such reasonable times and places as may be necessary; and

"(4) execute upon request of the agency or the organization a written document embodying the terms of, and take such steps as are necessary to implement, any agreement which is reached.

"(c) An agency and an exclusive representative shall, through appropriate representatives, negotiate in good faith as prescribed under subsection (b) of this section with respect to personnel policies and prac-

tices and matters affecting working conditions but only to the extent appropriate under laws and regulations, including policies which—

“(1) are set forth in the Federal Personnel Manual,

“(2) consist of published agency policies and regulations for which a compelling need exists (as determined under criteria established by the Authority) and which are issued at the agency headquarters level or at the level of a primary national subdivision, or

“(3) are set forth in a national or other controlling agreement entered into by a higher unit of the agency.

In addition, such organization and the agency may determine appropriate techniques consistent with section 7222 of this title, to assist in any negotiation.

“(d) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall give due regard to the obligation to negotiate imposed by this section, except that such obligation does not include an obligation to negotiate with respect to matters concerning the number of employees in an agency, the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty, or the technology of performing the agency's work. The preceding sentence shall not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

“(e)(1) If, in connection with negotiations, an issue develops as to whether a proposal is negotiable under this chapter or any other applicable law, regulation, or controlling agreement, it shall be resolved as follows:

“(A) An issue which involves interpretation of a controlling agreement at a higher

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

“(5) to refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

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

“(b) It shall be an unfair labor practice for a labor organization—

“(1) to interfere with, restrain, or coerce an employee in connection with the exercise of the rights assured by this chapter;

“(2) to cause or attempt to cause an agency to coerce an employee in the exercise of rights under this chapter;

“(3) to coerce or attempt to coerce an employee, or to discipline, fine or take other economic sanction against a member of the labor organization, as punishment or reprisal or for the purpose of hindering or impeding work performance, productivity, or the discharge of duties of such employee;

“(4) to—

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

“(B) condone any activity described in subparagraph (A) by failing to take action to prevent or stop it;

“(5) to discriminate against an employee with regard to the terms or conditions of membership in the organization because of race, color, religion, national origin, sex, age, or handicapping condition; or

“(6) to refuse to consult or negotiate in good faith with an agency as required by this chapter.

“(c) It shall be an unfair labor practice for a labor organization which is accorded ex-

nization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

“(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

“(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

“(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

“(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

“(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

“(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with

agency level is resolved under the procedures of the controlling agreement, or, if none, under regulations prescribed by the agency.

"(B) An issue not described in paragraph (1) which arises at a local level may be referred by either party to the head of the agency for determination.

"(2) An agency head's determination under paragraph (1) concerning the interpretation of the agency's regulations with respect to a proposal shall be final.

"(3) A labor organization may appeal to the Authority from a decision under paragraph (1) if it—

"(A) disagrees with an agency head's determination that a proposal is not negotiable under this chapter or any other applicable law or regulation of appropriate authority outside the agency, or

"(B) believes that an agency's regulations, as interpreted by the agency head, are in violation of this chapter or any other applicable law or regulation of appropriate authority outside the agency, or are not otherwise applicable to bar negotiations under subsection (c) of this section.

"§ 7216. Unfair labor practices

"(a) It shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, unless such assistance consists of furnishing customary and routine services and facilities—

"(A) in a manner consistent with the best interest of the agency, its employees, and the organization, and

"(B) on an impartial basis to organizations (if any) having equivalent status;

clusive recognition to deny membership to an employee in an appropriate unit unless such denial is for failure to meet reasonable occupational standards uniformly required for admission or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This subsection shall not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws which conform to the requirements of this chapter.

"(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under sections 7221 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or as an unfair labor practice under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this chapter nor as a precedent for such decisions. All complaints of unfair labor practices prohibited under this section that cannot be resolved by the parties shall be filed with the Authority.

"(e) Any question with respect to whether an issue can properly be raised under an appeals procedure shall be referred for resolution to the agency responsible for final decisions relating to those issues.

"§ 7217. Standards of conduct for labor organizations.

"(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the orga-

governing requirements comparable in purpose to those required by subsection (a) of this section; or

"(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

"(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary, provide for bonding of officials and with trusteeship and election standards

"(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such action as he considers appropriate to carry out the policies of this section.

"§ 7218. Basic provisions of agreements

"(a) Each agreement between an agency and a labor organization shall provide the following:

"(1) In the administration of all matters covered by the agreement, officials and employees shall be governed by—

"(A) existing or future laws and the regulations of appropriate authorities, including policies which are set forth in the Federal Personnel Manual,

"(B) published agency policies and regulations in existence at the time the agreement was approved, and

"(C) subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

"(2) Management officials of the agency

shall retain the right to determine the mission, budget, organization, and internal security practices of the agency, and the right, in accordance with applicable laws and regulations, to—

“(A) direct employees of the agency;

“(B) hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

“(C) relieve employees from duties because of lack of work or for other legitimate reasons;

“(D) maintain the efficiency of the Government operations entrusted to such officials;

“(E) determine the methods, means, and personnel by which such operations are to be conducted; and

“(F) take such actions as may be necessary to carry out the mission of the agency in situations of emergency.

“(b) Nothing in subsection (a) of this section shall preclude the parties from negotiating—

“(1) procedures which management will observe in exercising its authority to decide or act in matters reserved under such subsection; or

“(2) appropriate arrangements for employees adversely affected by the impact of management's exercising its authority to decide or act in matters reserved under such subsection,

except that such negotiations shall not unreasonably delay the exercise by management of its authority to decide or act, and such procedures and arrangements shall be consistent with the provisions of any law or regulation described in 7215(c) of this title, and shall not have the effect of negating the authority reserved under subsection (a).

“(c) Nothing in the agreement shall re-

and to the extent not contrary to any law, the coverage and scope of the procedure shall be negotiated by the parties to the agreement. Except as otherwise provided in this section, such procedure shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage.

“(b) Any employee or group of employees in the unit may present grievances falling within the coverage of the negotiated grievance procedure to the agency and have them adjusted without the intervention of the exclusive representative if the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given an opportunity to be present at the adjustment.

“(c) A negotiated grievance procedure shall provide for arbitration as the final step of the procedure. Arbitration may be invoked only by the agency or the exclusive representative. Except as provided in subsection (g) of this section, the procedure must also provide that the arbitrator is empowered to resolve questions as to whether or not any grievance is on a matter subject to arbitration under the agreement.

“(d) A negotiated grievance procedure may cover any matter within the authority of an agency if not inconsistent with the provisions of this chapter, except that it may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security, or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

“(e) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or

prohibited by any law administered by the Equal Employment Opportunity Commission.

“(g) A question that cannot be resolved by the parties as to whether or not a grievance is on a matter excepted by subsection (d) of this section shall be referred for resolution to the agency responsible for final decisions relating to those matters.

“(h) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, an arbitrator shall be governed by the provisions of section 4303 (f) or 7701(d) of this title, as applicable.

“(i) Allocation of the costs of the arbitration shall be governed by the collective-bargaining agreement. An arbitrator shall have no authority to award attorney or other representative fees, except that in matters where an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination prohibited by any law referred to in section 7701(h) of this title attorney fees may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k)).

“(j) Either party may file exceptions to any arbitrator's award with the Authority, except that no exceptions may be filed to awards concerning matters covered under subsection (e) of this section. The Authority shall sustain a challenge to an arbitrator's award only on grounds that the award violates applicable law, appropriate regulation, or other grounds similar to those applied by Federal courts in private sector labor-management relations. Decisions of the Authority on exceptions to arbitration awards shall be final, except for the right of an aggrieved employee under subsection (f) of this

quire an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

"(d) The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

"§ 7219. Approval of agreements

"An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or his designee. An agreement shall be approved within 45 days from the date of its execution if it conforms to this chapter and other applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation), and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within 45 days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of this chapter, other applicable laws, and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under agency regulations.

"SUBCHAPTER III—GRIEVANCES AND IMPASSES

"§ 7221. Grievance procedures

"(a) An agreement between an agency and a labor organization which has been accorded exclusive recognition shall provide a procedure, applicable only to the unit, for the consideration of grievances. Subject to the provisions of subsection (d) of this section

under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

"(f) An aggrieved employee affected by a prohibited personnel practice under section 2302(b) (1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties, negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to subsections (h) and (i) of section 7701 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type

section.

"(k) In matters covered under sections 4303 and 7512 of this title which have been raised under the provisions of the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, the provisions of section 7702 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Merit Systems Protection Board. In matters similar to those covered under sections 4303 and 7512 which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

"§ 7222. Federal Service Impasse Panel; negotiation impasses

"(a) (1) There is established within the Authority, as a distinct organizational entity, the Federal Service Impasses Panel. The Panel is composed of the Chairman, and an even number of other members, appointed by the President solely on the basis of fitness to perform the duties and functions of the Office, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. No employee (as defined under section 2105 of this title) shall be appointed to serve as a member of the Panel.

"(2) At the time the members of the Panel (other than the Chairman) are first appointed, half shall be appointed for a term of 1 year and half for a term of 3 years. An individual appointed to serve as the Chairman shall serve for a term of 5 years. A successor of any member shall be appointed for terms of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member whom

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such individual replaces. Any member of the Panel may be removed by the President.

"(3) The Panel may appoint an executive secretary and such other employees as it may from time to time find necessary for the proper performance of its duties. Each member of the Panel is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule for each day the member is engaged in the performance of official business on the work of the Panel, including travelttime, and is entitled to travel expenses and a per diem allowance under section 5703 of this title.

"(b) Upon request, the Federal Mediation and Conciliation Service shall provide services and assistance to agencies and labor organizations in the resolution of negotiation impasses.

"(c) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Panel to consider the matter.

"(d) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (c) of this section. The Panel shall consider the matter and shall either recommend procedures to the parties for the resolution of the impasse or assist the parties in arriving at a settlement through such methods and procedures, including fact finding and recommendations, as it may find appropriate to accomplish the purposes of this section. Arbitration, or third-party fact finding with recommendations to assist in the resolution of an impasse, may be used by the parties only when authorized or directed by the Panel. If the parties do not arrive at a settlement, the Panel may hold hearings, compel under section 7234 of this title the attendance of witnesses and the production of documents, and

reasonable number of such employees (not normally in excess of the number of management representatives) to negotiate on official time for up to 40 hours, or up to one-half the time spent in negotiations during regular working hours.

"§ 7233. Remedial actions

"If it is determined by appropriate authority, including an arbitrator, that certain action will carry out the policies of this chapter, such action may be directed by the appropriate authority if consistent with law, including section 5596 of this title.

"§ 7234. Subpenas

"(a) Any member of the Authority, including the General Counsel, any member of the Panel, and any employee of the Authority designated by the Authority may—

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, except that no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

"(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a) (1), the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as

the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority serving on the effective date of this section shall continue in effect until such time as such term would expire under Reorganization Plan Numbered 2 of 1978, and upon expiration of such term, appointments to such office shall be made under section 7203 of title 5, United States Code. Any term of office of any member of the Federal Service Impasses Panel serving on the effective date of this section shall continue in effect until such time as members of the Panel are appointed pursuant to section 7222 of title 5, United States Code.

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out the functions and purposes of this section.

(e) The table of chapters for subpart F of part III of title 5, United States Code, is amended by adding after the item relating to chapter 71 the following new item:

"72. Federal Service Labor-Management Relations..... 7201".

(f) Section 5314 of title 5, United States Code, is amended by adding at the end thereof:

"(69) Chairman, Federal Labor Relations Authority."

(g) Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

"(124) Members (2), Federal Labor Relations Authority."

(h) Section 5316 of title 5, United States Code, is amended by adding at the end thereof:

"(145) General Counsel, Federal Labor Relations Authority."

REMEDIAL AUTHORITY

SEC. 702. Section 5596 of title 5, United States Code, is amended by striking out subsections (b) and (c) and inserting in lieu

take whatever action is necessary and not inconsistent with the provisions of this chapter to resolve the impasse. Notice of any final action of the Panel shall be promptly served upon the parties and such action shall be binding upon them during the term of the agreement unless the parties mutually agree otherwise.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7231. Allotments to representatives

"(a) If, pursuant to an agreement negotiated in accordance with the provisions of this chapter, an agency has received from an employee in a unit of exclusive recognition a written assignment which authorizes the agency to deduct from the wages of such employee amounts for the payment of regular and periodic dues of the exclusive representative for such unit, such assignment shall be honored. Except as required under subsection (b) of this section, any such assignment shall be revocable at stated intervals of not more than 6 months.

"(b) An allotment for the deduction of labor organization dues terminates when—

"(1) the dues withholding agreement between the agency and the exclusive representative is terminated or ceases to be applicable to the employee; or

"(2) the employee has been suspended or expelled from the labor organization which is the exclusive representative.

"§ 7232. Use of official time

"Solicitation of membership or dues and other internal business of a labor organization shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except that the negotiating parties may agree to arrangements which provide that the agency will authorize a rea-

sonable absence from work for the purpose of a contempt thereof.

"(c) Witness (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"§ 7235. Regulations

"The Authority, including the General Counsel and the Panel, and the Federal Mediation and Conciliation Service shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to them. Unless otherwise specifically provided in this chapter, the provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation."

(b) (1) The amendments made by subsection (a) shall not preclude—

(A) the renewal or continuation of an exclusive recognition, certification of a representative, or a lawful agreement between an agency and a representative of its employees entered into before the effective date of this section; or

(B) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this section.

(2) Policies, regulations, and procedures established, and decisions issued, under Executive Order Numbered 11491, or under the provision of any related Executive order in effect on the effective date of this section, shall remain in full force and effect until revised or revoked by Executive order or statute, or unless superseded by appropriate decision or regulation of the Federal Labor Relations Authority.

(c) Any term of office of any member of

thereof the following:

"(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority to have suffered a withdrawal, reduction, or denial of all or part of the employee's pay, allowances, differentials, or other monetary or employment benefits, or a denial of an increase in such pay, allowances, differentials, or other monetary or employment benefits, which would not have occurred but for unjustified or unwarranted action taken by the agency—

"(1) is entitled, on correction of the action—

"(A) to be made whole for all losses suffered less, in applicable circumstances, interim earnings; and

"(B) if appropriate, to reinstatement or restoration to the same or a substantially similar position, or promotion to a higher level position; and

"(2) for all purposes is deemed to have performed service for the agency during the period of the unjustified or unwarranted action, except that—

"(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office of Personnel Management shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

"(c) For the purposes of this section—

"(1) 'unjustified or unwarranted action' includes—

"(A) any act of commission, either substantive or procedural, which violates or improperly applies a provision of law, Executive order, regulation, or collective bargaining agreement; and

"(B) any act of omission, or failure to take an action, or confer a benefit, which must be taken or conferred under a non-discretionary provision of law, Executive order, regulation, or collective-bargaining agreement;

"(2) 'administrative determination' includes, but is not limited to, a decision, award, or order issued by—

"(A) a court having jurisdiction over the matter involved;

"(B) the Office of Personnel Management;

"(C) the Merit Systems Protection Board;

"(D) the Federal Labor Relations Authority;

"(E) the Comptroller General of the United States;

"(F) the head of the employing agency or an agency official to whom corrective action authority is delegated; or

"(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management;

"(3) 'appropriate authority' includes, but is not limited to—

"(A) a court having jurisdiction;

"(B) the Office of Personnel Management;

"(C) the Merit Systems Protection Board;

"(D) the Federal Labor Relations Authority;

"(E) the Comptroller General of the United States;

"(F) the head of the employing agency or agency official to whom corrective action authority is delegated; or

"(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management.

"(d) The provisions of this section shall

Mr. COLLINS of Texas. Mr. Chairman, I am rising to offer an amendment for the committee's version of title VII, dealing with labor-management relations in the Federal civil service.

Under the provisions of the committee's bill, our longstanding policy toward labor relations between Federal employees and their government employer would be drastically altered. Knowing this, and afraid of the outcome when the committee's bill was brought to the floor, the Carter administration has been attempting to negotiate with various members of the committee in the hope of reaching some sort of compromise between what the administration wants and what the committee wants to give them.

Although I have not been a participant in these 11th-hour negotiations, I have a solution to the problem now facing the administration.

My amendment is virtually identical to the bill reported by the Senate Committee on Governmental Affairs before the Senate acted on S. 2640, and it reflects what I understand to be the administration's position on codifying our present Executive order program of labor-management relations.

The amendment establishes a Federal Labor Relations Authority and creates a legislated program for our labor-management relations, following the basic charter or our existing Executive order program.

My offering of what is the administration's requested language for this title

SCOPE OF BARGAINING

The amendment permits bargaining only on those personnel policies, practices and matters affecting working conditions that are not limited by laws and excludes Government-wide regulations, as well as agency regulations for which "compelling need" exists.

The amendment sets up two categories of "management rights":

Bargaining would be permitted but not required on number of employees in agency; on the numbers, types, and grades assigned to a unit, project, or tour of duty; or on the technology of performing work.

Bargaining would be prohibited on mission, budget, organization, and internal security of agency; as well as one management's retained right in accordance with applicable laws and regulations to direct employees to hire, promote, transfer, assign, and retain employees; to suspend, demote, discharge, or take other disciplinary action against employees; relieve employees from duty because of lack of work; to maintain efficiency of operations; to determine methods, means and personnel for accomplishing work; and on ability to take necessary actions in emergencies.

The House committee bill, on the other hand, broadly defines scope of bargaining by saying that "conditions of employment" excludes only matter relating to discrimination, political activities, and those few specifically prescribed by law—for example, pay and benefits.

Under the committee's bill, all agency

not apply to reclassification actions nor shall they authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

"(e) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees."

Page 143, beginning on line 19, strike out "Section 7203 of title 5, United States Code (as redesignated in section 703(1) of this Act)" and insert in lieu thereof "Section 7153 of title 5, United States Code."

Page 284, beginning on line 14, strike out "supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively)" and insert in lieu thereof "management official or supervisor (as defined in paragraphs (10) and (11) of section 7203 of this title, respectively)".

Page 376, beginning on line 1, strike out "before '7203' (as added in section 703(d)(2) of this Act)" and insert in lieu thereof "before '7153'".

Page 386, beginning on line 1, strike out "7203, and 7204 (as redesignated in section 703(a)(1) of this Act)," and insert in lieu thereof "7153, and 7154."

Conform the table of contents accordingly.

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that my amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

of the bill, and what has already been agreed to by the Senate committee should go a long way in avoiding complications as we finish out this session and could well insure final passage of the Civil Service Reform Act itself.

I want to point out that my amendment does not give Federal employees the right to strike, does not allow for an agency shop arrangement, and does not require employees in a bargaining unit who choose not to belong to a union to pay any fees for union representation.

The new Authority, which will come into being between now and next January 1 by virtue of passage of Reorganization Plan No. 2 of 1978, will carry out the functions formerly performed by the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

The amendment permits labor unions to bargain collectively over those personnel policies, practices and matters affecting working conditions that are within the authority of agency managers to agree to. It specifies those areas of decisionmaking which are reserved to management and may not be subject to the collective bargaining process.

The amendment also provides statutory permission allowing labor unions to bargain on the creation of arbitration mechanisms for resolving adverse actions—such as demotions and discharges—and other appealable matters—such as grievances.

There are several major areas where the amendment is different from the bill as reported by the House committee, because my amendment incorporates the administration's proposals:

regulations and Government-wide regulations would be subject to bargaining, unless a compelling need is demonstrated for keeping them off the bargaining table.

The committee's bill sets up only one category of management rights:

Bargaining would be prohibited only on management's retained right to determine the mission, budget, organization and number of employees in an agency, and on the internal security of an agency. Management would only be able to direct employees, to assign work—including contracting out—and to determine personnel for conducting agency operations, and to take necessary actions in emergencies.

GRIEVANCE ARBITRATION

The amendment permits grievance arbitration to cover any matter within the authority of an agency to decide but such arbitration may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security or the Fair Labor Standards Act.

The committee bill defines the scope of grievance arbitration in a fashion similar to its definition of "condition of employment" and includes discrimination and classification as matters for grievance arbitration. The only items excluded from an arbitration process would be political activities, retirement, life and health insurance, and suspension or removal for national security reasons.

USE OF GRIEVANCE ARBITRATION

The amendment provides that any negotiated procedure will be the exclu-

sive forum for use by employees in a bargaining unit on matters covered, except in adverse action and discrimination cases where employees may choose the negotiated arbitration procedure or the statutory appeal procedure, but not both.

The committee's bill provides no similar exclusivity. An employee may choose between the negotiated or statutory procedure on any matter covered.

JUDICIAL REVIEW OF FEDERAL LABOR RELATIONS AUTHORITY

My amendment provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Authority and are not subject to judicial review or enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under the substitute.

The committee's bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District court, which introduces the possibility of intolerable delays and unpredictable final decision by judges.

EXCLUSIVE RECOGNITION WITH AN ELECTION

The amendment continues our current procedures in requiring that an election must be held before exclusive recognition status can be granted by an agency to a union.

The committee's bill, however, departs substantially from our current practice by permitting the Federal Labor Rela-

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. UDALL, Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on line 12 of page 288 and ending on line 12 of page 348) and insert in lieu thereof the following:

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"Chapter 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.

"7101. Findings and purpose.

"7102. Employees' rights.

"7103. Definitions; application.

"7104. Federal Labor Relations Authority.

"7105. Powers and duties of the Authority.

"7106. Management rights.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS.

which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

tions Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of employees in the unit. This could be accomplished on the basis of a "card check," or by a petition.

UNFAIR LABOR PRACTICES—PICKETING

The amendment includes a prohibition against picketing which interferes or threatens to interfere with agency operations, which is a continuation of our current Executive order prohibition.

The committee bill, on the other hand, is unclear on the subject of picketing. Its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances, and if so, what recourse would an agency have if such picketing was not unfair labor practice?

DUES WITHHOLDING AND OFFICIAL TIME

The amendment allows unions to enter into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revocable at 6-month intervals. Both of these provisions are identical to our current program.

The committee bill, on the other hand, departs from our current program by requiring an agency to deduct dues at the request of an exclusion union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

"Sec.

"7111. Exclusive recognition of labor organizations.

"7112. Determination of appropriate units for labor organization representation.

"7113. National consultation rights.

"7114. Representation rights and duties.

"7115. Allotments to representatives.

"7116. Unfair labor practices.

"7117. Duty to bargain in good faith; compelling need; duty to consult.

"7118. Prevention of unfair labor practices.

"7119. Negotiation impasses; Federal Service Impasses Panel.

"7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

"Sec.

"7121. Grievance procedures.

"7122. Exceptions to arbitral awards.

"7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.

"7131. Reporting requirements for standards of conduct.

"7132. Official time.

"7133. Subpenas.

"7134. Compilation and publication of data.

"7135. Regulations.

"7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

or

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority; or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(g) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove

diction of the Equal Employment Opportunity Commission;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(C) relating to the classification of any position; or

"(D) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

— "(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) (i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive repre-

inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with, the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter.

"(C) intervene before the Authority in

employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the juris-

isdiction of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(1) on the basis of an election, or

"(11) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

"(1) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or security work, and

"(2) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct,

proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section

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3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(e) (1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(i) any other appropriate source; and

"(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b) (1) If a petition is filed with the Authority—

"(A) by any person alleging—

"(1) in the case of an appropriate unit for which there is no exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(ii) in the case of an appropriate unit for which there is an exclusive representative

come of the election, it shall conduct a new election by secret ballot in accordance with such requirements as are appropriate on the basis of its determination, and shall certify the results thereof.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) The Authority may, on the petition of a labor organization, certify the labor organization as an exclusive representative—

"(g) In order to carry out its functions under this chapter, the Authority may—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7233 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a) (6) (C) or 5596(b) (1) (B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"§ 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from—

"(1) among properly ranked and certified candidates for promotion; or

that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(B) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. Except as provided under subsection (e) of this section, if the Authority finds on the record of the hearing that a question of representation exists, the Authority shall, subject to paragraph (2) of this subsection, conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit of in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(2) (A) If, after the 60-day period beginning on the date on which the petition is filed pursuant to paragraph (1) of this subsection, unresolved issues exist concerning—

"(i) the appropriateness of the unit in accordance with section 7112 of this title;

"(ii) the eligibility of one or more employees to vote in the proposed election; or

"(iii) other matters determined by the Authority to be relevant to the election;

the Authority shall direct an election by secret ballot in the unit specified in the petition and announce the results thereof.

"(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of any disputed issues described in subparagraph (A) of this paragraph. If the Authority determines that matters raised by the disputed issues did not affect the outcome of the election, the Authority shall certify the results of the election. If the Authority determines that the matters affected the out-

"(1) if, after investigation, the Authority determines that the conditions for a free and untrammelled election under this section cannot be established because the agency involved has engaged in or is engaging in an unfair labor practice described in section 7116(a) of this title; or

"(2) if, after investigation, the Authority determines that—

"(A) the labor organization represents a majority of employees in an appropriate unit;

"(B) the majority status was achieved without the benefit of any unfair labor practice described in section 7116 of this title;

"(C) no other person has filed a petition for recognition under subsection (b) of this section or a request for intervention under subsection (c) of this section; and

"(D) no other question of representation exists in the appropriate unit.

"(f) Any labor organization described in section 7103(a) (16) (B) (ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(g) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(h) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between

the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

“(A) the collective bargaining agreement has been in effect for more than 3 years, or

“(B) the petition for exclusive recognition is filed not more than 120 days and not less than 60 days before the expiration date of has been in effect for more than 3 years, or

“(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

“(1) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

“§ 7112. Determination of appropriate units for labor organization representation

“(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

“(b) A unit shall not be determined to be appropriate under this section solely on the

be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

“(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

“§ 7113. National consultation rights

“(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

“(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

“(A) be informed of any substantive change in conditions of employment proposed by the agency, and

“(B) be permitted reasonable time to present its views and recommendations regarding the changes.

“(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organiza-

“(1) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

“(11) the employee requests such representation.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

“(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

“(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

“(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

“(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

“(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining;

basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

"(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization,

tion—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3) (B) of this subsection to be represented by an exclusive representative.

"(3) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

"(B) any investigatory interview of an employee in the unit by a representative of the agency if—

and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(6) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the

deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices

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

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

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

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

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

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as re-

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

Nothing in paragraph (7) shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedure negotiated pursuant to section 7121 of this title; may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or

division, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 15th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

quired by this chapter;

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; or

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

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

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

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

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

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

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

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

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

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

a precedent for any such determination.

"7117. Duty to bargain in good faith; compelling need; duty to consult

"(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of this subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national sub-

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which

the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"7118. Prevention of unfair labor practices

"(a) (1) If an agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-

month period, the Authority may issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(7) requiring an award of reasonable attorney fees;

"(D) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(E) including any combination of the actions described in subparagraphs (A) through (D) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in na-

term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall

month period referred to in subparagraph (A) of this paragraph by reason of—

"(1) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence on hear argument.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and

ture and shall not be binding on the Authority.

"§ 7119. Negotiation Impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired

term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings,

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES**"§ 7121. Grievance procedures**

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and

make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question

review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS**"§ 7131. Reporting requirements for standards of conduct**

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after

issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because—

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and

determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that here were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to

reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

“§ 7183. Subpenas

“(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

“(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

“(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a) (1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

“§ 7134. Compilation and publication of data

“(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

“(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a

determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

“(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

“(B) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7105(h) of this title; and

“(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(B) annual leave credit under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be

ber of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

“Subpart F—Employee Relations

“71. Policies----- 7101”
and inserting in lieu thereof

“Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations--- 7101

“72. Antidiscrimination; Right to Petition Congress----- 7201”

(2) Section 3302(2) of title 5, United States Code, is amended by striking out “and 7154” and inserting in lieu thereof “and 7204.”

(c) (1) Section 2105(c) (1) of title 5, United States Code, is amended by striking out “7152, 7153” and inserting in lieu thereof “7202, 7203”.

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out “7154 of title 5” and inserting in lieu thereof “7204 of title 5”.

(4) Section 410(b) (1) of title 39, United States Code, is amended by striking out “chapters 71 (employee policies)” and inserting in lieu thereof the following: “chapters 72 (antidiscrimination; right to petition Congress)”.

(5) Section 1002(g) of title 39, United States Code, is amended by striking out “section 7102 of title 5” and inserting in lieu thereof “section 7211 of title 5”.

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

“(124) Chairman, Federal Labor Relations Authority.”

of this title.

“§ 7135. Regulations

“The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

“§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

“(a) Nothing contained in this chapter shall preclude—

“(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

“(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

“(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.”.

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code, is amended to read as follows:

“(b) An employee of an agency who, on the basis of a timely appeal or an administrative

included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

For the purpose of this subsection, ‘grievance’ and ‘collective bargaining agreement’ have the meanings set forth in section 7103 of this title, ‘unfair labor practice’ means an unfair labor practice described in section 7116 of this title, and ‘personnel action’ includes the omission or failure to take an action or confer a benefit.”.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

“Chapter 72—ANTIDISCRIMINATION;
RIGHT TO PETITION CONGRESS

“SUBCHAPTER I—ANTIDISCRIMINATION
IN EMPLOYMENT

“Sec.
“7201. Antidiscrimination policy; minority recruitment program.

“7202. Marital status.

“7203. Handicapping condition.

“7204. Other prohibitions.

“SUBCHAPTER II—EMPLOYEES’ RIGHT
TO PETITION CONGRESS

“7211. Employees’ right to petition Congress.”;

and

(3) by adding at the end thereof the following new subchapter:

“SUBCHAPTER II—EMPLOYEES’ RIGHT
TO PETITION CONGRESS

“§ 7211. Employees’ right to petition Congress

“The right of employees, individual or collectively, to petition Congress or a Mem-

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

“(145) Members, Federal Labor Relations Authority (2), and its General Counsel.”.

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d) (1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that

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the amendment offered as a substitute for the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, we are about to reach what I think is the final major controversy in this bill and one of the major points that occupied our time in the Committee on Post Office and Civil Service.

We decided on Monday night in a vote on the Erlenborn amendment that we were going to have a title VII. The question I hope we can resolve this morning is what kind of a title VII we will have. We have basically two alternatives now before us: The Collins amendment, which is a complete rewrite of this title, and the substitute amendment which I have just offered.

I appeal to my colleagues, as we debate and consider and resolve this issue, that we not let this be turned into some kind of a bitter replay of the debate that we have had in this House on labor-management bills earlier in this session. I hope this will not dissolve into a bitter labor-management fight because there is not any basis for it.

This is not the old right-to-work controversy, for example; it is not the old 14(b) controversy. There is a right-to-work provision on page 290 of the bill

eral Register this basic plan of President Kennedy's that has worked so well in the last 15 years. No one seems to be arguing much about that anymore.

The Federal employee unions do not get much out of this amendment process that is not already in the Executive order. They do gain in my substitute some guarantees about procedures that management must follow. They get to arbitrate some things that now go through a torturous appeal process—things involving various labor grievances.

It would be a mistake to view this title VII or my substitute as some kind of a labor bill that is attached to an unrelated bill dealing with management prerogatives in the Federal service. This is how I view what we are trying to do here: It moves to meet some of the legitimate concerns of the Federal employee unions as an integral part of what is basically a bill to give management the power to manage and the flexibility that it needs.

But I say this in two respects. One, it gives some balance. We are saying to the Federal employees that we are going to give management some broad new rights here in this legislation, we are going to enable them to move. And employee organizations are saying, in turn, that they are entitled to have a more independent, secure position from which to deal with management as it operates under this new freedom in the bill.

Second, the arbitration provision I view as much of a gain for management as for labor. The Federal managers now,

essential management prerogatives and flexibility, while safeguarding the fundamental rights of employees and their representatives. The bill section numbers and the code section numbers and headings are, with one small exception (the words "duty to consult" are added to the heading of Code section 7117), identical to those of the Committee's Title VII. Where no change is made in the provisions of a section as reported by the Committee, this is so stated. Any changes in the substance of a section are noted and explained. Minor changes in wording or punctuation which do not change the meaning of a section are not noted.

SECTION 7101

Section 7101. Findings and purpose: No change.

Section 7102. Employees' rights: No change.

Section 7103. Definitions; applications: Two changes are made. First, the definition of "conditions of employment" (subsection (a)(14)) is amended. Paragraph (A) is clarified to provide for the exclusion of policies, practices, and matters relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, "within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission." The reported paragraph (C) is redesignated as paragraph (D). The new paragraph (C) excludes from "conditions of employment" any policy, practice, or matter relating to the "classification of any position." The effect of this new exclusion would be to remove the classification of positions from collective bargaining. This change is designed to help ensure the continuation of classification uniformity throughout the Federal Government. The term "classification of any position" encompasses all positions and jobs, including white-collar and

that is in my amendment and which would gladden the heart of the gentleman from Ohio, JOHN ASHBROOK, if he were here, and other Members who have engaged in this debate over the years. This is not situs picketing or it is not the Labor Reform Act of 1977, although some of these things are involved in our discussion.

There is nothing before us today in the substitute about the right of public employees to strike. As the gentleman from Michigan (Mr. FORD) said the other day, no one is seriously talking about that this year. That is outside the scope of this legislation entirely.

There is not really any argument in this bill or in this title about Federal collective bargaining for wages and fringe benefits and retirement—the kinds of things that are giving us difficulty in the Postal Service today. All these major regulations about wages and hours and retirement and benefits will continue to be established by law through congressional action. Major management rights to hire and fire and determine staffing are preserved in my amendment.

What we really do is to codify the 1962 action of President Kennedy in setting up a basic framework of collective bargaining for Federal employees. This was good enough and acceptable enough to all segments of our society that it was left unchanged during the 8 years of the Nixon and Ford administrations. Either one of those Presidents with a stroke of a pen could have eliminated this and chose not to have it.

So we are now going to put into the United States Code instead of the Fed-

instead of having to go through difficult, complex appeal procedures, will be able to submit them to arbitration, and this is a gain for management.

As I have said, Mr. Chairman, the President's program basically deals with strengthening management, Senior Executive Service, merit pay for supervisors and management, separating the operating functions of the Civil Service Commission from the judicial functions.

None of these basic management tools are affected by my amendment.

The CHAIRMAN. The time of the gentleman from Arizona (Mr. UDALL) has expired.

(By unanimous consent, Mr. UDALL was allowed to proceed for 1 additional minute.)

Mr. UDALL. Mr. Chairman, in conclusion, let me say that perhaps the best guide to what we come down to with the Udall substitute is that it is barely acceptable to people such as the gentleman from Michigan (Mr. FORD) and my friend, the gentleman from Missouri (Mr. CLAY), who have been outstanding spokesmen for the rights of the Federal employee groups. It is acceptable barely to the Business Roundtable, which represents 190 of our largest corporations. It does not really please the administration. But it is the balance point. It is the middle ground, and I think we can go forward and pass a good Senate bill if we would take this one final step here in title VII in adopting my substitute.

SECTIONAL ANALYSIS OF TITLE VII SUBSTITUTE

The substitute makes numerous changes in Title VII as reported by the Committee. These changes are designed to guarantee

blue-collar.

The second change is to subsection (b), concerning the exclusion of agencies and agency subdivisions, for national security reasons, from coverage by the labor-management relations provisions to be created by Title VII. The reported bill requires an agency seeking such an exclusion to apply to the Federal Labor Relations Authority, which would review and investigate the matter, and then issue a decision either granting or denying the exclusion. The substitute's subsection (b) would give to the President the power to exclude agencies and agency subdivisions from coverage for national security reasons. The President could do this, in his or her sole discretion, by order.

Section 7104. Federal Labor Relations Authority: No change.

Section 7105. Powers and duties of the Authority: Two subsections are added. A new subsection (h) directs and empowers the Authority to establish, by regulation, standards to be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with the provisions being established by Title VII of this bill.

A new subsection (i) would allow the Federal Labor Relations Authority to represent itself (except in litigation before the U.S. Supreme Court) in any civil action brought in connection with any function carried out by the Authority pursuant to title 5 of the United States Code or as otherwise authorized by law. Under this subsection, the Authority would not have to seek Justice Department approval or representation in carrying out its litigation-related responsibilities (except in the U.S. Supreme Court). This provision is designed to help ensure the independence which will be essential to the proper functioning of the Authority. It also

will permit the Justice Department to represent agencies without the potential conflicts of interest that could arise if it also represented the Authority in the same case.

Section 7106. Management rights: Four changes increase the number of rights reserved to management. This substitute strengthens the "Management rights" section reported by the Committee, but it is still to be treated narrowly as an exception to the general obligation to bargain over conditions of employment.

Subsection (a)(2)(A) is expanded to reserve to management, the authority, in accordance with applicable law, to "hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees." The reported subsection (a)(2)(A) reserves only the right to "direct employees". The new language preserves management's right to make the final decisions in these additional areas, in accordance with applicable laws, including other provisions of chapter 71 of title 5. For example, management has the reserved right to make the final decision to "remove" an employee, but that decision must be made in accordance with applicable laws and procedures, and the provisions of any applicable collective bargaining agreement. The reserved management right to "remove" would in no way affect the employee's right to appeal the decision through statutory procedures or, if applicable, through the procedures set forth in a collective bargaining agreement.

Subsection (a)(2)(C) of the substitute adds a new provision, guaranteeing management's right, with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source. The intent of this

determine the mission, budget, organization, number of employees, and internal security of the agency (the rights reserved in subsection (a)(1)), or appropriate arrangements for employees adversely affected by the exercise of management authority described in subsection (a).

Section 7111. Exclusive recognition of labor organizations: The substitute modifies the reported subsection (b)(2) by expanding the maximum time period during which secret ballot representation elections must be held from 45 days to 60 days.

The substitute also modifies the reported subsection (h)(3)(B) by changing the time period for filing a petition for exclusive recognition, where there is in effect a lawful written collective bargaining agreement, from "the 4-month period beginning on the 180th day before the expiration date" of the existing agreement, to "not more than 120 days and not less than 60 days before the expiration date" of the agreement.

Subsection (h)(4) of the substitute bars the according of exclusive representation to a labor organization where, within the previous 12 calendar months, the Authority has conducted a secret ballot election for the unit described in the petition, and in the election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative. The effect is to lend stability to the collective bargaining relationship by preventing challenges to incumbents by other unions for at least 12 months, while at the same time permitting elections in larger units during the 12-month period if no exclusive representative has been certified. The reported subsection (h)(4) bars the according of exclusive representation whenever an election involving any of the employees in the petitioned-for unit has been held during the previous 12 months.

Subsection (d) of the reported section 7112 is redesignated, substance unchanged, as subsection (e) in the substitute.

Section 7113. National consultation rights: Subsection (b)(1)(A) of the substitute requires that any labor organization having national consultation rights in connection with any agency be informed of "any substantive change" in conditions of employment proposed by the agency. The reported subsection (b)(1)(A) required that the labor organization be informed of "any change".

Section 7114. Representation rights and duties: Two important provisions in the reported bill's section 7114 are modified by the substitute.

The right of an employee to request representation by the exclusive representative and the right of an exclusive representative to be present at certain types of management-employee meetings are set forth in subsections (a)(2) and (a)(3) of the substitute. Subsection (a)(2) provides that before any representative of an agency commences any investigatory interview of an employee in a bargaining unit, where the interview concerns misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee must be informed of his or her right to be represented by the exclusive representative. Subsection (a)(3) provides that an exclusive representative has the right to be given the opportunity to be represented at: (1) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or personnel policy or practice or other general condition of employment; and (2), any investigatory interview of an employee in the unit by a representative of an agency if the employee reasonably believes that such interview may result in disciplinary action against the em-

provision is to preserve as bargainable (to the extent permitted by applicable laws and regulations) the standards, criteria, and procedures for establishing promotion certificates, while ensuring management's right to make the actual selection from the certificate, or to make the appointment from any other appropriate source.

The reported Title VII's subsection (a) (2) (C) is redesignated in the substitute as subsection (a) (2) (D), with one substantive change. Management is guaranteed the right to take whatever actions may be necessary to carry out the agency mission during emergencies. The reported bill reserves this right only in the case of national emergencies.

The reported subsections (b) (1) and (b) (2) are redesignated, with changes, as subsections (b) (2) and (b) (3). A new subsection (b) (1) is added to provide that nothing in the "Management rights" section shall preclude any agency and any labor organization from negotiating, at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

The amendment's subsections (b) (2) and (b) (3) provide that nothing in the section shall preclude negotiating the procedures which management officials of the agency will observe in exercising any authority under this section, or negotiating appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

The reported subsections (b) (1) and (b) (2) provide that nothing in the "Management rights" section shall preclude negotiating procedures management officials will observe in exercising their authority to

Section 7112. Determination of appropriate units for labor organization representation: Subsection (c) of the substitute provides that any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization which represents other individuals to whom such provision applies, or which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies. This provision, which is not found in the reported Title VII, is intended to help prevent conflicts of interest and appearances of conflicts of interest. For example, an employee of the National Labor Relations Board could not, under this provision, be represented by a labor organization which is subject to the National Labor Relations Act, or which is affiliated with an organization which is subject to the National Labor Relations Act.

Subsection (c) of the reported Title VII is redesignated as subsection (d) in the substitute, with two changes in substance. The new subsection (d) provides that two or more bargaining units in an agency for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority would then certify the labor organization as the exclusive representative of the new, larger unit. The analogous portion of the reported section 7112, subsection (c), requires that the labor organization be the exclusive representative of the existing, smaller units "by reason of election". It is also not specific as to the triggering of the consolidation process by petition, and the discretion of the Authority to direct or not to direct an election. The substitute's provisions should better facilitate the consolidation of small units.

employee, and the employee requests such representation.

The reported section 7114 provides the right of representation for any discussion between one or more representatives of the agency and one or more unit employees or their representatives concerning any grievance, personnel policy or practice, or other conditions of employment. By inserting the word "general" before "conditions of employment", the substitute limits the right of representation to those formal discussions (other than grievance discussions) which concern conditions of employment affecting employees in the unit generally.

The reported sections also differs from the substitute in providing the right of representation for "any discussion between an employee in the unit and a representative of the agency if the employee reasonably believes that the employee may be the subject of disciplinary action." The substitute provides the right for investigatory interviews, and stipulates that the employee must request representation before the right attaches. The substitute also provides that the employee must be informed of the right of representation before the commencement of any investigatory interview concerning misconduct which would reasonably lead to suspension, or reduction in grade or pay, or removal.

The substitute's provisions concerning investigatory interviews reflect the U.S. Supreme Court's holding in *National Labor Relations Board v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). In *Weingarten*, the Court upheld the Board's determination that the National Labor Relations Act provides a statutory "right of union representation at investigatory interviews which the employee reasonably believes may result in disciplinary action against him." 420 U.S. 251, at 267.

The Court also sustained the Board's shaping of "the contours and limits of the statu-

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tory right." 420 U.S. 251, at 256. First, the right inheres in the Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Second, "the right arises only in situations where the employee requests representation." Third, "the employee's right to request representation as a condition of participation in an interview is limited to situations where the employee reasonably believes the investigation will result in disciplinary actions." Fourth, "exercise of the right may not interfere with legitimate employer prerogatives." And fifth, "the employer has no duty to bargain with any union representative who may be permitted to attend the investigatory interview." 420 U.S. 251, at 256, 257, 258, 259.

The *Weingarten* right, of course, is tied to the National Labor Relations Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Other than this difference in derivation, the substitute's provisions differ from *Weingarten* only in providing that the employee must be informed of the right of representation prior to the commencement of any investigatory interview concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal.

The second area of change made by the substitute's section 7114 is in subsection (b) (4), concerning the obligation of an agency to provide data necessary for negotiations to the exclusive representative. The substitute qualifies this obligation by providing, in subsection (b) (4) (C), that data which constitutes "guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining" need not be furnished to the exclusive representative.

Section 7115. Allotments to representatives: No change

sions of agencies, bars to negotiation, subject to the "compelling need" test, except in cases in which an exclusive representative represents a bargaining unit which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable. In those latter cases, the agency or primary national subdivision rule or regulation is not, for purposes of that unit, a bar to negotiations on the subject matter of the rule or regulation.

If, for example, the Department of the Treasury issues a regulation which applies to employees of the Department, and an exclusive representative represents a unit which includes a majority of the employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit. Similarly, if the Department issues a regulation which applies to employees of the Internal Revenue Service (a primary national subdivision of the Department) and an exclusive representative represents a unit which includes a majority of IRS employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit in IRS.

Subsection (b) of the substitute sets forth a procedure for "compelling need" determinations for agency or primary national subdivision rules or regulations. When an exclusive representative alleges that no compelling need exists for a rule or regulation which an agency or primary national subdivision has invoked as a bar to negotiations, the Federal Labor Relations Authority takes jurisdiction and determines whether a compelling need exists. The Authority will prescribe regulations governing compelling need determinations. A finding of "no com-

minate when the labor organization no longer meets the Authority's prescribed criteria. The Authority shall resolve issues relating to a labor organization's eligibility for, or continuation of, consultation rights.

A labor organization having consultation rights must be informed of any substantive change in conditions of employment proposed by the agency and must be permitted reasonable time to present its views and recommendations regarding the proposed changes. The agency must consider any views or recommendations so presented before taking final action on any matter with respect to which the views or recommendations are presented, and must provide the labor organization a written statement of the reasons for taking the final action.

Section 7118. Prevention of unfair labor practices: The one change from the provisions of the reported bill's section 7118 is in subsection (a) (6) (D). Instead of empowers the Authority to require reinstatement of an employee "with backpay, together with interest thereon," the substitute empowers the Authority to require reinstatement of an employee with "backpay in accordance with section 5596 of this title." The applicable provision of section 5596, as amended by section 702 of this substitute, provides for backpay plus 5 percent, rather than "interest".

Section 7119. Negotiation impasses; Federal Service Impasses Panel: One change is made in the provisions of the reported bill's section 7119. In subsection (b) (2) of the reported section, the parties may agree to adopt a procedure for binding arbitration of a negotiation impasse. The substitute requires that the procedure agreed to by the parties is subject to approval by the Federal Service Impasses Panel.

Section 7120. Standards of conduct for

Section 7116. Unfair labor practices: The one change made adds a new labor organization unfair labor practice by expanding subsection (b)(7) to proscribe "picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations." A positive statement is added, however, after subsection (b)(8) to provide that nothing in subsection (b)(7) "shall result in any information picketing which does not interfere with an agency's operations being considered as an unfair labor practice."

Section 7117. Duty to bargain in good faith; compelling need; duty to consult: The substitute's section 7117 contains major changes effecting a significant alteration of the reported bill's scope of bargaining.

Under the reported bill, agency-wide rules or regulations are never a bar to negotiations, and any Government-wide rule or regulation may be removed as a bar to negotiations if there is no "compelling need" for the rule or regulation, as determined by the Federal Labor Relations Authority under the reported section 7117.

The substitute's section 7117 makes Government-wide rules or regulations an absolute bar to negotiations (subsection (a)(1)).

Subsection (a)(2) of the substitute provides that agency rules or regulations are a bar to negotiations, subject to subsection (a)(3), unless a finding of "no compelling need" for the rule or regulation is made by the Authority (as determined under regulations prescribed by the Authority).

Subsection (a)(3) states that the provisions of subsection (a)(2) apply to any rule or regulation issued by any agency, or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable.

The net effect of the substitute's subsection (a)(3) is to make rules or regulations of agencies, or of primary national subdivi-

pling need" may be made only if the issuing agency or primary national subdivision informs the Authority in writing that no compelling need exists, or if the Authority determines after a hearing that there is no compelling need. The Authority's General Counsel shall not be a party to a "compelling need" hearing, but the issuing agency or primary national subdivision shall be.

Subsection (c) of the substitute provides an expedited appeals system for resolving negotiability disputes other than those involving "compelling need" determinations. The reported Title VII provides that such disputes be resolved through the unfair labor practice mechanism. The substitute provides that an exclusive representative may appeal an agency's allegation of non-negotiability to the Authority. The appeal may be filed, on or before the 15th day after the date on which the agency first makes its allegation, by filing a petition with the Authority and furnishing a copy to the head of the agency. On or before the 15th day after the agency head receives the copy of the petition, the agency must file a statement with the Authority either withdrawing the allegation or setting forth in full its reasons supporting the allegation. A copy is to be furnished to the exclusive representative, which then has 15 days to file a response with the Authority. The Authority shall expedite proceedings to the extent practicable and shall issue a written decision and supporting reasons at the earliest practicable date.

Subsection (d) of the substitute provides for consultation rights concerning Government-wide rules or regulations. A labor organization which is the exclusive representative of a substantial number of employees (as determined in accordance with criteria prescribed by the Authority) shall be granted consultation rights by any agency issuing a Government-wide rule or regulation effecting any substantive change in any condition of employment. Consultation rights shall ter-

labor organizations: No change.

Section 7121. Grievance procedures: In subsection (d), the substitute excludes additional matters from the scope of negotiated grievance procedures. Not grievable under negotiated procedures (in addition to those exclusions already in the reported section 7121) would be matters concerning examination, certification, or appointment, or the classification of any position which does not result in the reduction in grade or pay of any employee. The term "classification of any position" encompasses all positions and jobs, including white-collar and blue-collar.

Section 7122. Exceptions to arbitral awards: No change.

Section 7123. Judicial review; enforcement: No change.

Section 7131. Reporting requirements for standards of conduct: No change.

Section 7132. Official time: No change.

Section 7133. Subpenas: The substitute simplifies the reported section's subpoena provision, and removes the immunity and criminal penalty provisions found in subsections (d) and (e) of the reported section 7133.

Subsection (a) of the substitute section provides that any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of title 5 of the United States Code, and any employee of the Authority designated by the Authority may: (1) issue subpoenas requiring the attendance of and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and (2), administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

Subsection (b) provides that in the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the person to whom the subpoena is

addressed resides or is served may issue an order requiring such person to appear at any designated place to testify and to produce documentary or other evidence. The court may punish as contempt any failure to obey an order.

Subsection (c) provides that all witnesses be paid the same fee and mileage allowance which are paid subpoenaed witnesses in Federal courts.

Section 7134. Compilation and publication of data: No change.

Section 7135. Regulations: No change.

Section 7136. Continuation of existing laws, recognitions, agreements and procedures: No change.

SECTION 702

Section 5596. Backpay in case of unfair labor practices and grievances: The substitute retains the modifications to the Backpay Act which would be made by the reported Title VII, with two changes.

First, the reported bill's modification of section 5596(b)(1)(A) is changed to provide for backpay "plus 5 percent, less any amount earned through other employment." The reported bill provides for backpay, less any amounts earned through other employment, plus "interest".

The substitute's section 5596(b)(1)(B) provides for reasonable attorney fees and reasonable costs and expenses related to the personnel action. With respect to any decision relating to an unfair labor practice or to a grievance processed under a procedure negotiated in accordance with chapter 71 of title 5 of the United States Code (Federal Service Labor Management Relations), attorney fees and reasonable costs and expenses of litigation shall be awarded in accordance with standards established by the Federal Labor Relations Authority under section 7105 (h) of title 5.

issue has no place in this discussion. It has not been in this bill at any point, it is not in this bill directly, indirectly, back door, front door or side door, and the discussion of the agency shop is totally irrelevant.

Mr. UDALL. No one advocates it here in this debate. It is not in the bill.

Mr. ERLLENBORN. Mr. Chairman, I rise in support of the Collins amendment and in opposition to the Udall substitute.

(Mr. ERLLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLLENBORN. Mr. Chairman, let me say, however, that I am pleased to see the Udall substitute, which is moving in the direction of the Senate language and away from the House-reported language in title VII. The Collins amendment contains, I think, with little or no change, the language adopted by the Senate, and the Senate language is substantially the Executive order relative to labor and management relations. So obviously I am in favor of the Senate language embodied in the Collins amendment. But given the choice, if it should come to that, between the Udall substitute or the House-reported language, I certainly would prefer the Udall substitute. The Udall substitute moves in the right direction, in some respects, by narrowing the scope of bargaining, by expanding management's rights, and these are in relationship to the House-reported language, the committee-reported language. Moreover, some of the provisions of the Udall substitute recognize the

because it is altogether possible that the employees of the Commission could be members of the very same union that they are investigating and controlling under the Federal Election Act.

Lastly, the Udall substitute treats a strike as an unfair labor practice only. I think we should require a decertification of the union or a loss of union rights, but the substitute only treats this, as far as the union is concerned, as an unfair labor practice. Then, we have to look to other portions of the law to find the sanctions for the individuals who engage in a strike or support a strike. There are sanctions in the current law which, in our colloquy the day before yesterday, our experts from the Education and Labor Committee, Mr. FORN and Mr. THOMPSON, said remained undisturbed by this bill. I am pleased because, there are some severe sanctions, including a \$1,000 fine for individuals who support a strike against a Government agency.

For these reasons, I think the Udall substitute is better than the House committee bill, but the Collins amendment is much more preferable. It would also make the job of the conferees a good deal easier, because we would adopt the Senate language. There would not be much to confer on.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. ROUSSELOT and by unanimous consent, Mr. ERLLENBORN was allowed to proceed for 3 additional minutes.)

No change.

SECTION 703

SECTION 704

Subsection (c) of the reported section is redesignated as subsection (d) and a new subsection (c) is added, requiring that the regulation required under section 7105(h) of title 5 (standards for the awarding of attorney fees and reasonable costs and expenses of litigation in unfair labor practice and negotiated grievance procedure cases) be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of the Civil Service Reform Act.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Kansas.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentleman might tell me the difference between his substitute and the Collins amendment with respect to the issue of the agency shop or the closed or union shop, and how that relates to the existing Executive order.

Mr. UDALL. There is no difference here. The unions have long wanted an agency shop. We do not give them that in the Udall substitute. They do not get the agency shop, they do not get the union shop in either one of the provisions.

Mr. Chairman, I will yield to my friend, the gentleman from Michigan, who can clarify this point.

Mr. FORD of Michigan. Mr. Chairman, this is one of the unfortunate things that can happen in the discussion of this matter. The agency shop

uniqueness of the National Labor Relations Board. But it really goes much farther than title VII, as reported by the committee, in some respects. It permits informational picketing, except if the Federal labor relations authority determines that the picketing interferes with the agency's operations. It allows the Federal labor relations authority to consolidate units, even if neither of the unions has by free elections been certified as the major bargaining agent. It still, as does the committee-reported language, permits certification of a union without election.

It allows a dues checkoff form of union security. As a matter of fact, it requires negotiation by an Agency with the union for the purpose of achieving an agreement relative to checkoff, with a union that has as little as 10-percent support among the employees of the unit. It delegates the Federal labor relations authority to the administrative labor law judges, something the so-called labor reform bill tried to do in the context of the National Labor Relations Act.

The Udall substitute allows the President to remove the general counsel at will, without cause. It permits an election after 60 days rather than 45 days when basic issues remain unresolved.

It does not recognize the conflict of interest to which the Federal Election Commission employees are subject and exposed. I will be offering an amendment in most of these areas. The first one I will offer will be on this area of the Federal Election Commission. The Commissioners asked this administration to give them some protection in this area

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ERLLENBORN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding, and I appreciate his description of how the Collins substitute is superior to the Udall substitute.

I am interested in this new term "informational picketing." What is that?

Mr. ERLLENBORN. Well, in answer to the gentleman, I believe informational picketing is a fairly well-known term. Informational picketing is one where the pickets are in place; they carry signs; they indicate their displeasure over some condition, but no labor dispute exists.

I will tell the gentleman, it is something he may have noticed here in the District of Columbia. It is where several restaurant unions have thrown up picket lines around restaurants and bars where none of the employees of those restaurants or bars are interested in joining the union, but the union thinks that they should be interested, and so they throw up a picket line around the restaurant or the bar for informational purposes. Of course, it goes a little bit beyond information, because once the information is given, then many people will decline to patronize the bar or restaurant because the pickets are there.

But, in the law they have no right to picket because of a labor dispute, because there is no labor dispute in that place of business.

Mr. ROUSSELOT. So it can be for anything. It could really just be a demonstration.

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Mr. ERLLENBORN. Usually the informational picketing is based upon the failure to observe so-called area standards which usually means union standards.

They will say that this employer does not live up to area union standards and is therefore unfair.

Mr. ROUSSELOT. Who makes the final determination under the Udall substitute as to whether or not informational picketing is legitimate?

Mr. ERLLENBORN. My understanding is under the Udall bill it is the Federal labor relations authority rather than the unit of Government that is being picketed.

Mr. ROUSSELOT. So a unit of Government could really have no say as to whether this is a legitimate informational picketing operation?

Mr. ERLLENBORN. They would certainly have no final say. They could complain to the Federal labor relations authority and that authority would have the final say.

Mr. ROUSSELOT. Let me make sure this point is clear: An agency could be subjected to "informational picketing" even though the picketing has nothing to do with employee grievances or other legitimate complaints of that particular agency.

Mr. ERLLENBORN. It could be that there are none of the employees in that unit that are even interested in the union but the union pickets could picket that unit because of the area standards or some other reason.

can expect under the present political circumstances.

Therefore I urge my colleagues to support the Udall substitute.

Mr. Chairman, at the time when the Committee of the Whole rose, on August 11, I expressed my disappointment that the administration—with whom I disagreed on several major ingredients of the Federal labor-management relations program, had not engaged in serious give-and-take with the Committee in an effort to iron out these major differences. I indicated that, in view of the intransigence of the administration, it would be necessary for me to utilize every parliamentary device at my command to bring the intransigence of the administration to the attention of my colleagues.

Since that time, I am pleased that the administration sat down with representatives of the Committee in what appears to have been a sincere effort to resolve our differences. The Udall substitute is the result of these extended negotiations.

I am not totally delighted with this final product because it does not begin to afford the rights to employees which, in my judgement are essential ingredients of any labor relations program. But the Udall substitute does represent a substantial improvement over what the administration originally proposed to the Congress. The Udall substitute does enjoy the support of the administration. Finally, the sad political reality is that given the anti-public employee mood of the Congress, I do not believe that the Nation is ready to accept much more

Title VII obviously represents congressional dissatisfaction with the state of labor-management relations in the Federal service under the various oversight bodies now established. The public and the taxpayer deserve the more effective and efficient Federal Government that is a predictable result of a meaningful labor-management program for Federal agencies. Unfortunately, the provisions of the order and, especially, the straitjacket interpretation of them by the Federal Labor Relations Council, have barred the development of such a program.

In enacting title VII, Congress will free both agency management and employee representatives from the strictures of the past and thereby encourage both management and labor to engage in the kind of relationship that, in the private sector, has fostered the single most productive economy in the world. An essential component of the new labor-management program mandated by title VII is the interplay between the obligation to bargain in good faith over conditions of employment and the reserved management rights set forth in section 7106. Since the Udall substitute contains several changes from the committee print's management rights clause, I would like to describe the background that led us to work out the Udall compromise and the current understanding that now prompts our agreement to the Udall substitute.

At no time either during the committee's deliberations or afterwards was it

Mr. ROUSSELOT. I appreciate the gentleman's information.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Udall substitute.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, some in this body would have us believe that the Udall substitute was written the headquarters of the AFL-CIO, but just the reverse is true, I believe. Not impugning the integrity of the gentleman from Arizona (Mr. UDALL) who offered the substitute, but it seems most of the substitute was written long ago by the Business Roundtable.

I do not view this as a fight between labor and business. I view this as a fight between what is right and what is wrong, between what is just and what is unjust. I think what the gentleman from Arizona (Mr. UDALL) is primarily attempting to do in his substitute is to get some balance between the now expanded rights of management and the lessened rights of the employees. It is in a sense a compromise.

It is still management oriented—too much, in my opinion. It still allows the administration flexibility—a little too much, in my opinion. It still permits the easy discharges of Federal employees—too much, in my opinion.

But, Mr. Chairman, the Udall substitute, even though it does not begin to reach the provisions that I and others on the subcommittee and committee approved of in title VII, does however represent the best that reasonable persons

than the provisions of the Udall substitute.

The Udall substitute provides for:

A statutory Federal labor-management program which cannot be universally altered by any President;

A truly independent Federal labor relations authority with judicial review and enforcement of Federal labor relations authority decisions and actions;

Binding arbitration for most statutory appeals and grievances;

Negotiation of agency-wide regulations under some circumstances;

Mandatory consultation on Government-wide regulations;

Attorneys' fees, litigation costs for employees;

Automatic dues withholding at no cost to unions; and

Mandatory official time for the negotiation of collective bargaining agreements.

Because the Udall substitute for title VII contains several departures from the version in the committee print, I would like to set out for the record the considerations that lay behind this compromise approach to labor-management relations in the Federal Government. The Udall substitute is the culmination of extension discussions between Mr. UDALL, the administration, Mr. FORD and others especially concerned with title VII, and myself. As the chairman of the Subcommittee on Civil Service, the sponsor of H.R. 13, and the cosponsor of H.R. 9094, I would like to state the rationale behind certain sections of the bill that has led me and others to work out and support the Udall substitute.

suggested that Federal employee labor organizations should be allowed to bargain over every conceivable topic. Initially, disagreement arose over whether the ultimate exercise of genuine management responsibility could best be protected, while also insuring meaningful negotiations on other topics, by inclusion of a management rights clause in title VII, as under the Executive order, or by a case-by-case development as under the National Labor Relations Act.

Many of us believed that a management rights clause was unnecessary. The National Labor Relations Board and the Federal courts have protected private sector management from union demands that "management rights" be bargained away. See, e.g., *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 235 (1964) (bargaining obligation does not extend to the method of investing capital, the goods to be produced, or the basic scope of the enterprise); *General Motors Corp.*, 191 NLRB 951, 952 (1971), aff'd 470 F.2d 422 (D.C. Cir. 1972) (the issue of whether a company should sell a dealership facility); and *Summit Tooling Co.*, 195 NLRB 479, 480 (1972) (partial closure of a company). Since this protection has been afforded private sector management without a management rights clause in the National Labor Relations Act, as amended, we believed that inclusion of such a clause in title VII was unnecessary and would invite the interpretative abuse reflected in the Council's decisions on the order.

We were persuaded, however, that a new independent agency, replacing the part-time management-oriented Coun-

cil, would itself provide some insulation against the kind of decisional abuse that has hamstrung both agency managers and employee representatives in the past. Moreover, we have included in section 7136(a)(1) express recognition of our expectation that the new Federal Labor Relations Authority will issue decisions superseding those of the Council. (In the interest of continuity we also provide that Council decisions will continue in force until superseded.) We fully expect that the Authority will not repeat the mistakes of the Council, especially since the Authority is acting under a new statutory charter mandating a new approach to Federal labor-management relations.

In drafting the committee print version of title VII, the committee intended that the scope of collective bargaining under the act would be greater than that under the order as interpreted by the Council. (See House Rep. No. 95-1403 at pages 43-44.) The Udall substitute and its accompanying sectional analysis also embodies this approach. Title VII is remedial legislation designed to cure the problems caused primarily by the Council's misinterpretation of the Executive order. The approach in title VII constitutes a clear rejection of the Council's interpretative techniques, and we support the Udall substitute with the clear understanding that the Authority is in no way bound to the Council's past decisions, even where language in title VII is identical to that in the Executive order.

agement rights clause substantially enlarged beyond that in the committee print. An important element in our agreeing to entrust such an expanded management rights clause to the hands of the new Authority is the example of the protection afforded the collective bargaining process by conscientious scrutiny of management claims of infringements on management rights, especially as found in the two 1978 decisions above. If the new Authority is faithful to these interpretative guidelines, the ultimate exercise of the specified managerial responsibility, the only subject exempted from the bargaining obligation, will be protected and the general obligation to bargain over conditions of employment will be unimpaired. However, it is essential that only those proposals that directly and integrally go to the specified management rights be barred from the negotiations. (See the May 17, 1978 decision above at pages 5-7.)

Although more management rights have been added, the section has been revised to make clear that the exercise of any management rights in the section does not preclude negotiations over procedures or adverse effects involved in those rights.

In section 7117, the Udall substitute removes many Government-wide regulations from collective bargaining. We have agreed to this change with the understanding that the consultation rights accorded exclusive representatives

subsection 7114(a)(3)(B). Nothing in this section prohibits an agency from negotiating greater rights for exclusive representatives. Nor does this section authorize an agency to bypass the rights of the exclusive representative and engage in direct communications with unit employees. Section 7116(a)(8) makes it an unfair labor practice for an agency to violate any provision of title VII, including obviously the section requiring that a labor organization with exclusive recognition shall be the exclusive representative.

Section 7116(b)(7) of the compromise version adds "picketing in a labor-management dispute if such picketing interferes with an agency's operations" as an unfair labor practice by a labor organization. In *National Treasury Employees Union v. Fraser*, 428 F. Supp. 295 (D. D.C. 1976), the U.S. district court held that the Executive order's absolute ban on picketing was overbroad and violated the first amendment. The court specifically authorized nondisruptive informational picketing. We had recourse to the Federal Labor Relations Council policy statement in this area and, in view of the constitutional principles involved, adopted the language in this subsection.

Section 7132(b) of the Udall compromise bars the use of official time for conducting the internal business of a labor organization. The section also lists three such activities reflecting our intention that "internal business" be strictly construed to apply only to those activi-

As the sectional analysis makes clear, the management rights clause is to be construed as a narrow exception to the general obligation to bargain in good faith. Although reviewing bodies under existing labor-management programs have sometimes adopted this approach, the Council has in large measure departed from this canon of construction in its haste to restrict the scope of bargaining. For examples of the approach mandated by title VII, see *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center, Charleston, S.C.* 1 FLRC 235, 244 (FLRC No. 71A-52) (1972); *Local Union No. 2219, International Brotherhood of Electrical Workers AFL-CIO and Department of the Army, Corps of Engineers, Little Rock District, Little Rock, Ark.*, 1 FLRC 219, 235 (FLRC No. 71A-46) (1972); *American Federation of Government Employees, National Joint Council of Food Inspection Locals and Officer of the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture*, 1 FLRC 616, 620-21 (FLRC No. 73A-36) (1973), *aff'd on remand* 3 FLRC 324, 345-46 (1975); *AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona)*, 1 FLRC 71, 73-74 (FLRC No. 70A-10) (1971); *Library of Congress and American Federation of State, County and Municipal Employees, Local Nos. 2477 and 2910*, 56-7 (Decision of the Labor-Management Umpire) (May 17, 1978) (slip opinion); and *AFSCME, Local 2910 and Library of Congress*, 2-4, 6-7 (Decision of the Labor-Management Umpire) (Sept. 5, 1978) (slip opinion).

The Udall substitute contains a man-

are to be rigidly enforced. It should be clear from the contents of the agency statement required in subsection 7117 (d) (3) (B) that the agency has in fact considered the views and recommendations of the labor organizations exercising consultation rights. A clear record is also necessary for later judicial review of the adequacy of the agency's proceedings that led to promulgation of the regulation.

Section 7103(a) (14) (D), removing from subjects of bargaining those matters specifically provided for by Federal statute, was adopted by the committee and retained in the Udall substitute with the clear understanding that only matters "specifically" provided for by statute would be excluded under this subsection. Thus, where a statute merely vests authority over a particular subject with an agency official with the official given discretion in exercising that authority, the particular subject is not excluded by this subsection from the duty to bargain over conditions of employment.

Section 7114(a) (1) requires that a labor organization that has been accorded exclusive recognition shall be the exclusive representative for employees in its bargaining unit. Section 7114(a) (3) (A) specifically gives the exclusive representative the opportunity to appear at "formal discussions" between agency representatives and employees. In the Udall substitute the word "formal" was inserted before "discussions" in order to make clear the intention that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions—unless covered by

ties regarding the structure and institution of the labor organization. Activities that involve labor-management contacts are not included in this section. Nor is preparation for such activities, such as grievances, bargaining, unfair labor practice proceedings, included within this section. Title VII imposes heavy responsibilities on labor organizations and on agency management. These organizations should be allowed official time to carry out their statutory representational activities just as management uses official time to carry out its responsibilities.

The purpose of title VII is to foster a successful labor-management program in the Federal service. Under the current system, many agencies have elected to ignore litigation before the Council and simply conclude agreements with employee representatives that benefit both agency management and employees. Since the Council's decisions have been too rigid even for agency management, there is a growing body of Federal contracts existing outside the realm of the Council's formal negotiability rulings. (See, e.g., "Assignment and Scheduling of Work in Federal Labor Agreements," USCS/OLMR 76/14 (August 1976) and particularly clauses numbered 8, 13, 16, 29, 30, 31, 42, 43, 51, 52, 68, 103, and 113 therein.)

Section 7136(a) (1) provides that nothing in title VII will preclude the renewal or continuation of such agreements. In this way, we have sought to insure that our goal of bringing successful labor relations programs to other agencies will not impair the ongoing development of such programs in agencies where they already

exist. This goal also requires great hesitancy in applying Council decisions, even where those decisions interpret language in the order identical to that found in title VII.

The whole structure and approach of title VII is in large part a repudiation of past Council practice. If we could not have been assured that identical language for management rights would be handled differently under the narrow construction mandated by title VII, the Udall compromise would never have been possible. That compromise is an important step in gaining House action on title VII and the bill in general. Many of us believe that the list of management rights is needlessly long, but we also believe that interpreted in accord with the clear principles enunciated in the legislative history the list of management rights will not impair a genuine collective bargaining relationship over meaningful issues. This last understanding is an essential element in all that we do in adopting the Udall compromise.

Section 7103(a) (14) (A) defines the term "conditions of employment" and the exceptions to the term. The general obligation of both management and labor to bargain in good faith is an obligation to bargain over "conditions of employment." Section 7103(a) (14) (A) was amended to clarify the intent that collective bargaining will not extend to matters of discrimination in agencies subject to the jurisdiction of the Equal Employment Opportunity Commission. Under section 11 of the Equal Employ-

ment, Mr. DERWINSKI. Mr. Chairman, the amendment is simply the administration's proposal for a flexible but orderly codification of the Executive orders which have successfully governed Federal labor-management relations since 1962. Four Presidents, two of each party, have managed to work with the guidelines embodied in this substitute, and now their successor has offered to codify the system into statutes which cannot, like Executive orders, be revoked by the White House at will.

The substance of this amendment closely resembles the original program established by President Kennedy.

First. Union membership and dues remain voluntary. Work slowdowns, stoppages or picket lines continue to be unfair labor practices.

Second. The President retains his right, within the law, to appoint and remove members of a bipartisan Federal Labor Relations Authority, whose General Counsel would investigate and prosecute unfair labor practices, as does the General Counsel of the National Labor Relations Board.

Third. The amendment would permit negotiated grievance arbitration on most matters, and the FLRA would have subpoena powers to enforce final decisions, which would be subject to judicial review on constitutional questions.

Fourth. Under this substitute, an agency's mission, budget, organization and internal security practices would remain beyond the scope of collective bargaining, as would the wages, fringe benefits,

man, I want to point out the four major places where my amendment differs from the Udall substitute. One is on exclusive recognition with a union election. My amendment continues our current procedure in requiring an election must be held before exclusive recognition status can be granted to a union. The committee bill and the Udall substitute, however, depart substantially from our current standard and permits the Federal Labor Relations Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of the employees in the agency. This could be shown either on the basis of a card check or a petition. We differ on that point.

On picketing, my amendment includes a provision against picketing which interferes or threatens to interfere with an agency's operation, which is presently in the current Executive order prohibition. The committee bill, on the other hand, is unclear on the subject of picketing. It is also unclear in the Udall substitute. In its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances and, if so, what recourse would an agency have if such picketing was not an unfair labor practice?

Another section on which we have a difference is that of dues withholding and official time.

My amendment allows unions to enter

ment Opportunity Act of 1972, Public Law 92-261, 86 Stat. 111, codified at 42 U.S.C. 2000e-16, the Civil Rights Act of 1964 was amended to include the prohibition of employment discrimination in the Federal Government. Under the act, the Civil Service Commission (CSC) was given oversight responsibility for equal employment and affirmative action programs in the Federal Government. A desire for more expert handling of such issues, and to some extent a dissatisfaction with the performance of CSC in this area, led to the transfer of CSC functions in the area of employment discrimination and affirmative action to the Equal Employment Opportunity Commission (EEOC). See Reorganization Plan No. 1 of 1978, effective May 6, 1978. The committee has added language to this subsection to make clear its intent that agencies and labor organizations do not engage in bargaining over matters subject to the EEOC's jurisdiction. Like the Civil Service Commission before it, the Equal Employment Opportunity Commission now has jurisdiction over all Federal employees covered by the 1972 act, except for those in the Library of Congress for whom the 1972 act precludes outside review of discrimination matters by another administrative agency.

I urge my colleagues to support this amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

and number of employees in an agency; the numbers, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty; or the technology of performing the work of such projects.

The other provisions of this substitute are substantially identical to Executive order 11491, as amended.

Fifth. The uniformed services, Foreign Service, Tennessee Valley Authority, national and internal security agencies, and non-executive agencies are excluded from coverage.

Sixth. National consultation rights at an agency-wide level are available to unions which represent a substantial number of agency employees, but are not recognized as the exclusive bargaining agent. Exclusive representation rights would be won by a union's receiving a majority of votes in elections by secret ballot.

Seventh. Agencies would be required to show a "compelling need" why an otherwise negotiable regulation should be kept off the bargaining table.

The Assistant Secretary of Labor for Labor-Management Relations would continue to issue standards of conduct for all labor organization in both the private and public sectors.

Mr. Chairman, I support the amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chair-

into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revokable at 6 month intervals. Both of these provisions are identical to our current program.

The committee bill and the Udall substitute, on the other hand, depart from our current program by requiring an agency to deduct dues at the request of an exclusive union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

The fourth point on which we do not agree, and which is of major concern is that of judicial review of Federal Labor Relations Authority.

My amendment, and I differ from the Udall substitute, provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Federal Labor Relations Authority and are not subject to judicial review for enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under my amendment.

The committee bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District Court.

What would happen under this judicial review is that one individual could go to court instead of bringing it before the Federal Labor Relations Authority, this when our courts are so overcrowded. Although we want everyone to have full recourse to judicial review, this would mean that it would go to the court system if one individual wished, and this would mean unending litigation and would make the paperwork on this unbearable.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I thank the gentleman for yielding. I want to congratulate him for this amendment.

Mr. Chairman, it just seems incomprehensible that at a time when we are talking about more democratic procedures, we are talking about the rights of the rank and file, we are talking about individuals becoming more active throughout the country that we would have a bill which would limit the right of an employee to make an expression of whether or not he wants to belong to a union.

The provision in title VII, as reported in the Udall substitute, is absolutely an invitation to blanket in union membership without a vote.

Mr. Chairman, one of the most fundamental American principles is that we should have votes and, indeed, secret ballots on very substantive issues. Whether

denied the same democratic rights that others enjoy. Everyone would be astounded at the abuse of those rights if that happened anywhere else.

Mr. Chairman, I could cite examples of union members who have been fired for merely speaking out against the international officers. We had examples of unions fining members for having the audacity to run against an international president. They fine members for the exercise of constitutional rights that would be guaranteed to everyone else.

Somehow or other, on the other side they tend to look the other way. The great civil rights advocates of our time tend to look the other way when it comes to the basic constitutional rights of either union members or of workers who are about to be placed in the union, whether it is with their vote or without their vote. Our liberal friends just don't care. Their concern about civil rights has a water's edge and that is when unions are involved.

Mr. Chairman, I think the Collins amendment helps further some of the basic democratic rights which all of us in our speeches at home enunciate, except for those who look the other way when it comes to this vital area of recognition and whether or not a rank-and-file member should have a right to vote.

Mr. Chairman, I think it is basic that there should be a vote and there should be a secret vote. Any effort to force union membership on any employee, particularly a Federal employee, without a vote

Mr. RUDD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. RUDD. Mr. Chairman, this slight but important addition to the exclusions from the definition of "employee," in the Udall substitute to Collins, amendment and, re-states in clear and unequivocal language that strikes against the Federal Government are illegal and punishable.

By adding this exclusion, we will remove any doubt about the intent of this Congress and this legislation with regard to strikes by Federal employees.

The effect of this amendment is straightforward.

An employee who strikes is no longer eligible to work for the Federal Government.

Such a person would no longer enjoy the protections and benefits of this legislation.

This provision is consistent with the penalties already contained in title 5 of the United States Code.

It is, in fact, more lenient than the provisions of title 18, which allows fines and imprisonment for strikers.

These penalties are consistent with the provisions of Executive Order 11491. But more importantly, this amendment is consistent with the original and

one is going to be required to belong to a union or not is a very substantive issue, and to try to blanket such an issue with an overall designation that we can have the FLRA blanket members into a union without a vote runs against the tide of everything that we have been doing.

The CHAIRMAN. The time of the gentleman from Texas (Mr. COLLINS) has expired.

(By unanimous consent, Mr. COLLINS of Texas was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield further?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. To continue, Mr. Chairman, it runs against the tide of everything that we have been doing, and against all of the great liberal talk on the other side.

Mr. Chairman, if we look at this from the civil rights standpoint, this is as important a civil right as anyone could have in America. I am amazed to see the great civil rights advocates look the other way when it comes to forcing members into a union without a vote. If they want a vote and there is a majority, that is fine. We all agree with that. However, it certainly runs against the tide of civil rights to say that we are going to make a person belong to a union without a secret ballot, without an expression of the majority.

Mr. Chairman, the one thing which the gentleman from Illinois (Mr. ERLÉN-BORN) and I have pointed out so frequently during the debate on the so-called Labor Reform Act is that often rank-and-file members of a union are

certainly runs against the tide of good public opinion and proper constitutional practice.

Again, Mr. Chairman, I certainly support the Collins amendment.

I think for all the reasons the gentleman pointed out, we could go through every section in order to have a much more balanced approach. I think we have to decide whether we want a balanced approach or whether we want the Federal unions to literally run the Federal service.

Mr. COLLINS of Texas. Mr. Chairman, the gentleman from Ohio (Mr. ASHBROOK) sums the matter up well in saying that every worker in America is entitled to freedom of choice and they should have the right to vote on whether they want to belong to a union; and based on their vote, they would be so governed.

This is a very serious flaw in the Udall substitute because it almost brings on mandatory unionism instead of giving all of the workers an opportunity to decide for themselves.

AMENDMENT OFFERED BY MR. RUDD TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. RUDD. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. RUDD to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Immediately after section 7103(a)(2)(iv), insert the following new paragraph:

"(V) any person who participates in a strike in violation of 5 U.S.C. 7311;"

overall intent of this legislation—to facilitate the removal of those employees who are inadequate in the performance of their jobs.

For there can be no more inadequate performance than total abandonment of job responsibilities in order to strike.

It has long been recognized that public employment is quite different than private sector employment.

These differences are most acute when it comes to labor relations in general, and strikes in particular.

Strikes deprive the public of services for which there is no alternative source of supply.

Some of these services, including many provided by the Federal Government, are so critical that their disruption threatens the public well-being.

Many other strikes by Federal employees would cause extreme hardship to individuals and businesses across this country.

Just this summer, we have seen too many American cities thrown into chaos by striking police, firefighters, garbage-men, and others seeking to force these cities to capitulate to their demands.

Such actions are nothing short of blackmail—the actions of a narrow-interest group holding public welfare hostage in order to achieve their own selfish ends.

There can be no question that we need to ban public sector strikes.

The threat to the public is unthinkable.

The tactic is intolerable.

Title VII of this bill must very clearly restate the intent of Congress that

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strikes against the Federal Government are illegal and punishable.

This amendment accomplishes that purpose.

I urge its adoption.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, in a burst of good fellowship between Arizonans, if the gentleman wants to save time for other Members who have more contentious amendments, we are prepared to accept this one. It is already in the law.

Mr. RUDD. Mr. Chairman, I thank the gentleman very much. This amendment nails it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RUDD) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN to

the problem, and I do not stand alone in looking for a solution.

I have here a letter dated July 20 of this year from the Federal Election Commission and signed by all of its members. The Commission itself and the members of the Commission are deeply concerned about this conflict. I will read it in part. The letter is addressed to the President and it says:

DEAR MR. PRESIDENT: The undersigned members of the Federal Election Commission, by this letter, urge that appropriate steps be taken to exempt the Federal Election Commission and its staff from collective bargaining with, and representation of employees by, labor unions which maintain political action committees or which endorse or support Federal candidates.

The letter goes on to ask that under the Executive order or through an amendment to the bill before us the Commission be exempt from having to recognize the union that they are supervising under the act. I think that is a reasonable request. I am surprised that the committee, knowing of the concerns of the Commission, did not respond and adopt in committee an amendment such as the amendment offered here.

The sole effect of my amendment is to say that unions that maintain political action committees or who endorse candidates for Federal office may not represent the employees of the Election Commission. The two conditions are conditions that would subject a union to supervision by the very people we are talking about here. I do not see any way we can reach

bargaining with a union that has been selected by its employees to represent its employees. Furthermore, it should be noted that the FEC is coming to us, that group of people who I am sure all of us think so fondly of as having done a wonderful job with the attempts we have made in reforming the election law, with a unanimously passed resolution saying that their highly laudable purpose is simply to avoid a conflict of interest. Baloney! Their highly laudable purpose is that they have a work force that is sufficiently concerned about representation to have an 80-percent vote to select a union to represent them.

What union did they select? Not a union that represents blue collar workers, not a union that represents a wide spectrum of the Federal work force; in fact, not even a union affiliated with the AFL-CIO, but an independent union which has grown out of representing Internal Revenue agents.

What is amazing is that a union made up entirely of professionals, that includes every office of the Internal Revenue Service in the United States, cannot be trusted to conduct audits if they belong to a union, if they are working for the FEC; yet those employees that belong to that union audit you and I as citizens. They audit every union in this country. They audit every nonprofit organization in this country and they audit every corporation from General Motors on down.

Now, the FEC came to us and talked to us about this. We said, "Look, this can be solved," and we conferred with

the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7112 of subpart F of part III of title V, United States Code, is amended by inserting after subsection (c), a new subsection (d) (and redesignating the subsequent subsections accordingly) which reads as follows:

"(d) Any employee who is engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated, or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal Office."

Mr. ERLLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLLENBORN asked and was given permission to revise and extend his remarks).

Mr. ERLLENBORN. Mr. Chairman, this amendment addresses what I consider to be a very serious problem, and that is the possible conflict that Federal Election Commission employees will face if they belong to and are represented by a labor union that is subject to supervision under the Federal Election Act. I do not stand alone, nor was I the one first to observe

any other conclusion than that there is a clear conflict of interest, if we have a member of the union investigating the very union that he belongs to.

I would hope that the committee would see fit to agree to this amendment.

Mr. FORD of Michigan. Mr. Chairman, I rise in opposition to the amendment.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, with all due respect to my colleague, the gentleman from Illinois (Mr. ERLLENBORN), the purpose that his amendment purports to carry out is a laudable one and one on which we are in total agreement. But, unfortunately, to reach his end he is driving a tractor across the front lawn, and it really is not necessary; a lawnmower would do the job.

I am sure that the gentleman has no way of knowing about the background of this. First of all, consider that what we are talking about is a bargaining unit of 150 employees which last week held an election to determine whether or not they wanted to belong to a union, and in fact selected the union to which they would belong. Seventy-five percent of all the employees in the unit participated in the secret election, as the gentleman has indicated he would like the practice to be, and 80 percent of those who participated in the election voted to select the National Treasury Employees Union as their collective bargaining agent. So, in fact, we are now at the point today where the FEC is required under the existing Executive order, not under this bill but under the existing Executive order, to begin

Chairman THOMPSON of the House Committee on Administration. The solution of the problem is in the Federal election law to provide that if a union representing the employees of the Federal Election Commission has a PAC and it comes within the purview of the law that that pact is to be audited, then the FEC would be required to go outside and get an independent auditor.

Now, how many times a year are they going to audit their own union PAC. Every month, every 2 months or every 10 years? Or only when they think there is some reason to audit them, or when they come up by the luck of the draw?

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, if this was the first attempt to prevent them, to save themselves from sitting down and bargaining in good faith with their employees, it would not be all that bad. What they first did was that the Federal Election Commission, 150 employees, was not under the existing Executive order as an appropriate bargaining unit and they tried to prevent their employees from joining a union by indicating they would not recognize that their employees constituted within the purview of the present Executive order a bargaining unit. That was appealed to the assistant secretary, who determined that, indeed, the employees of the Federal Election Commission were an appropriate bargaining unit under the Executive order that has been in effect since

1962. They then appealed to the administration and asked the White House to change the Executive order. In other words, after having determined that the rules provided that they could not prevent the employees from joining the union and bargaining with them, they then went around the process and attempted to change the rules by saying, "Take us out of the Executive order." They were refused.

Now, after those efforts to prevent the employees from joining a union and to save themselves from bargaining with their employees, the same as every other Federal agency, they now come to us under the guise of trying to protect the purity of their audits, to try to accomplish by indirection that which they could not accomplish directly.

I will pledge the gentleman from Illinois my full support before the House Committee on Administration and on this floor for clear language in the Federal election law amendments when they come to us that specifically lawfully requires that the Federal Election Commission seek outside independent audits on any occasion when the activity of a union representing its employees are involved. I think that is the proper way to do it. We should not leave here being accused of having literally ex post facto legislated out of existence a bargaining unit.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. ERLÉNORN, and by

Now, is it not rather interesting that of all the unions in this country representing employees in the private sector, in and out of right-to-work States, it has never occurred to anyone to change the National Labor Relations Act to affect the ability of the members of a group to belong to a union if in fact that union takes a position in elections?

This would make the FEC distinct and different from every other collective bargaining unit in the U.S. Government.

I am frankly ashamed of the fact that the Members of my party voted on FEC to ask for this kind of an amendment. I think it is the most undemocratic—with a small "d"—proposal I have ever heard. I think it is an absolute outrage, and it is an insult to every Member in this House who worked for election reform and for the purity of the electoral process.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has again expired.

(On request of Mr. ERLÉNORN, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLÉNORN. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLÉNORN. Mr. Chairman, let me point out that there are two portions of my amendment. One is as it applies to the political action committees and proscribes belonging to a union or a group that is affiliated with a union that main-

do that. We ought not have the regulators under our Federal election laws advocating the election or defeat of the very people who are running for office and subject to their jurisdiction.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. ERLÉNORN), the author of the amendment, a few questions.

I gather it is the purpose of this amendment to in effect deal exclusively with the FEC, and with no other Federal agency.

Mr. ERLÉNORN. If the gentleman will yield, that is correct.

Mr. SOLARZ. If that is in fact the case, I wonder if the gentleman could explain what seems to me to be a potentially significant ambiguity in this amendment. As I read the amendment, it says that any employee who is engaged in the administration, interpretation, and enforcement of the Federal Election Campaign Act of 1971 shall not be represented by any labor organization which maintains a political action committee, and then it goes on. Now, it seems to me that this might very easily be interpreted to apply, for example, to employees in the Justice Department who have the responsibility for the enforcement of the criminal penalties in the FEC law, and that, in this sense, the gentleman's amendment might not only prohibit the employees of the FEC from being represented by a labor union, but might also prohibit, unintentionally and

unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLÉNORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLÉNORN. Mr. Chairman, I appreciate what the gentleman from Michigan (Mr. FORD) has said, and I hope that that clear expression is forthcoming in the Federal election law or the report accompanying it.

But the gentleman is referring, I think, only to audits. There is the other question raised by this amendment, and that is as to employees belonging to a union that has endorsed a candidate for Federal office. Now, that means that we will have employees of the commission who may be investigating that very candidate or the committee supporting the candidate that they have endorsed or who may be investigating the opponent of the candidate they have endorsed. That goes beyond the question of audits.

How would the gentleman suggest that, without the adoption of an amendment such as this, we ward off that kind of conflict of interest?

Mr. FORD of Michigan. Mr. Chairman, I will say to the gentleman from Illinois (Mr. ERLÉNORN) that I do not really think that we do that. What the latter part of the gentleman's amendment suggests is this—and I frankly did not allude to it—in addition to the other conditions, any "labor organization which expressly advocates the election or defeat of any candidate for Federal office."

tains a political action committee.

Mr. FORD of Michigan. Mr. Chairman, if I might put the gentleman's mind to rest, I suspect there is a little jealousy in there someplace. The fact is that this is an independent union which got there "fustest with the mostest" and beat the AFL-CIO to the punch and got the bargaining unit. That might have something to do with some attitudes in this House about whether or not we want to protect what they have done.

They are not affiliated with any other union. They are an independent union, representing Treasury agents, IRS agents, and similar types of Federal employees.

Mr. ERLÉNORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLÉNORN. Mr. Chairman, I was going to point out that in the second part of my amendment the language is addressing the prohibition against belonging to a labor organization that expressly advocates the election or defeat of a candidate for Federal office, and we left out that portion about being "affiliated with."

So we could have in this instance a union local that is affiliated with the AFL-CIO, and the AFL-CIO could advocate the election or defeat of a candidate and not violate this particular amendment.

What we are saying is that the union local representing the FEC employees should not advocate the election or defeat of a candidate for office. I think it is quite apparent that they ought not

unwittingly, but nevertheless inescapably, employees of the Justice Department, who are engaged in the administration and enforcement of this law, from being represented by unions as well.

Mr. ERLÉNORN. If the gentleman will yield, as the gentleman now calls my attention to it, that might very well be the interpretation. The language, by the way, of this amendment is not language that I drafted but, rather, is an amendment drafted by the Federal Election Commission and suggested by them.

Let me point out to the gentleman that the Udall substitute to which this amendment is being offered has language relative to the exclusion of a similar nature for those units of Government administering Federal labor-management relation laws. And let me quote. It excludes from any bargaining unit employees engaged in "administering any provision of law relating to labor-management relations."

I think, likewise, there you might have the Solicitor's office, or possibly even the Justice Department, administering in some fashion the criminal law, the criminal sections in the National Labor Relations Act. So the same sort of language is used by the committee and by the gentleman from Arizona (Mr. UDALL).

Mr. SOLARZ. This is the gentleman's amendment, and I do not think that it would be appropriate for us to pass an amendment of this nature unless we had a very specific idea of what it meant and what it did not mean.

Is it the gentleman's intention that this amendment apply solely to the FEC?

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Mr. ERLÉNORN. That is my intention.

Mr. SOLARZ. I thank the gentleman for that clarification. I think it makes the amendment less unfortunate than it otherwise would have been, but I do at this point, having received that clarification, nevertheless want to indicate that I support the observations made by the gentleman from Michigan. I urge my colleagues, this clarification notwithstanding, to vote against the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLÉNORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ERLÉNORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 166, noes 217, not voting 49, as follows:

[Roll No. 763]

AYES—166

| | | |
|---------------|----------|-------------|
| Abdnor | Goodling | Myers, John |
| Andrews, N.C. | Gradison | Neal |
| Andrews, | Grassley | O'Brien |
| N. Dak. | Gudger | Davis |
| Archer | Guyer | Delaney |
| Ashbrook | Hagedorn | Dellums |
| | | Poage |

| | |
|-----------------|-----------------|
| Addabbo | Foley |
| Akaka | Ford, Mich. |
| Alexander | Ford, Tenn. |
| Anderson, | Fowler |
| Calif. | Fuqua |
| Annunzio | Gammage |
| Applegate | Gaydos |
| Ashley | Giaino |
| Aspin | Gilman |
| Baldus | Ginn |
| Bedell | Gonzalez |
| Bellenson | Gore |
| Benjamin | Green |
| Bennett | Hamilton |
| Bevill | Hanley |
| Blaggi | Hannaford |
| Bingham | Harkin |
| Blanchard | Harrington |
| Boggs | Harris |
| Boland | Harsha |
| Bolling | Heckler |
| Bonior | Heftel |
| Bonker | Holland |
| Brademas | Holtzman |
| Brinkley | Howard |
| Brodhead | Hubbard |
| Brooks | Jacobs |
| Brown, Calif. | Jenrette |
| Burke, Mass. | Johnson, Calif. |
| Burlison, Mo. | Jones, Tenn. |
| Burton, John | Jordan |
| Burton, Phillip | Kastenmeyer |
| Carney | Keys |
| Carr | Klidae |
| Chappell | Krebs |
| Chisholm | Le Fante |
| Clay | Lederer |
| Collins, Ill. | Leggett |
| Conte | Levitas |
| Corman | Lloyd, Calif. |
| Cornell | Lloyd, Tenn. |
| Cornwell | Long, La. |
| Cotter | Long, Md. |
| Daniel, Dan | Luken |
| Danielson | McCormack |
| Davis | McFall |
| Delaney | McHugh |
| Dellums | Maguire |
| Dent | Markey |

NOES—217

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|--------------|
| Nix |
| Nowak |
| Oakar |
| Oberstar |
| Obey |
| Ottinger |
| Panetta |
| Patten |
| Patterson |
| Pattison |
| Pepper |
| Perkins |
| Pickle |
| Pike |
| Price |
| Pritchard |
| Rahall |
| Rangel |
| Reuss |
| Roberts |
| Rodino |
| Roncallo |
| Rooney |
| Rosenthal |
| Rostenkowski |
| Roybal |
| Russo |
| Scheuer |
| Schroeder |
| Seiberling |
| Shipley |
| Sikes |
| Simon |
| Sisk |
| Skelton |
| Smith, Iowa |
| Snyder |
| Solarz |
| Spellman |
| Staggers |
| Stanton |
| Stark |
| Steed |
| Steers |
| Stokes |
| Stratton |
| Studds |
| Thompson |
| Thornton |

Mr. Broomfield for, with Mr. Hawkins against.

Mr. Burke of Florida for, with Mr. Krueger against.

Mr. Del Clawson for, with Mr. Ammerman against.

Mr. Frenzel for, with Mr. Garcia against.

Mr. Ruppe for, with Mr. St Germain against.

Mr. Vander Jagt for, with Mr. Beard of Rhode Island against.

Mr. Wiggins for, with Mr. Miller of California against.

Mr. Bureson of Texas for, with Mrs. Burke of California against.

Mr. Risenhoover for, with Mr. Conyers against.

Mr. EDGAR changed his vote from "aye" to "no."

Messrs. HIGHTOWER, WHITE, SHARP, D'AMOURS, BLOUIN, and GLICKMAN changed their vote from "no" to "aye."

So the amendment to the amendment offered as a substitute for the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLÉNORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLÉNORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLÉNORN to the amendment offered by Mr. UDALL as a

AuCoin
 Badham
 Bafalls
 Barnard
 Baucus
 Bauman
 Beard, Tenn.
 Blouin
 Bowen
 Breckinridge
 Brown, Mich.
 Brown, Ohio
 Broyhill
 Buchanan
 Burgener
 Butler
 Carter
 Cavanaugh
 Cedarberg
 Clausen,
 Don H.
 Cleveland
 Cohen
 Coleman
 Collins, Tex.
 Corcoran
 Coughlin
 Crane
 Cunningham
 D'Amours
 Daniel, R. W.
 de la Garza
 Derwinski
 Devine
 Dickinson
 Dornan
 Duncan, Oreg.
 Duncan, Tenn.
 Edwards, Ala.
 Edwards, Okla.
 Emery
 English
 Erlenborn
 Ertel
 Evans, Del.
 Findley
 Forsythe
 Fountain
 Frey
 Gephardt
 Glickman
 Goldwater

Hall
 Hammer-
 schmidt
 Hansen
 Hegner
 Hightower
 Hillis
 Hoyt
 Horton
 Hughes
 Hyde
 Ichord
 Ireland
 Jeffords
 Jenkins
 Jones, N.C.
 Jones, Okla.
 Kazen
 Kelly
 Kemp
 Kindness
 Kostmayer
 Lagomarsino
 Latta
 Leach
 Lent
 Livingston
 Lott
 Lujan
 Lundine
 McClory
 McCloskey
 McDade
 McDonald
 McEwen
 McKay
 Madigan
 Mahon
 Mann
 Marks
 Marriott
 Martin
 Mazzoli
 Michel
 Milford
 Miller, Ohio
 Mitchell, N.Y.
 Montgomery
 Moore
 Moorhead,
 Calif.
 Myers, Gary

Fressler
 Freyer
 Pursell
 Quayle
 Quillen
 Rallsback
 Regula
 Rhodes
 Rinaldo
 Robinson
 Rogers
 Rose
 Rousselot
 Rudd
 Runnels
 Ryan
 Santini
 Satterfield
 Sawyer
 Schulze
 Sebelius
 Sharp
 Shuster
 Skubitz
 Smith, Nebr.
 Spence
 Stangeland
 Steiger
 Stockman
 Symms
 Taylor
 Thone
 Treen
 Tribble
 Waggonner
 Walgren
 Walker
 Walsh
 Watkins
 White
 Whitehurst
 Whitley
 Wilson, Bob
 Winn
 Wylder
 Wylie
 Young, Fla.
 Young, Tex.

Derrick
 Dicks
 Diggs
 Dingell
 Dodd
 Downey
 Drinan
 Early
 Eckhardt
 Edgar
 Edwards, Calif.
 Ellberg
 Evans, Colo.
 Evans, Ga.
 Evans, Ind.
 Fascell
 Fenwick
 Fisher
 Fithian
 Flippo
 Flood
 Florio
 Flynt

Ambro
 Ammerman
 Anderson, Ill.
 Armstrong
 Beard, R.I.
 Breaux
 Broomfield
 Burke, Calif.
 Burke, Fla.
 Burleson, Tex.
 Byron
 Caputo
 Clawson, Del
 Cochran
 Conable
 Conyers
 Fary

Mathis
 Mattox
 Meeds
 Metcalfe
 Meyner
 Mikulski
 Mikva
 Mineta
 Minish
 Mitchell, Md.
 Moakley
 Moffett
 Mollohan
 Moorhead, Pa.
 Moss
 Mottl
 Murphy, Ill.
 Murphy, N.Y.
 Murphy, Pa.
 Murtha
 Myers, Michael
 Natcher
 Nedzi
 Nichols

NOT VOTING—49

Flowers
 Fraser
 Frenzel
 Garcia
 Gibbons
 Hawkins
 Hollenbeck
 Huckaby
 Johnson, Colo.
 Kasten
 Krueger
 LaFalce
 Lehman
 McKinney
 Marlenee
 Miller, Calif.
 Nolan

Traxler
 Tucker
 Udall
 Ullman
 Van Deerlin
 Vanik
 Vento
 Volkmer
 Wampler
 Waxman
 Weaver
 Weiss
 Whitten
 Wilson, C. H.
 Wilson, Tex.
 Wirth
 Wolff
 Wright
 Yates
 Yatron
 Young, Mo.
 Zablocki
 Zeferetti

Quie
 Richmond
 Risenhoover
 Roe
 Ruppe
 Sarasin
 Slack
 St Germain
 Stump
 Teague
 Tsongas
 Vander Jagt
 Whalen
 Wiggins
 Young, Alaska

substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7104(f) (1) of subpart F of part III of title V, United States Code, is amended by inserting before the final period the words "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office".

Mr. ERLÉN BORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLÉN BORN asked and was given permission to revise and extend his remarks.)

Mr. ERLÉN BORN. Mr. Chairman, this amendment will add a requirement to the exercise of the authority by the President to remove the General Counsel for the Federal Labor Relations Authority. Under the National Labor Relations Act the Board has a General Counsel very similar to the General Counsel created by this act. In the instance of the General Counsel for the NLRB, he may be removed only upon notice and hearing and good cause. The members of the Federal Labor Relations Authority themselves are subject to removal for cause only. This amendment will merely add the language that is already in the act relative to the members of the Authority and apply it to the General Counsel so that the General Counsel could be removed only for cause.

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Fary against.

Mr. Teague for, with Mr. Richmond against.

I would hope that the amendment would be adopted.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield to me?

Mr. ERLBORN. I will be happy to yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

I must say to the gentleman that I believe that I offered a similar amendment in the committee, and it was defeated. I am honor bound by the agreement to support the compromise that has been worked out to vote against the gentleman's amendment, but I obviously have no quarrel with it in principle and wish that I had won in the committee.

Mr. ERLBORN. If I understand the gentleman correctly, then he would be very pleased if the amendment were adopted. I hope the amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

unresolved issues have been resolved, and it would also be my understanding that there would be an expedited resolution of the outstanding issues so that we would not have a delay in the conduct of the election. It is not my purpose to add to any delay in conducting a recognition election, but rather to see that when the election is held we know what the proper unit is for conducting the election and who within that unit is eligible to vote, because should these questions be resolved in some way contrary to the way the election was conducted, it would throw the election out and merely delay matters and force the holding of another election anyhow. So this would have us resolve these questions in an expedited election and then hold the election in the best interests of all the parties.

I would hope that the amendment would be agreed to.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I will be happy to yield to the gentleman from Missouri.

Mr. CLAY. I thank the gentleman for yielding.

It is not the gentleman's intention to oppose expedited elections; is it?

Mr. ERLBORN. In response to the gentleman, certainly not. I want these elections to be held within a reasonable period of time, but I want to see that the questions as to eligibility, and so forth, are resolved before the election is held.

Mr. CLAY. Mr. Chairman, if the gen-

from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b)(1)(B) of subchapter II of subpart F of part III of title V, United States Code is amended by striking the words "Except as provided under subsection (e) of this Section, if", and substituting therefor "If"; and section 7111 is further amended by striking all of subsection (e) and redesignating the subsequent subsections accordingly.

Mr. ERLBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLBORN asked and was given permission to revise and extend his

Mr. ERLÉNORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLÉNORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b) of Subchapter II of subpart F of part III of title V, United States Code is amended by striking "(b)(1)" and substituting therefore "(b)"; and is further amended by striking from presently designated 7111(b)(1)(B) the words "Except as provided under subsection (e) of this section, if" and substituting therefore "If", and by striking the words "subject to paragraph (2) of this subsection"; and by striking all of paragraph (2), including (2)(A) and (2)(B).

Mr. ERLÉNORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLÉNORN asked and was given permission to revise and extend his remarks.)

Mr. ERLÉNORN. Mr. Chairman, the Udall substitute before us has a provision that would mandate the conduct of an election for recognition purposes even though there may be unresolved outstanding issues such as who is eligible to vote, what the proper unit is for conducting the election, and so forth.

The thrust of my amendment is to remove the requirement for the election under these circumstances so that the election would be held only when these

gentleman will yield further, it would also be the gentleman's intention that the FLRA should no all within their power to expedite elections?

Mr. ERLÉNORN. Yes, absolutely. I want the authority to expedite the resolution of these questions, so that the election may be held at an early day.

Mr. CLAY. Mr. Chairman, I have no objection to the amendment.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, would I be properly stating the intent of the gentleman's amendment to be predicated on the fact that under existing law and the law as it would remain with the passage of this bill, unlike the private sector, management, in this case the Federal Government, must remain neutral, completely neutral, and not participate in any way in encouraging or discouraging the acceptance or selection of a union by its employees and, therefore, the sense of concern that was in the Labor Reform Act does not exist here.

The gentleman intends that they should expedite the elections as early as possible, but the protection for the employer to have time to campaign is not necessary here, so that a specific time as we had set up in the bill really is unnecessary.

Mr. ERLÉNORN. Mr. Chairman, I think the gentleman is correct. I would agree with that.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLÉNORN) to the amendment offered by the gentleman

remarks.)

Mr. ERLÉNORN. Mr. Chairman, this amendment strikes sections of the Udall substitute which allow certification of a labor organization without an election of the employees of the unit, where in the terms of the amendment a free election cannot be held because of unfair labor practices by an agency.

Now, first of all, it is very unlikely that you would find a Federal agency engaging in unfair labor practices prior to the holding of a certification election.

The amendment goes on to say in the second condition where the authority determines without an election, that the union has a majority. I think it is impossible for the authority to be able to find that a majority of the employees wish to belong to a union without the holding of an election.

The Udall substitute would allow the certification of a union under these circumstances without the holding of an election.

Mr. Chairman, so that I not be misunderstood, I am not addressing myself to a bargaining order. As far as I understand, the authority would still be able to order the agency to engage in bargaining with the union, even though an election had not been held, if they find these conditions exist; so that what we want to get to here is the certification, not a bargaining order. The certification, of course, carries with it certain rights to certain further recognition of the union. For instance, I understand if they are certified, that closes the question as to exclusive representation for a year. If there is a bargaining order, those same conditions do not prevail.

September 13, 1978

CONGRESSIONAL RECORD—HOUSE

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Mr. Chairman, I would be happy to yield to the gentleman from Michigan, if the gentleman has any comment or question.

Mr. FORD of Michigan. Mr. Chairman, as I understand the intent of the gentleman's amendment is not to reverse entirely what is here coming from the Supreme Court decision in NLRB against Gissell, but really to eliminate the card check provision in lieu of an election for the initial recognition; but that the gentleman does agree that in the event a Federal agency interfered in some fashion or did not cooperate in the holding of the election and going forward, that the labor authority would continue to have the authority to step in and tell them to start playing fair and issue bargaining orders and require the agency to begin bargaining with the union.

Mr. ERLENBORN. Yes. I would agree that the authority would have the right to find if there were an unfair labor practice by the agency, and as I understand it, they may even be able to order bargaining with the unit. But this gets only to the question of certification, and it does conflict with the Gissel decision.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman. With that understanding, I have no objection to the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentle-

typed copy. My copy does not show any changes.

Am I correct in my understanding?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, my understanding is not that there was any change in the wording of the amendment, but I think in the interpretation of the amendment it gets to the question as to whether decertification is automatic or not.

Mr. FORD of Michigan. Mr. Chairman, continuing under my reservation, counsel over here indicates that the words, "or" and "assists" were deleted.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield further, let me amend my statement. I understand there is an agreement to remove the words, "assists, or". So the amendment will read: "an organization which participates in the conduct of a strike * * *"

I understand the amendment that was submitted at the desk has been so changed.

Mr. FORD of Michigan. Yes. Mr. Chairman, I thank the gentleman, and I withdraw my reservation of objection.

he CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CLAY. Mr. Chairman, reserving the right to object, so I may clarify the understanding, the agreement was to remove the words, "assist, or," is that correct?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, that is correct. The amendment at the desk has been so

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike newly designated section 7113 of subpart F of part III of title V, United States Code, and redesignate the subsequent sections accordingly; and amend newly designated section 7117 by striking all of subsection (d).

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, let me initially say that I thank the gentleman from Michigan (Mr. FORD) for his cooperation, and I am certain that the Members of the House thank him for his cooperation in expediting the consideration of title VII. I am very pleased that I have been able to cooperate with the gentleman and that our staffs have worked together so well.

For the information of the House, this is the last amendment I am going to offer to title VII.

We have no agreement relative to this amendment, but I would like to have some colloquy so that we could understand what the bill and the Udall substitute mean in the section entitled, "National Consultation Rights."

man from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ELLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT BY MR. COLLINS OF TEXAS

Mr. ERLÉNORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLÉNORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Amend newly designated section 7103 of subpart F of part III of title V, United States Code by striking the "or" after subparagraph 7103(a)(4)(B); by inserting an "or" after subparagraph 7103(a)(4)(C); and by inserting the following new subparagraph 7103(a)(4)(D):

"(D) an organization which participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;"

Mr. ERLÉNORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. FORD of Michigan. Mr. Chairman, reserving the right to object, I have a printed copy of the gentleman's amendment. I understand that the staff has worked out some change in its original

changed.

Mr. CLAY. Mr. Chairman, we have no objection to the amendment, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to ask the gentleman this question: It is the understanding of the gentleman from Illinois (Mr. ERLÉNORN) that it would still be up to the labor authority to determine whether or not this provision applies?

Mr. ERLÉNORN. Mr. Chairman, if the gentleman will yield, yes, that is correct. This would leave the discretion in the FLRA as to whether or not the decertification should be applied. It will not happen automatically.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman for his answer. We have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLÉNORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ELLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLÉNORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

Now, as I read this, a union representing a minority of the members may gain national consultation rights. Certain rights and privileges then attach to that union. One is that they must be informed before changes in pay and other working conditions are put into effect by the agency involved. My reading of this section of the Udall amendment and the bill would lead me to believe that this could happen: It may not be contemplated by the authors, but we could have national consultation rights attached to a minority union and then another union would be successful in a certification election and be certified as the exclusive bargaining agent, and thereafter the bargaining would take place. But before the agreement that was reached by the majority union and the agency could be put in place, the agency would have to go back to the minority union which is not certified as a bargaining agent and advise them and let them comment on the results of the negotiations.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, first, I would like to say, in response to the gentleman's very last statement, if there is an exclusive right to bargain, the consultation provision really is not applicable.

There are two ways in which the consultation works, and I should say to the gentleman that it is in the Udall substitute. I assume it is in the Collins substitute because it is in the existing executive order. This is in fact the law as it has been since 1962.

Mr. ERLNBORN. Could I ask the gentleman, is that what is commonly referred to as meet and confer?

Mr. FORD of Michigan. Meet and confer. It works in two ways. If, in a large agency, the agency promulgates an agencywide regulation, but a particular union, while it represents a majority of the people in a bargaining unit, does not represent the majority of the people in the total agency, the agency has no obligation to negotiate in any way with the union, but before promulgating an agencywide regulation that would affect the rights of that bargaining unit, they would meet and confer with the representatives of those employees. They could ignore what they say, but at least they would have to get their input and discuss it with them. They are not compelled to bargain over the issue, nor are they in any way bound by the results of that conference.

The second way in which it works is the situation where we have 26 or more unions representing Federal employees, plus a number of associations and organizations that stand in the place of unions and function in the same fashion, and they may represent individual agencies, and then it is proposed to promulgate a Government-wide regulation that would affect all employees. In that instance the individual unions will be called into consultation to hear what they have to say about the proposed regulation. Again, there is no requirement on the Government to negotiate the matter.

Now, as I read the Udall substitute, that portion of the Executive order has been, in effect, split up into two parts. The Udall substitute says, under "management rights," section 7106:

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

Then it drops down in subsection (b) and says:

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

My first question, then, to the gentleman from Michigan is, why was that particular part of the Executive order split into two parts, if the gentleman can give me an answer to that.

Mr. FORD of Michigan. I should say that the splitting of the two parts has no substantive effect on the status quo. In fact, we are picking up the language of the management rights clause, as it is referred to in the Executive order, by tailoring it to fit the structure of this bill so that it does not diminish the relative rights of either the employee organizations or the Government agency with

where that has been done, but very rarely.

Mr. EDWARDS of Alabama. Is it an issue that could go forward to the Impasse Board?

Mr. FORD of Michigan. No, it cannot.

Mr. EDWARDS of Alabama. So that, if I understand the gentleman correctly—and I will use the Defense Department again as an example—if the Defense Department chooses not to negotiate on the subject of "numbers, types and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth, as provided in that subsection (b)(1), then there is no way that they can be forced to negotiate on those subjects?

Mr. FORD of Michigan. That is correct.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(At the request of Mr. FORD of Michigan and by unanimous consent, Mr. EDWARDS of Alabama was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of Alabama. And if they in fact start negotiating on those subjects and conclude at some point that they should not negotiate further, there is no way to force them to negotiate further?

Mr. FORD of Michigan. That is correct. It is completely within the discretion of one side of the table, and there is no appeal from their decision.

Mr. EDWARDS of Alabama. It is the gentleman's opinion, if I understand the

simply advise them they are about to do it and hear what their reaction to it is. It really is nothing but meet and confer.

Mr. ERLLENBORN. Mr. Chairman, I thank the gentleman for the clarification of the committee's intent. I found this section difficult to understand, and I think this clarification will help in the interpretation.

Mr. Chairman, pursuant to our agreement, I ask unanimous consent to withdraw this amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the last word.

(Mr. EDWARDS of Alabama asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of Alabama. Mr. Chairman, I would like to have the attention of the gentleman from Michigan (Mr. Ford) and/or the gentleman from Arizona (Mr. UDALL).

Mr. Chairman, I am directing my inquiry to section 7106 of the Udall substitute. I would like to refer, first, Mr. Chairman, to the Executive order from which this section was taken and modified, and I will read in part from the Executive order.

However, the obligation to meet and confer does not include matters with respect to the mission of an agency, its budget, its organization, the number of employees and the numbers, types and grades or positions of employees assigned to an organizational unit, work project, or tour of duty, the technology of performing its work, or its internal security practices.

respect to any of the contents of both sections the gentleman referred to.

Mr. EDWARDS of Alabama. The Executive order says that there shall be no obligation to meet and confer on "numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth; in other words, down at the base level in the case of a defense facility, for example. Yet, in the Udall substitute it says they are not "precluded" from meeting and conferring which suggests that under the heat of bargaining they in fact could negotiate and bargain at that level. Is the Defense Department or any other Federal agency, for that matter, required to bargain on those particular subjects?

Mr. FORD of Michigan. Will the gentleman yield?

Mr. EDWARDS of Alabama. I yield.

Mr. FORD of Michigan. It is permissible, and it is in exactly the same status as the existing law. I might say that not only are they under no obligation to bargain, but in fact they can start bargaining and change their minds and decide they do not want to talk about it any more, and pull it off the table. It is completely within the control of the agency to begin discussing the matter or terminate the discussion at any point they wish without a conclusion, and there is no appeal or reaction possible from the parties on the other side of the table.

It is completely, if you will, at the pleasure and the will of the agency. Where an agency wants to resolve a particular problem with an organization and come to some agreement, it can choose to do so. There are circumstances

gentleman correctly, that the intention of the drafters of this particular section of the Udall substitute is that, in practical effect, they have intended to carry out the original language of the Executive order, but have just rearranged it in a different way.

Mr. FORD of Michigan. I believe that those of my colleagues who have worked on the bill could concur with me that it was not our intention to substantively affect the status quo with respect to specific items contained in either of the sections involving items that are permissibly negotiable.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I concur with the interpretations of the gentleman from Michigan and I would say regarding the management rights it may be argued that we should be moving more favorably toward the management rights than away from them.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. LOTT. Mr. Chairman, I move to strike the last word, and I rise in support of the Collins amendment.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Chairman, I rise in support of this title VII amendment, which would continue the successful labor management program established by Executive order in 1962.

The language of the amendment is, with minor changes, identical to that of the Executive order and to the title VII approved by the Governmental Affairs Committee of the other body.

Title VII as reported to the House contains some extremely controversial material and cannot properly be called a mere codification of the Executive order. Title VII as reported would allow the FLRA, under certain conditions, to extend exclusive recognition to a union without an election by the employees concerned; it would allow a union with as little as 10 percent representation to negotiate with an agency for a voluntary dues checkoff; it would nullify the Executive order's decertification provisions against unions which condone or participate in strikes; and it would even allow the so-called "informational" picketing of an agency.

Mr. Chairman, these are not provisions which we can make consistent with the general principles of civil service reform. We should repeal them by passing this amendment. It has already been pointed out how much further title VII as reported goes beyond the Executive order, the President's initial request, and concessions granted by the other body in its bill. I just have some general remarks on the substance of title VII as reported and the need for replacing it with the Collins amendment.

I think most of us agree that Federal employee unionism cannot fairly be compared to collective bargaining in the private sector. The Federal Government is

yond what the Carter administration originally proposed in the way of a legislated program for Federal labor-management relations.

We are being asked today to rewrite the bill; yet, the Udall substitute still contains provisions that will widen the scope of bargaining and will lead to increased unionization of Federal employees at the expense of the taxpayers.

I want to make it clear that I am not personally opposed to unions in the Federal Government. I support their efforts to improve collective bargaining, and I do believe that statutory protection of Federal employees' right to organize and bargain collectively through labor organizations is in the public interest.

But I do not believe it is in the public interest to have the taxpayer shoulder the burden of some of the incidental costs associated with maintaining a union.

The committee bill requires the deduction of union dues, and at no cost to the union or the employee. The Collins amendments continue our present arrangement of allowing—but not requiring—bargaining on this issue, and it is generally felt that agency management would negotiate a service charge of some sort for this service. The Udall substitute makes no change in the committee bill in this respect, and asks the taxpayer to help pay for unions of Federal employees.

In another area, the committee bill allows the new Federal Labor Relations Authority to certify a union as the exclusive representative without an elec-

tion branch greater flexibility and greater power in terms of their ability to manage the Federal work force we have in fact, if we did nothing more than that, changed the balance that has established itself over a period of time between the employees' individual rights and their collective rights, vis-a-vis the powers and prerogatives of management.

For this reason, while considering the increased powers for management, we always had in mind that we would put together a totality here, a total package that we hoped—and obviously we had great disagreement during the months that we have considered this, on just what the final product should look like—that we hoped would represent a fair package of balanced authority for management, balanced with a fair protection for at least the existing rights the employees have.

I do not think that at this point, after all the hard work that has gone into this legislation, that we want to jeopardize the opportunity for this historic breakthrough in the reform of the American Government's backbone, its administrative work force, by letting it fall apart here in title VII.

For that reason, and not with great alacrity, I am going to support the Udall substitute even with the amendments that have been added by the gentleman from Illinois (Mr. ERLENBORN) which have been considerable.

I want you to know that my staff and I know how far we have moved from our original position to come to this position.

not a private corporation responsible to a few stockholders, but a sovereign entity responsible to all taxpayers, unionized or nonunionized. Picketing a private company whose products the public may buy or not buy is very different from picketing a Government agency which the law compels us to support with our tax dollars. The public has a right to uninterrupted, unimpeded enforcement of the people's laws, and the picketing of any agency should continue to be considered the unfair labor practice that it is.

This is done by the Collins amendment and I strongly urge its enactment.

Mr. TAYLOR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as most of the Members know, this title of the bill was one of the reasons most of us in the minority voted against reporting the bill to the floor from the committee.

I rise in support of the amendment offered by my colleague on the committee from Texas (Mr. COLLINS), and I would caution the Members to be wary of our distinguished committee vice chairman's substitute.

This is at least the second time that I know that he has taken on the role of "compromiser," offering language that supposedly strikes a "middle ground" between opposing points of view of the Carter administration and the various labor unions that operate in the Federal Government.

If the Members will refer to the individual and minority views in the committee report, they will see that the Committee's bill greatly increases the role of Federal employee unions and goes far be-

tion. The Collins amendments would require a secret ballot election in all cases where a union seeks exclusive recognition status for the first time, which I think is the fair way to go about it. The Udall substitute, on the other hand, makes no change in the committee bill and would be another area where union power would be increased.

I urge my colleagues to support the Collins amendment.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman and members of the committee, I sense that we are very close to the time for a vote on the substitutes and the bill itself and title VII.

I would like, as briefly as I can, to repeat some of the things I said the other night about how we got to where we are.

Along with our colleagues, the gentleman from Missouri (Mr. CLAY), the gentleman from New York (Mr. SOLARZ), and other members of the committee, I have worked with the gentleman from Arizona (Mr. UDALL) and representatives of the administration throughout consideration of this legislation from the time it was introduced by the President.

I should say that I have tried to be supportive of the efforts of the administration because I think that the purposes stated by the President, when he sent the legislation to us, are purposes we can all agree with. But, as I stated before, in attempting to give the executive

But I have to tell you, in all honesty, that I could not, in good conscience support moving any further because there really is not much left that we can represent to the Federal employees as a retention of fair play for them.

I think it is absolutely essential at this point that we reject the Collins of Texas amendment and adopt the Udall substitute, as amended by the Erlenborn amendments, so that at least it can be shown that we did the best that was possible here to compromise conflicting views between those who feel, for whatever their reasons, that Federal employees do not need the same kind of protection that other citizens in this country have.

There are those of us who believe that ultimately, some day, we will see the time when Federal employees are no longer second-class citizens.

Mr. Chairman, let me call the Members' attention to this further fact: When we were talking about the Senior Executive Service and the power of the administration to hire career and non-career people and to shift them around and to change their careers in very dramatic ways, and when we were talking about merit pay to be given or withheld from employees in the mid-level positions as an incentive for more effective and efficient performance on their part, we were not talking about the people who were affected by title VII. That is why the bill has to be considered in its totality.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(By unanimous consent, Mr. FORD of

Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. To continue, Mr. Chairman, the bill has to be considered as a totality because we are here talking about literally the workers themselves. These are not policymaking people. I might say that they are not bureaucrats. The complaint all across the land is against the Federal bureaucracy. They are not complaining about the people who maintain the plumbing and the electrical systems of our airbases and our military installations. These are the kinds of people we are talking about in title VII. We are talking about everybody from the janitor to the technician who keeps the airplanes operating, the people who are, in fact, keeping our Defense Establishment going day by day, who are ordinary working technicians, who do a job. They do not make decisions which affect the American public directly. They are not people within an "In" box full and an "Out" box empty on a desk occupied by a large bureaucrat. They are the people who actually do the work everyday, the work which keeps this Government operating. They are not the glamor jobs. They are just the people who take orders from almost everybody, all the way up to the President, and carry those orders out as best they can.

Mr. Chairman, what we are trying to say with title VII is that they should be reassured that their ability to function and that whatever rights the Congress from time to time gives them are pro-

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I think we are going to do something historic and far-reaching and important for the country today if this bill is written into the law books, as I hope it will be.

Mr. Chairman, I just want to say as strongly as I can that the gentleman from Michigan (Mr. FORD) has made it possible. Perhaps more than anyone else in this House, he has played a key, critical role. The gentleman has one of the finest minds in this House. He is articulate, and I always like to be on his side when I can. However, he has been caught in a difficult position between his strong feelings about the rights of the common ordinary Federal worker to whom he has referred and his desire to see some changes made in the nature and the direction of efficiency.

Mr. Chairman, I want to tell him how proud I am of his work and how proud the House is and the country ought to be for the role he played in bringing us to the position in which we are today.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman from Arizona (Mr. UDALL) for his remarks. Now, I am sure, the Members see why I am supporting the Udall substitute, even though I do not think it goes far enough.

It has been with great reluctance that I lent my support to the Udall substitute for title VII of H.R. 11280. As I said when

Originally, the order was designed to achieve a balance. On the one hand, agencies were given broad authority—and required—to negotiate over working conditions and personnel policies and practices. On the other hand existed management prerogatives that were not to be bargained away by agency administrators.

Unfortunately, this balance was never struck. Instead, the Federal Labor Relations Council interpreted the order's management rights provisions in such a way as to eliminate many subjects of bargaining sought by both agency management and employees. In the hands of the Council, many of the management rights were interpreted so broadly that their existence in the order precluded flexibility and responsiveness needed by agency administrators.

Too often the Council interpreted the management rights clauses so broadly as to stifle an attempt by both management and employees to address commonly recognized problems. The original intention merely to insure that essential aspects of managing the agency were not subject to negotiations has been thwarted. Many agency administrators, however, found that this broad interpretation of the order prevented agency managers from addressing problems and concerns that they, as agency heads, believed required supervisory attention.

A developing trend involves sidestepping litigation before the Council in order to avoid its decisions which may

tected and that they can protect themselves in their relationship with the several levels of management and that those protections are not in any way diminished and are, in fact, to a slight degree enhanced because we will be saying for the first time—and I think this is important and we ought to be very proud of it—that it is Congress that sets policy in this area. Of course, in 1962 John Kennedy took a great step forward when he issued an Executive order which said finally that Federal employees down at the level which we are describing could join a union and engage in collective bargaining with their employer in a fashion similar to, but far short of, of course, the fashion of their brothers and sisters in the private sector.

Mr. Chairman, from time to time that Executive order has been changed. We have had succeeding administrations from both parties who have found it possible to live with and operate under the conditions of the Executive order dealing with collective bargaining.

We are not here conferring for the first time on Federal employees a new right to collective bargaining; but what we are doing for the first time as a Congress is recognizing by statute that this is the same kind of right, although different in form and substance, as exists in the private sector.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. UDALL and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

we first had general debate on this bill, I felt that the bill as it was reported by the committee was a modest step forward in labor-management relations in the Federal sector. The Udall substitute is the product of long negotiations between the gentleman from Arizona, the administration, other Members with special interest in title VII and myself. This substitute represents an important step in getting the title and the bill passed, because it reconciles the differences between the administration's proposal and H.R. 9094, a bill with much support in this House.

While this substitute is a further compromise away from provisions that I believed to be reasonable and appropriate, there are some advances forward made in the bill over the present Executive order. It was only in light of these benefits over and beyond the Executive order that I have agreed to this amendment. In order to clarify my intentions in supporting this substitute, I would like to discuss, as a sponsor of H.R. 9094 and a major participant in the fashioning of this substitute of title VII, some specific sections of the title.

The revised management rights clause is an important element of the compromise approach by the Committee on Post Office and Civil Service and by Mr. CLAY and myself in working out and supporting the Udall compromise on title VII of H.R. 11280.

Experience under the Executive order and the interpretations of its management rights clauses by the Federal Labor Relations Council has not been particularly successful for either agency management or employee.

be too rigid for management flexibility. Instead, agency administrators and employees representatives have simply reached agreement on contracts with provisions that were beneficial to both parties but unlikely to withstand rigid scrutiny by the Council.

Thus, agency administrators have proposed and agreed on contract terms such as flexible working schedules for employees, procedures preventing arbitrary assignment of work, standards for promotion that require performance at the next higher level for advancement. Agency administrators have determined that negotiating these non-monetary employee benefits have increased the effectiveness and the efficiency of the Government operations entrusted to them even though they implicate "management rights" as construed by the Council.

In drafting a revision of H.R. 9094 as title VII of this bill, Mr. CLAY and I attempted to alleviate these problems with the Executive order in three ways. First, some of the management rights listed in the order were omitted from title VII. Typically, these rights are those that have served to preclude agency flexibility in addressing problems recognized by both agency administrators and employees. Second, we expressly provided in the language of title VII itself that negotiations may occur over the adverse impact caused by exercise of any of the management rights in title VII and that procedures may be negotiated for the exercise of those rights. Third, we attempted to make clear that the purpose of the management rights clause is to preserve the ultimate exercise of the management functions listed. As such,

the management rights clause operates as an exception to the general obligation to bargain in good faith over conditions of employment.

Adoption of this basic approach is an essential element in our working out the Udall compromise. The debate in drafting title VII focused on whether the pure exercise of an essential management function would better be protected by a case-by-case determination without statutory guidance, as under the National Labor Relations Act, or by inclusion of a management rights clause. We and the committee decided to include such a clause, but to make clear its intention that the scope of bargaining would be substantially broadened from that permitted agency management under the order. (See House Rept. No. 95-1403 at pp. 43-44.)

This approach specifically rejects the experience of the Federal Labor Relations Council and its broad interpretations of such clauses, interpretations that have tied the hands of agency management in effectively addressing agency concerns. While we very reluctantly support the Udall compromise, we do so with the clear understanding that the Authority will interpret the management rights clause within present and future labor-management realities and in no way is bound to the Council's past decisions.

A principal goal in revising the management rights clause is to change the current situation and, wherever possible, encourage both parties to work out their

order, the Federal Labor Relations Council has taken care to insure that this management right does not "swallow" the bulk of the bargaining obligation. Since some case can be made that virtually any change will reduce in some way the "efficiency of Government operations", the Council has required that management pass a balancing test in order to declare a proposal non-negotiable under this section. Thus, the Council has stated:

In general, agency determinations as the negotiability made in relation to the concept of efficiency and economy in section 12(b) (4) of the Order and similar language in the statutes require consideration and balancing of all the factors involved, including the well-being of employees, rather than an arbitrary determination based only on the anticipation of increased costs. Other factors such as the potential for improved performance, increased productivity, responsiveness to direction, reduced turnover, fewer grievances, contribution of money-saving ideas, improved health and safety, and the like, are valid considerations. We believe that where otherwise negotiable proposals are involved the management right in section 12 (b) (4) may not properly be invoked to deny negotiations unless there is a substantial demonstration by the agency that increased costs or reduced effectiveness in operations are inescapable and significant and are not offset by compensating benefits.

Local Union No. 2219, International Brotherhood of Electrical Workers AFL-CIO and Department of the Army, Corps of Engineers, Little Rock District, Little Rock Ark., 1 FLRC 219,225 (FLRC No. 71A-46) (1972). Accord, American Fed-

Federal sector, as demonstrated by a recent decision of the Labor Relations Umpire in the Library of Congress.

The Library, of course, is not covered by Executive Order 11491. In 1975, the Library established by an internal regulation its own program patterned after the order and containing identical management rights clauses. However, the Library lacked statutory authority to vest final decisions in an agency outside the Library. The Library's regulation makes appropriate decisions of the Federal Labor Relations Council precedents in the Library's labor relations program.

In a recent decision, the Library's Labor-Management Relations umpire articulated, in the labor relations context of the Library, the general principles that we embodied in the substitute's management rights clause.

(I) t is certainly appropriate to apply the (management rights) concept narrowly to effectuate its apparent purpose. This same approach is dictated by accepted principles of statutory construction. Plainly, Regulation 2026 is remedial in character, designed to grant rights to employees and to unions, in an effort to improve labor relations which became exacerbated under the Library's unilateral control. The coverage or scope of such a regulation should therefore be broadly construed. See, e.g., *McComb v. Super-A Fertilizer*, 165 F. 2d 824, 826 (ast Cir. 1948), and cases there cited. Conversely, any exception to the scope of the bargaining obligation created by Regulation 2026 must be narrowly and strictly construed, and be granted only to matters unmistakably within the terms and spirit of the exception. See *A. H. Phillips Co. v. Walling*, 324 U.S. 490, 493.

differences in negotiations. (See House Rept. No. 95-1403 at p. 44.) In retaining a management rights clause in our original draft of title VII, Mr. CLAY and I, as well as the committee intended however, that this section be read very narrowly. In agreeing to the Udall compromise of adding several more portions to this section, we fully intend that the committee's original position go unchanged and that this section be narrowly construed.

In adopting this course, in the Udall compromise, we implement the rationale of several decisions of relevant oversight agencies for Federal sector labor relations. The Federal Labor Relations Council, for example, has ruled that a proposal must directly relate to the "numbers, types, and grades of positions or employees" before that proposal can be ruled nonnegotiable because it infringes on the management right under the Executive order to determine those matters. Thus, the Council has stated:

(I)t does not appear that the basic workweek for employees here proposed is integrally related in any manner to the numbers and types of employees involved. Absent this integral relationship to staffing pattern, the proposal does not conflict with section 11(b) . . . *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center, Charleston, South Carolina*, 1 FLRC 235, 244 (FLRC No. 71A-52) (1972).

Section 12(b)(4) of the Executive order makes nonnegotiable the management right "to maintain the efficiency of the Government operations entrusted to them." In interpreting this section of the

eration of Government Employees, National Joint Council of Food Inspection Locals and Office of the Administrator, Animal and Plant Health Inspection Service, U.S. Dept. of Agriculture, 1 FLRC 616, 620-21 (1973), *aff'd on remand* 3 FLRC 325, 345-46 (1975) (FLRC No. 73A-36). See also *AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona)*, 1 FLRC 71, 73-74 (FLRC No. 7-A-10) (1971).

As the sectional analysis makes clear, the Udall substitute is drafted so as to embody in the statute the approach of these and similar decisions, decisions from which the Council has unfortunately departed in the main.

The management rights section if, loosely construed, as it has too often been under the order, could tie the agency's hands in dealing with any issue. The committee equally intended then that the listed management rights were to be narrowly construed exceptions to the general obligation to bargain in good faith over conditions of employment and that section 7106 "be read to favor collective bargaining whenever there is doubt as to the negotiability of a subject or proposal." *Id.* at 44. Title VII itself is remedial legislation and those supporting the Udall change in the management rights clause continue to fully intend title VII to be broadly construed to achieve these remedial objectives. These goals are also consistent with few decisions of the relevant oversight bodies for labor-management relations in the

In approaching issues of negotiability therefore, the Umpire starts with the premise that the Library bears a heavy burden of establishing that a matter relevant to terms and conditions of employment is nevertheless removed from the scope of bargaining. Of course, proposals which directly and explicitly go to the number of employees assigned to an organizational unit, for example, will be held non-negotiable. Where the "non-negotiability" argument is strained, or where it is presented as a conceivable secondary or tertiary result of a union proposal, however, it will be rejected. Also, the tactic of negotiating over a subject and then belatedly discovering that it is "non-negotiable" is not calculated to inspire either confidence in the labor organizations as to the good faith of the past negotiations, or confidence in reviewing authorities that the claim of non-negotiability is anything more than an expression that the proposal is unacceptable on its merits. In a program initially flawed, at least in theory, by the retention of all final reviewing authority in the hands of top management, any abuse of the doctrine of "non-negotiability" would result in turning the Library's labor relations program into what Justice Jackson colorfully described as "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards v. California*, 314 U.S. 160 at 186, concurring opinion.

Library of Congress and American Federation of State, County & Municipal Employees, Locals Nos. 2477 and 2910, 5, 6-7 (decision of the labor-management relations umpire, May 17, 1978) (slip option). The structure of the substitute's management rights clause dictates that the new authority will closely

scrutinize agency claims of "management rights" at least to the degree the claims were analyzed in the above decision and in AFSCME, Local 2910 and Library of Congress, 2-4, 6-7 (decision of the labor-management relations umpire, September 5, 1978) (ship option).

It is our expectation and that of others supporting the substitute's management rights clause that such a clause will adequately protect genuine managerial prerogatives but that, construed strictly, such a clause will also allow the flexibility that is the hallmark of a successful labor-management program. Thus, although management has the right to direct the work force, proposals aimed at lessening the adverse impact on employees of an exercise, perhaps arbitrary, of that right are fully negotiable. Moreover, agency administrators are fully authorized to negotiate procedures for adequate supervision without avoiding the act. This eliminates the need for agency management to shunt the authority as it has sometimes shunned the Council and conclude an agreement without reference to the order because management cannot live with the strait-jacket that many Council decisions impose on management bargaining.

Finally, it is hoped that the Federal Labor Relations Authority will oversee a flexible Federal labor-management program responsive to changing and particularized circumstances. The concept of negotiability is and must be a dynamic and growing one. If not, Federal sector

organizations representing these teachers do not have exclusive recognition with State. Title VII prevents management from continuing this practice or from extending this type of maneuver to other agencies in order to avoid the duty to bargain by making "matters" that are the subject of non-Government-wide regulations (as opposed to regulations themselves) negotiable. It is intended that the Authority shall not permit such a maneuver to derogate the obligation of management to bargain in good faith on these matters.

Again, an essential element in performance of the authority's responsibilities is an extremely close scrutiny of agency claims that proposals are barred by the management rights clause. The two decisions of the labor-management umpire contain the level of scrutiny we expect from the Authority as a minimum.

Section 7117 sets forth the duty to bargain in good faith, especially with respect to regulations. Under the compromise version, Government-wide rules and regulations are no longer subject to bargaining as they were under the committee print of title VII (except for those supported by a compelling need). In this fashion, Government-wide rules and regulations are thus a major exception to the duty to bargain. In making this change, however, the committee at no time expanded the definition of "Government-wide" as contained in the committee's report.

bor organizations. It is our intention that it ought to be obvious from the contents of the written statement required under subsection (b) (2) (B) that the agency has in fact considered the views and recommendations of the labor organizations. This aspect of the written statement is also necessary for the agency to establish an adequate record for later judicial review of the lawfulness of its promulgation of the regulation.

Section 7116(b) (7) contains language adopted in lieu of the Federal Labor Relations Council policy statement in this area.

Section 7114(a) (3) (A) specifically provides that an exclusive representative shall be given the opportunity to appear at formal discussion between agency representatives and employees. This subsection must be read in conjunction with subsection 7114(I) (1), requiring that a labor organization which has been accorded exclusive recognition is the exclusive representative for employees in its bargaining unit, and with subsection 7116(a) (8) which makes it an unfair labor practice for an agency to fail to comply with any provision of title VII, including the exclusivity rights of labor organizations with exclusive recognition. The compromise inserts the word "formal" before discussions merely in order to make clear that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions regarding performance. Of

labor relations must fail because the energies of management and labor will be diverted from consideration of important labor relations problems to the litigation of the scope of the exceptions to the general bargaining obligation. Years of public and private sector collective bargaining indicate this should not happen.

The compromise position in section 7117 was accepted with the understanding that the provision in subsection (a) (3) will be broadly construed such that the compelling need test will be permitted to be raised in only a limited number of cases. If an exclusive representative represents a unit including at least a majority of the employees affected by the issuance of a regulation, the compelling need test could not be raised. This would permit, for instance, overseas schoolteachers to negotiate all agency regulations (that at least specifically apply only to them), without the possibility of having the compelling need test raised by management.

By also permitting negotiation of matters that are the subject of agency regulations that are not Government-wide rules or regulations, problems such as those that have occurred with overseas schoolteachers should be eliminated. While these teachers are employees of the Defense Department, the Department of State has been given the authority, in some instances, to issue regulations regarding these teachers. The Defense Department has indicated that they could not negotiate on these matters, since they did not issue the regulations. The State Department will not negotiate on the matters, since the employees or-

Section 7103(a) (14) (D) removes from the definition of "conditions of employment" those policies, practices and matters to the extent such matters are specifically provided for by Federal statute. The committee print of title VII contained the word "specifically," also found in the compromise version, in order to clarify the intention of the committee on the scope of this exception to conditions of employment. Where a Federal statute specifically establishes procedures and standards for a condition of employment, section 7103(a) (14) (D) bars negotiations in contravention of those procedures and standards. On the other hand, where a statute merely provides particular authority for an agency official (with that authority to be exercised at the official's discretion and in such manner as the official deems appropriate), that authority and its exercise are not included within the definition in section 7103(a) (14) (D) because it is not "specifically provided for by Federal statute."

Section 7113(b) (2) requires that an agency consider the views or recommendations of any labor organization with national consultation rights before taking final action on any matter for which the views or recommendations were presented. The action resulting in the compromise version of title VII with respect to negotiations over Government-wide and agency regulations reduces the scope of bargaining with respect to such regulations from that in the committee print of title VII. This action was agreed to in part because we believed that section 7113(b) (2) insured genuine consideration by agency officials of views and recommendations presented by la-

course, nothing in this section bars an agency and an exclusive representative from negotiating an agreement providing for a greater role for the representative than that minimally mandated by title VII. Moreover, nothing in this section authorizes agency management to bypass the rights of the exclusive representative and engage in direct communications with unit members.

Section 7132(b) of the compromise precludes the use of official time by employees for conducting the internal business of a labor organization. This subsection specifically provides that employees shall not solicit membership, engage in electioneering, or collect dues on official time. The inclusion of these three categories reflects the general intention that "the internal business of a labor organization" encompasses those activities directed to the institutional structure of such organizations. This section does not, therefore, apply to activities of labor organizations that involve an "interface" with agency management, such as negotiations, grievances, negotiability disputes, and unfair labor practices. Nor does this section apply to preparation for such "interface" activities. Management, of course, engages in all these activities, including preparation, on official time, and subsection 7132(d) (2) makes the use of official time by employees for these activities a subject of negotiated agreement between the agency and the exclusive representative.

Section 7136(f) (1) of the compromise version provides that nothing in title VII will preclude the renewal or continuation of an exclusive recognition or a lawful agreement. This subsection re-

flects the intention that successful on-going labor-management relationships shall not be disputed by enactment of title VII. Since the purpose of this title is principally to encourage the development of successful labor-management programs, it would have been inappropriate for this new legislation, designed to encourage collective bargaining, to operate in such a way as to thwart successful collective bargaining programs already in existence. The intention is to encourage development of these already successful programs while at the same time encourage the development of such relationships between other agencies and labor organizations. Certainly, it is important in this regard to consider the past bargaining relationship in deciding how the new legislation impacts on labor-management relations within such an existing relationship.

Section 7136(b) provides that procedures and decisions issued under the enumerated Executive orders shall continue in effect until revised or revoked by the President or unless superseded by specific provisions of title VII or by regulations or decisions issued by the new Federal Labor Relations Authority.

A primary reason for this legislation in general is dissatisfaction with the state of labor-management relations in the Federal Government under the Executive order and its enforcement bodies. There was great concern that the new authority would simply "rubber-stamp" the decisions and procedures of the Federal

meetings and through his surrogates, that the labor title of the Civil Service Reform Act would not go beyond the principles embodied in Executive Order 11491 and the current practice of labor-management relations in the civil service. While I realize that the President does not exercise complete control over House Members of his own party, we should follow through on his original request and codify the original Kennedy Executive order.

The substitute offered by my colleague from Texas (Mr. COLLINS), is a reasonable compromise between those seeking the continuation of present Federal labor-management relations (as provided by the Executive order) and those labor loyalists on the committee who sought expanded union rights and authority and a diminished management role. It is a compromise adopted by the Senate Governmental Affairs Committee and only slightly modified by the full Senate. It is a compromise acceptable to those who believe that the unions already have sufficient power to protect and promote the rights of their Federal members. The Collins substitute will further the cause of civil service reform. A vote for the committee version of title VII or the Udall substitute would be a vote for "non-reform".

The gentleman from Texas has carefully described the provisions of his substitute and its effect on the scope of bargaining; changes in grievance arbitration; judicial review of decisions of

services is to supply the public with certain essentials of life which cannot reasonably be supplied by the average citizen himself, or to him by private enterprise. Fundamentally, these essentials are usually police and fire protection, education, water, sewage, highways and the like (primarily reserved for State and local governments) and the public defense (reserved, constitutionally, for the Federal Government). Because these services are essential to the health, welfare and safety of the public, the expenditure of public funds for their provision becomes justifiable. Equally because they are so essential, it becomes intolerable that they be interrupted. Precisely because these services are not available from competing sources, as products or services in the private sector are, Federal labor-management relations are not comparable to private sector labor-management relations.

Public employees occupy a status entirely different from their counterparts in the private sector. Public employees are the agents of government, and in reality, exercise a part of the sovereignty entrusted to government. While serving a mission different from the private employee, the public employee enjoys benefits not necessarily available to the private employee. Governments do not go out of business. The public employee has, therefore, enjoyed a security of employment not assured to those in the private sector. In addition, by legislative enactment, the public employee has been

Labor Relations Council that it replaces. The "superseded" language is intentionally included to make clear that the new authority, acting under its own statutory charter, is not to repeat past mistakes in the area of labor-management relations. Title VII as a whole, and the management rights clause in particular, mandates a new approach to labor relations in the Federal Government, an approach that will be more successful for both agency management and labor organizations.

This subsection is included as drafted because of the concern that the development by the new authority of the contours of the new labor-management program will necessarily take time. During that time, questions about the legal efficacy of existing regulations and decisions could prove quite disruptive. Consequently, this subsection provides that such regulations and decisions will continue in force until superseded by regulations and decisions issued under title VII.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Collins substitute for title VII, the so-called Labor-Management Relations title of the Civil Service Reform Act of 1978, and in opposition to the Udall substitute. Evidence has not been presented which would convince me that the current labor-management relations program in the Federal Service is in need of change.

As my colleagues know from reading the incisive, informative views of many of the minority members of the Post Office and Civil Service Committee, we were assured by the President, in personal

the Federal Labor Relations Authority; the exclusive recognition of unions; the definition of unfair labor practices and the prohibition against picketing; and the terms for dues withholding and use of appeal time for union activities. In many cases, this substitute merely codified the present program and grants some expansion of union rights. Hopefully, these changes will not seriously endanger the stability of the civil service or jeopardize the delivery of Government services to the public.

Supporters of title VII claim that the Congress must act to achieve equity between public and nonpublic employees. Federal employee unions have been pushing legislation which would supposedly "equalize" public sector and private sector labor relations. The basic problem with this argument is that the Government is not a business, and attempting to apply the labor practices of a competitive business just will not work.

The competitive marketplace of the private sector is absent in Government employment. Funds from which wages, salaries and money-related benefits are paid or extended to Federal employees come primarily from taxes. Through the budgetary process, the President and elected legislators are responsible for the allocation of such funds. Adding the right to bargain over wages, salaries and other money-related benefits to the free access public employees and their unions already have to Congress, would give Federal workers excess power which would inequitably subordinate the budget-making process to the worker's interests and against the interests of the American taxpayers.

The primary reason for Government

guaranteed such things as employment and promotion on a merit basis, grievance procedures through which his complaints can be resolved, classification and pay plans assuring equal pay for equal work, liberal holiday and vacation schedules, sick leave programs rarely matched by private employers, and retirement systems more liberal than those commonly found in the private sector. And unlike the private sector, all of these benefits are protected by law in the public sector. It is my guess that many private employees would be willing to trade benefits with the average Federal employee and would not be overly concerned by the differences between public and private sector labor relations.

In October 1975, the Sacramento Bee printed an editorial admitting that the paper's earlier support for collective bargaining for public employees was wrong. I urge my colleagues to review with me the main points of this editorial and support efforts to maintain Federal labor-management relations on a level that will protect the responsible, dedicated employee and the taxpaying public which provides and pays for the jobs.

[From the Sacramento Bee, Oct. 19, 1975]
COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES
IS WRONG

The recent collapse of law and order in San Francisco, brought on by an illegal policemen's strike, and numerous other strikes and threats of strikes by various municipal employees' unions require a major re-evaluation of the relationship between public employees and the public they are presumed to serve.

It is pertinent to mention that federal and state employees are performing their jobs without destructive and illegal upheavals.

Why, then, have illegal municipal and school strikes spread like the bubonic plague throughout much of the nation, wreaking havoc on innocent school children, ordinary citizens and the very fabric of government?

The answer is pretty clear. There has been a growing acceptance that unions representing public employees should have the right to bargain collectively with government. And with this development has come the weakening of the civil service system and the placing of union leaders in positions where they can dictate to elected officials. When this happens decisions are made not on the basis of what is good for the public but rather what will satisfy the labor leaders and their followers. New York City's present financial debacle is the end result of leaders of municipal labor unions imposing their will on elected officials.

Recently The Bee supported a bill giving public employes the right to join together and bargain collectively. We also endorsed a bill specifically giving teachers the right to bargain collectively. It now seems clear our position in both instances was wrong.

The Meyers-Milas-Brown Act now requires municipal governments to "meet and confer" with employe groups. To a large degree, this has become the equivalent of a collective bargaining requirement. This law should be revised to halt the trend towards forced collective bargaining by municipalities.

The granting of collective bargaining to public employes is not necessary and dangerously weakens the public's ability to protect its most essential services, services that should not be poker chips traded back and forth between public officials and union leaders.

When an individual goes to work for a governmental unit, he is entering into a relationship that is entirely different from one

business enterprise is faced with wage demands so unreasonable that it will be forced out of business, the private business can say so, even if it means a strike. But government is different. Often unreasonable demands cannot be turned down by government because the public cannot tolerate the loss of essential public services.

The man negotiating for the public is not like the representative of a private company. He is a public servant, subject to political pressures. There is nothing to prevent him from caving in to threats. And when he does, he does not pay the bill. The bill simply will be handed on to the taxpayer who had no effective voice in the negotiations.

Generally, public employes have earned the respect of the public they serve. This is true whether you are talking about the city garbage collector, the state highway patrolman or a forest service ranger.

It would be tragic if the inevitably destructive consequences of collective bargaining are permitted to jeopardize the best interests of public employes and the public they serve.

The time is late but the issue is critical. The Bee believes the public, elected officials and public employes should pause before they turn their fate over to collective bargaining and labor leaders who sometimes care too much about power and too little about the general welfare.

Mr. Chairman, the Udall substitute differs from the Collins substitute and the Executive order in three major areas: Provisions allowing so-called informational picketing by Federal union members—which could be almost anything; the exclusive recognition of a union without an election; and provisions requiring an agency to deduct dues of mem-

ferences; and I urge my colleagues to seriously consider the differences.

I know my colleague from Arizona, a supporter of this legislation, has had a difficult time negotiating compromises of the various differences among the Members. But his title VII substitute does plow new ground with regard to Federal labor-management relations, and it is not completely clear how his changes will affect the current practice of Federal labor-management relations.

So, I urge my colleagues to support the Collins substitute because it does exactly what my colleague from Michigan (Mr. Ford) is talking about—it provides for the basic concepts and codifies the Executive order originally issued by President John F. Kennedy and supported by all Presidents since, including the present incumbent, Mr. Carter. That is what President Carter asked for, and I think we should give him that by passing the Collins substitute.

I urge support of the Collins substitute.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, the Members will recall that on Monday we had a very long session, but by and large it was a session marked by statesmanship and fine, high-level debate. But I must observe that with the return of the

getting a job in private enterprise. Civil service gives the government employe far greater job protection. His retirement pay and other fringe benefits generally are higher than in private enterprise.

Most important, the government worker has gone to work for the people. In accepting a job as a public servant, he has accepted a public trust. The idea of firemen, teachers, public health employes, policemen or city garbage collectors going on strike is an affront to that public trust. If an individual does not feel he is willing to trade the special benefits of government employment for a commitment to obey that public trust, then he should seek other employment.

No one can deny public employes the right to organize and lobby in behalf of their members. The California State Employes Association has done this ably and effectively for years. But the next step, giving an employes' group the right to bargain with government, is fraught with peril and should be avoided.

This is the primary lesson to be learned from the recent illegal strike of policemen in San Francisco. Mayor Joseph Alloto, after personally bargaining with the policemen's association and other labor leaders, caved in to their demands.

The dynamics of the bargaining situation, by its very nature, creates pressures on public officials they find difficult to withstand. Alloto's surrender probably was inevitable.

A recent statement by Legislative Analyst A. Alan Post strongly opposes collective bargaining for public employes. He said the state's present policy of "attempting to maintain parity with the results of collective bargaining in the more relevant private sector has been extraordinarily effective."

Possibly there must be refinements developed to ensure pay and working conditions are truly comparable to similar jobs in the private sector but only ill will come from putting the fate of critical public services in the hands of union negotiators.

Government is not in a position to successfully bargain collectively. If a private

bers without cost to the exclusive union.

The Udall substitute provides that—
"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

So for the first time we are going to allow the Treasury to pay for union activity. This is certainly not the case in the private sector. But under the Udall substitute, we would allow these organizing and membership efforts to be financed out of the Federal Treasury. My colleagues who support the Udall substitute claim that this will provide equity between Federal union members and private sector union members. That is not true. We are giving more than equity—we are allowing Federal employe unions to dip into the Federal Treasury to provide for this dues checkoff.

Additionally, as I have mentioned, the Udall substitute allows, for the first time, informational picketing. As described in the substitute, this can mean almost anything.

My colleagues, the gentleman from Michigan (Mr. Ford) and the gentleman from Arizona (Mr. Udall), claim that there are no great differences between the Udall substitute and the Executive order. There are substantial dif-

ferences between the Executive order and the Udall substitute. The gentleman from California (Mr. Rous-selot) the debate today has risen to even greater heights of statesmanship, and his wisdom and his powers of observation are doing much to help expedite this bill.

I suggest, Mr. Chairman, that we have done a very fine job in amending the Udall substitute. I would point out, as the gentleman from California (Mr. Rous-selot) properly did, that the present Executive order is in fact what the gentleman from Texas (Mr. Collins) is proposing. So what we have really are two very fine amendments. Either way we are going to a great civil service reform.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we have come a long way today and the gentleman from Illinois (Mr. Erlendorn) has completed the amendments that are most important. Many of those were accepted, which made the substitute amendment of the gentleman from Arizona (Mr. Udall) much stronger and much better legislation.

We still have three major differences that exist. I am impressed with how far we have gone with what the committee brought to the floor for us to consider. We still, of course, if civil service reform passes, have a conference; but I want to bring out three major differences that exist. One is on the matter of dues check-off. It is proposed that this be a negotiable item. Under the substitute amendment of the gentleman from Arizona (Mr. Udall), the gentleman states that the Government must pay for them. In other words, dues check-off must be

paid by the Government, that it is not a negotiable item. Normally this should be a negotiable item, in that dues check-off will be made at no cost to the union or the employee. That is a tremendous concession and the gentleman asks that we go further which handicaps the civil service or any agency that is involved.

The second one that comes up; it seems to me in any type of voting for a union that the secret ballot election is absolutely essential. Under the substitute amendment of the gentleman from Arizona (Mr. UDALL), in one particular situation they can be declared a union. If an agency has created an unfair labor practice, they can declare a union, regardless. That is a tremendous move, to allow that a union be declared without a secret election.

The third issue, which still stands in the substitute amendment of the gentleman from Arizona (Mr. UDALL) is on this matter of picketing. The gentleman from Arizona provides that you can have informational picketing. Knowing how the courts are so broad in their interpretation, anything could be considered as informational picketing. We must remember that the people involved here in Civil Service are employees. They are dedicated professionals. These are the civil servants of the United States Government. There is a complete difference between working for the U.S. Government and being an employee working for a shirt factory or working in an automobile plant. These civil servants are

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. COLLINS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 381, noes 0, answered "present" 1, not voting 50, as follows:

[Roll No. 764]

AYES—381

| | | | | | |
|----------------|-----------------|-----------------|----------------|--------------|---------------|
| Abdnor | Daniel, R. W. | Hefner | Molohan | Rangel | Steers |
| Addabbo | Danielson | Heftel | Montgomery | Regula | Steiger |
| Akaka | Davis | Hightower | Moore | Reuss | Stockman |
| Alexander | de la Garza | Hillis | Moorhead, | Rhodes | Stokes |
| Ambro | Delaney | Holland | Calif. | Rinaldo | Stratton |
| Anderson, | Dellums | Hollenbeck | Moorhead, Pa. | Roberts | Studds |
| Calif. | Dent | Holt | Moss | Robinson | Symms |
| Anderson, Ill. | Derrick | Holtzman | Mottl | Rodino | Taylor |
| Andrews, N.C. | Derwinski | Horton | Murphy, Ill. | Roe | Thompson |
| Andrews, | Devine | Howard | Murphy, N.Y. | Rogers | Thone |
| N. Dak. | Dickinson | Howard | Murphy, Pa. | Roncalio | Thornton |
| Annunzio | Dicks | Hubbard | Murtha | Rooney | Traxler |
| Applegate | Diggs | Hughes | Myers, Gary | Rose | Trible |
| Archer | Dingell | Hyde | Myers, John | Rosenthal | Tucker |
| Ashbrook | Dodd | Ichord | Myers, Michael | Rostenkowski | Udall |
| Ashley | Dornan | Ireland | Natcher | Rousselot | Ullman |
| Aspin | Downey | Jacobs | Neal | Roybal | Van Deerin |
| AuCoin | Drinan | Jeffords | Nedzi | Rudd | Vanik |
| Badham | Duncan, Oreg. | Jenkins | Nichols | Runnels | Vento |
| Bafalis | Duncan, Tenn. | Jenrette | Nix | Ruppe | Waggonner |
| Baldus | Early | Johnson, Calif. | Noian | Russo | Walgren |
| Barnard | Eckhardt | Jones, N.C. | Nowak | Ryan | Walker |
| Baucus | Edgar | Jones, Okla. | O'Brien | Satterfield | Walsh |
| Bauman | Edwards, Ala. | Jones, Tenn. | Oakar | Scheuer | Wampler |
| Beard, R.I. | Edwards, Calif. | Kastenmeyer | Oberstar | Schroeder | Watkins |
| Bedell | Eilberg | Kazen | Obey | Schulze | Waxman |
| Bellenson | Emery | Kelly | Ottinger | Sebelius | Weaver |
| | | | Panetta | Seiberling | Weiss |
| | | | Patten | Sharp | White |
| | | | Patterson | Shuster | Whitehurst |
| | | | Pattison | Sikes | Whitley |
| | | | Pease | Simon | Wilson, Bob |
| | | | Pepper | Sisk | Wilson, C. H. |
| | | | Perkins | Skelton | Wilson, Tex. |
| | | | Pettis | Skubitcz | Winn |
| | | | Pickle | Smith, Iowa | Wirth |
| | | | Pike | Smith, Nebr. | Wolff |
| | | | Poage | Snyder | Wright |
| | | | Pressler | Solarz | Wydler |
| | | | Preyer | Spellman | Wylie |
| | | | Price | Spence | Yates |
| | | | Fritchard | St Germain | Yatron |
| | | | Pursell | Staggers | Young, Fla. |
| | | | Quayle | Stangeland | Young, Mo. |
| | | | Quillen | Stanton | Zablocki |
| | | | Rahall | Stark | Zefiretti |
| | | | Railsback | Steed | |

NOES—0

working for the U.S. Government. To have them out picketing, whether they call it informational picketing or whatever it is, is completely contrary to the principles of the Constitution. In our country, the Government is supreme. The Government is the law of the land.

So I want to commend the gentleman from Arizona for the gentleman's broad-mindedness and openmindedness. I know how far the gentleman has gone to try to provide a workable solution. I would hope that in the conference, we could take up these three very serious issues that still stand in the gentleman's substitute amendment.

● Mr. BIAGGI, Mr. Chairman, I would like to emphasize, at this point, that the "Definition of Agency" provision of title VII, the "Labor-Management Relations" title of H.R. 11280, as written into the bill and reported by the House Committee on Post Office and Civil Service, represents a fair and equitable approach to labor-management relations for Federal employees. It therefore should remain in the final version of the bill. I strongly urge my colleagues to support this particular provision as it is currently written so that when this legislation becomes law, it will apply to all those Federal employees we in the House intended to include in its coverage.●

The CHAIRMAN. All time has expired.

The question is on the amendment, as amended, offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment, as amended, offered as a substitute for the amendment was agreed to.

Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Blount
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Mass.
Burlison, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cederberg
Chappell
Chisholm
Clausen,
Don H.
Clay
Cleveland
Cohen
Coleman
Collins, Ill.
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Cunningham
D'Amours
Daniel, Dan

English
Erlenborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fasell
Fenwick
Fendley
Fish
Fisher
Fithian
Flippo
Flood
Florio
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frey
Fuqua
Gammage
Garcia
Gaydos
Gephardt
Glaime
Gilman
Ginn
Glickman
Goldwater
Gonzales
Goodling
Gore
Gradison
Grassley
Green
Guyer
Hagedorn
Hall
Hamilton
Hammer-
schmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harshe
Hawkins
Heckler

Kemp
Keys
Kildee
Kindness
Koetmayer
Krebs
Lagomarsino
Latta
Le Fante
Leach
Lederer
Lent
Levitass
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCloskey
McCormack
McDade
McDonald
McFall
McHugh
Madigan
Maguire
Mahon
Mann
Markey
Marks
Marionee
Marriott
Martin
Mathis
Mattox
Mazzoli
Meeds
Metcalfe
Meyner
Michel
Mikulski
Mikva
Milford
Miller, Ohio
Mineta
Minaish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett

ANSWERED "PRESENT"—1

Edwards, Okla.

NOT VOTING—50

| | | |
|---------------|----------------|---------------|
| Ammerman | Frenzel | Santini |
| Armstrong | Gibbons | Sarasin |
| Beard, Tenn. | Gudger | Sawyer |
| Breaux | Huckaby | Shipley |
| Breckinridge | Johnson, Colo. | Slack |
| Broomfield | Kasten | Stump |
| Brown, Ohio | Krueger | Teague |
| Burke, Calif. | LaFalce | Treen |
| Burke, Fla. | Leggett | Tsongas |
| Caputo | Lehman | Vander Jagt |
| Clawson, Del | McEwen | Volkmer |
| Cochran | McKay | Whalen |
| Conable | McKinney | Whitten |
| Crane | Miller, Calif. | Wiggins |
| Fary | Quie | Young, Alaska |
| Flowers | Richmond | Young, Tex. |
| Fraser | Risenhoover | |

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read title VIII.

The Clerk read as follows:

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

Sec. 801. (a) (1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

"SUBCHAPTER VI—GRADE AND PAY RETENTION

§ 5361. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 or 5363 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

"§ 5362. Grade retention following a change of positions

"(a) Any employee—

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

shall be entitled, to the extent provided in subsection (b) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

"(b) For the 2-year period referred to in

tion shall cease to apply to an employee who—

"(1) has a break in service of one work-day or more;

"(2) declines a reasonable offer of a position the grade of which is equal to or higher than the retained grade; or

"(3) elects in writing to have the benefits of this section terminate.

"§ 5364. Pay retention

"(a) Any employee—

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of—

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the em-

"(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

"(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

"(2) to individuals to whom such provisions do not otherwise apply; and

"(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

"§ 5367. Appeals

"(a) (1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

"(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

"(A) under section 5112(b) or 5346(c) of this title or otherwise, any reclassification of a position; or

"(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

"(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section)—

"(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

"(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under such appeals procedures."

(2) Sections 5334(d), 5337, and 5345 of title 5, United States Code, are hereby re-

subsection (a) of this section, the retained grade of an employee under such subsection (a) shall be treated as the grade of his position for all purposes (including pay and pay administration under this chapter and, chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

“(1) for purposes of subsection (a) of this section,

“(2) for purposes of applying any reduction-in-force procedures, or

“(3) for such other purposes as the Office of Personnel Management may provide by regulation.

“(c) The provisions of subsection (a) of this section shall cease to apply to an employee who—

“(1) has a break in service of one work-day or more;

“(2) is demoted (determined without regard to this section) for personal cause;

“(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

“(4) elects in writing to have the benefits of this section terminate.

“§ 5363. Grade retention following position reclassification

“(a) An employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled to have the grade of such position before reduction be treated for all purposes (other than the application of reduction-in-force procedures) as the retained grade of such employee so long as such employee continues in such position.

“(b) The provision of subsection (a) of this section shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

“(c) The preceding provisions of this sec-

tion shall cease to apply to an employee who—

“(1) has a break in service of one work-day or more;

“(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

“(3) is demoted for personal cause.

“§ 5365. Remedial actions

“Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

“(1) to report to the Office information with respect to vacancies (including impending vacancies);

“(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362, 5363, or 5364 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

“(3) to establish a program under which employees receiving benefits under section 5362, 5363, or 5364 of this title are given priority in the consideration for or placement in positions which are equal to or greater than their retained grade or pay; and

“(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

“§ 5366. Regulations

“(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

pealed.

(3) (A) Chapter 53 of title 5, United States Code, is amended—

(1) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B) (1) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following:

“SUBCHAPTER VI—GRADE AND PAY
RETENTION

“5361. Definitions.

“5362. Grade retention following a change of positions.

“5363. Grade retention following position reclassification.

“5364. Pay retention.

“5365. Remedial actions.

“5366. Regulations.

“5367. Appeals.

“SUBCHAPTER VII—MISCELLANEOUS
PROVISIONS

“5371. Scientific and professional positions.

“5372. Administrative law judges.

“5373. Limitation on pay fixed by administrative action.

“5374. Miscellaneous positions in the executive branch.

“5375. Police force of National Zoological Park.”

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5346, respectively.

(iii) Section 559 of title 5, United States Code, are each amended by striking out “5362,” each place it appears and inserting “5372,” in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out “section 5361” and inserting “section 5371” in lieu thereof.

(D) Section 5102(c) (5) of title 5, United States Code, is amended by striking out “sec-

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tion 5365" and inserting "section 5375" in lieu thereof.

(E) Sections 5107 and 5704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in lieu thereof "subchapter VI of chapter 53".

(F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".

(G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(H) Section 5349(a) of title 5, United States Code, is amended—

(i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";

(ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and

(iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".

(I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".

(J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90-448; 15 U.S.C. 1715(a)), and section 808(e) of the Act of April 11, 1968 (Public Law 90-284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".

(4) (A) The amendments made by this subsection shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.

(B) An employee who was receiving pay

(A) during the period beginning on January 1, 1977, and ending on the effective date of the amendments made by subsection (a) of this section was holding any position under a covered pay schedule when such position was reduced in grade; and

(B) after the date of such reduction in grade and before such effective date, changed to any other position under such a schedule (other than by reason of a demotion for personal cause) and is holding such position on such effective date;

is entitled to the benefits of section 5363 of title 5, United States Code (as amended by subsection (a) of this section) as if such employee had not changed positions.

(3) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(4) (A) For purposes of this subsection, the requirements under paragraph (1) (B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(5) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has

employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) On the completion of the study under subsection (a) of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Personnel Management shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any such recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

Sec. 1102. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding

under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 or 5363 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).

(b) (1) Under regulations prescribed by the Office of Personnel Management, any employee—

(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 or 5363 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more; shall be entitled—

(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

(ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) Under such regulations, any employee who—

under section 5366 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of title VIII be dispensed with, and that it be printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. For the information of the committee, titles IX and X were stricken.

There being no amendments to title VIII, the Clerk will read title XI.

The Clerk read as follows:

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

SEC. 1101. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Personnel Management shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include—

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal

shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1103. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

SEC. 1104. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to—

“(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or

“(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 1105. (a) Title 5, United States Code, is amended—

(1) in sections 5347, 8713, and 8911, by striking out “Chairman of the Civil Service Commission” and inserting in lieu thereof “Director of the Office of Personnel Management”;

(2) in section 3304 by striking out “a Civil Service Commission board of examiners” and inserting in lieu thereof “the Office of Personnel Management”;

(3) in sections 1301, 1302, 1304, 1306, 2105, 2951, 3110, 3304a, 3308, 3312, 3318, 3324, 3325, 3344, 3351, 3363, 3373, 3502, 3504, 4102, 4106, 4113-4118, 5102, 5103, 5105, 5107, 5110-5115, 5303, 5304, 5333, 5334, 5336, 5338, 5343, 5346, 5347, 5351, 5352, 5371, and 5372 (as redesignated in section 801(a)(3) (A)(ii) of this Act), 5374 (as redesignated in section 801(a)(3) (A)(ii) of this Act), 5504, 5533, 5545, 5548, 5723, 6101, 6304-6306, 6306, 6311, 6322, 6326, 7203, and 7204 (as redesignated in section 703(a)(1) of this Act), 7312, 8151, 8331, 8332, 8334, 8337, 8339-8343, 8345-8348, 8501, 8701-8712, 8714, 8714a, 8716, 8901-8903, 8905,

8907-8910, and 8913, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(4) in sections 1505-1508 and 3383 by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Merit Systems Protection Board" and "Board", respectively;

(5) in section 1504 by striking out "Civil Service Commission. On receipt" and all that follows down through the end thereof and inserting in lieu thereof "Special Counsel of the Merit Systems Protection Board.";

"(6) in section 5335(c)—

"(A) by striking out "Commission" the first place it appears and inserting in lieu thereof "Office of Personnel Management";

"(B) by striking out "Commission" the second place it appears and inserting in lieu thereof "Merit Systems Protection Board";

"(C) by striking out "Commission" the third place it appears and inserting in lieu thereof "Office"; and

"(D) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Board";

(7) in section 8347(d), by striking out "Commission" the first time it appears and inserting in lieu thereof "Merit Systems Protection Board" and by striking out "Commission" the second time it appears and inserting in lieu thereof "Board";

(8) in section 552(a)(4)(F)—

(A) by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof, "Special Counsel"; and

(B) by striking out "its" and inserting in lieu thereof "his";

(9) in section 1303—

(A) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management Merit Systems

(16) in the section heading for section 2951 and in the item relating to section 2951 in the analysis for chapter 29, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(17) in the section heading for section 5112 and in the item relating to section 5112 in the analysis for chapter 51, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management".

(b) Section 1307 of title 5, United States Code, is hereby repealed.

(c) (1) Section 5109(b) of title 5, United States Code, is hereby repealed.

(2) Section 5109 of such title is further amended by redesignating subsection (c) as subsection (b).

(d) The President or his designee shall, as soon as practicable, but in any event not later than 30 days after the date of the enactment of this Act, submit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a draft of any additional technical and conforming amendments to the provisions of title 5, United States Code, and any other provisions of law which have not been made by the provisions of this Act and which are necessary to reflect throughout such provisions the amendments to the substantive provisions of law made by this Act and by Reorganization Plan Numbered 2 of 1978.

EFFECTIVE DATE

SEC. 1106. Except as otherwise expressly provided in this Act, the provisions of this Act shall take effect 90 days after the date of the enactment of this Act.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that

shops, and the midshipmen's store", and inserting in lieu thereof "the laundry, tailor shop, Cobbler and barber shops, and store for individuals enrolled at the Academy".

(3) Section 2108(3) of title 5, United States Code, is amended—

(A) in subparagraph (D), by striking out "widow or widower" and inserting in lieu thereof "surviving spouse"; and

(B) in subparagraph (E), by striking out "wife or husband" and inserting in lieu thereof "spouse".

(4) Section 3110(a)(3) of title 5, United States Code, is amended by striking out "father" and all that follows down through "half sister" and inserting in lieu thereof the following: "parent, child, brother, sister, uncle, aunt, first cousin, nephew, niece, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepmother, half brother, or half sister."

(5) The heading for section 3551 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(6) Section 5343(d)(2)(B) of title 5, United States Code, is amended by striking out "manpower" and inserting in lieu thereof "supply of personnel available and fitted for service".

(7) The heading for section 5543 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(8) Section 5561(3)(B) of title 5, United States Code, is amended by striking out "mother or father" and inserting in lieu thereof "parent".

(9) Section 5582(b) of title 5, United States Code, is amended by striking out "widow or

Protection Board, and Special Counsel"; and

(B) by striking out "Commission" in paragraph (1) and inserting in lieu thereof "Office of Personnel Management";

(10) in section 1305, by striking out "For the purpose of sections 3105, 3344, 4301(2) (E), 5362, and 7521 of this title and the provisions of section 5335(a) (B) of this title that relate to administrative law judges the Civil Service Commission may" and inserting in lieu thereof "For the purpose of section 3105, 3444, 4301(2) (D) and 5372 of this title and the provisions of section 5335(a) (B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may";

(11) in section 1306, to read as follows: "The Director of the Office of Personnel Management and authorized representatives of the Director, may administer oaths to witnesses in matters pending before the Office.";

(12) in sections 1302, 1304, 1308, 2951, 3304a, 3308, 3312, 3317b, 3318, 3324, 3351, 3363, 3504, 4106, 4113-4115, 4117, 4118, 5105, 5107, 5110-5112, 5114, 5333, 5343, 5346, 5545, 5548, 5723, 6304, 6405, 7312, 8331, 8332, 8337, 8339-8343, 8345-8348, 8702, 8704-8707, 8709-8712, 8714a, 8716, 8901-8903, 8505, 8907, 8909, 8910, and 8913 (as such sections are amended in paragraph (3) of this subsection), by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(13) in sections 1303, 8713, and 8911 (as such sections are amended in paragraph (1) of this subsection), by striking out "Commission" and inserting in lieu thereof "Office";

(14) in section 8344(a), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management";

(15) in section 8906, by striking out "Commission" each place it appears and inserting in lieu thereof "Office of Personnel Management" the first time it appears and "Office" the other times it appears;

this last title of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mrs. SCHROEDER: Page 383, after line 14, insert the following:

GENDER-BASED REFERENCES

SEC. 1102. (a) (1) Section 2108(3) (F) and (G) of title 5, United States Code, are each amended—

(A) by striking out "the mother" and inserting in lieu thereof "the parent";

(B) by striking out "her husband" and inserting in lieu thereof "such parent's spouse";

(C) by striking out "she" each place such term appears and inserting in lieu thereof "such parent";

(D) by striking out "from the father" and inserting in lieu thereof "from such individual's other parent"; and

(E) by striking out "from her husband".

(2) Section 5561(3) (A) of title 5, United States Code, is amended by striking out "a wife" and inserting in lieu thereof "a spouse".

(3) Section 8332(j) of title 5, United States Code, is amended by striking out "widow" each place such term appears and inserting in lieu thereof "surviving spouse".

(b) (1) The heading for section 502 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members in the Reserves and National Guard".

(2) Section 2105(b) of title 5, United States Code, is amended by striking out "the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber

widower" and inserting in lieu thereof "surviving spouse".

(10) Section 5583(a) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(11) Section 5701(4) of title 5, United States Code, is amended by inserting "or stewardesses" after "stewards".

(12) Section 5723 of title 5, United States Code, is amended—

(A) in the heading, by striking out "manpower" and inserting in lieu thereof "personnel"; and

(B) in subsections (a) (1) and (d), by striking out "manpower shortage" each place the term appears and inserting in lieu thereof "shortage in personnel available and fitted for service".

(13) The hearing for section 6323 of title 5, United States Code, is amended by striking out "Reserves and National Guardsmen" and inserting in lieu thereof "members of the Reserves and National Guard".

(14) The heading for section 6324 of title 5, United States Code, is amended by striking out "firemen" and inserting in lieu thereof "firefighters".

(15) (A) (1) Section 8101(6) of title 5, United States Code, is amended to read as follows:

"(6) 'surviving spouse' means the spouse living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion."

(1) Section 8101(11) of title 5, United States Code, is hereby repealed.

(B) Section 8109(a) (D) (i), (ii) and (iii) of title 5, United States Code, are each amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(C) Section 8133 of title 5, United States Code, is amended—

(i) by striking out "widow or widower" each place it appears and inserting in lieu thereof "surviving spouse";

(ii) in subsection (a) (4), by striking out "widow, widower," each place it appears and inserting in lieu thereof "surviving spouse";

(iii) in subsection (a) (5), by striking out "widow, widower," and inserting in lieu thereof "surviving spouse,"; and

(iv) in subsection (b) (1), by striking out "widow, or widower" and inserting in lieu thereof "surviving spouse".

(D) Section 8135 of title 5, United States Code, is amended by striking out "widow or widower" each place it appears and inserting in lieu thereof "surviving spouse".

(16) Section 8110 of title 5, United States Code, is amended—

(A) by striking out paragraph (1);

(B) in paragraph (2)—

(i) by redesignating such paragraph as paragraph (1); and

(ii) by striking out "husband" and inserting in lieu thereof "spouse"; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(17) Sections 8116(c), 8137(a) (1), and 8173 of title 5, United States Code, are each amended by striking out "workmen's" and inserting in lieu thereof "workers'".

(18) Section 8342(c) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

(19) (A) The heading for subchapter II of chapter 85 of title 5, United States Code, is amended by striking out "EXSERVICEMEN" and inserting in lieu thereof "FORMER MEMBERS OF THE ARMED FORCES".

(B) Section 8521(a) (2) of title 5, United States Code, is amended by striking "servicemen" and inserting in lieu thereof "members of the armed forces".

(C) The item in the chapter analysis of chapter 85 of title 5, United States Code, which relates to subchapter II is amended

ing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; the words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person; the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with by making affirmation in judicial form. (R. S. § 1.)

Thus, my amendments make changes, such as replacing the words "husband" or "wife" with "spouse," and "mother" or "father" with "parent," and "widow" or "widower" with "surviving spouse," and "National Guardsman" with "member of the National Guard," which reflect the fact that citizens of both sexes are to be treated equally. I believe that many of these changes either reflect the law as interpreted by the courts, or would reflect the law if an appropriate case were brought. In addition, many of the changes are as beneficial to men as to women.

These modifications were suggested in a report of the U.S. Commission on Civil Rights which came out in April 1977 entitled "Sex Bias in the U.S. Code."

Mr. Chairman, I urge my colleagues' support of this reform.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentlewoman yield?

gives the mother of a disabled veteran a 5-point preference with respect to Federal employment. The father does not now have that preference. If we pass this amendment I am told by the staff we would make a change in that law, and there may be dozens of other Federal laws relating to benefits where major changes in policy would be affected. I would probably stand with the gentlewoman on those changes, but I am not sure that this is the right way. The right time, to be moving in that drastic a manner.

Mrs. SCHROEDER. Mr. Chairman, I do not think what we are doing here is drastic, because I think the consensus of the Civil Rights Commission, who did hold extensive hearings on this, and did make these recommendations, was that if any of this language was tested in the courts under the current laws that we have on the books, "mother" would be "parent." For example, the section you are talking about is where a mother who has a husband who is totally or permanently disabled, but what we are saying is that the parent of someone who was injured in the war, who is married to someone who is permanently disabled, so that neither parent could help themselves, so they would get that benefit.

The Civil Rights Commission seems to feel that in a court you could not sustain that anyway, that would be considered sex bias by U.S. law.

Mr. UDALL. If the gentleperson will yield further, I understand there are a

by striking out "EX-SERVICEMEN" and inserting in lieu thereof "FORMER MEMBERS OF THE ARMED FORCES".

(20) Section 8705(a) of title 5, United States Code, is amended by striking out "widow or widower" and inserting in lieu thereof "surviving spouse".

Page 383, line 16, strike out "Sec. 1102." and insert in lieu thereof "Sec. 1103."

Page 384, line 15, strike out "Sec. 1103." and insert in lieu thereof "Sec. 1104."

Page 384, line 21, strike out "Sec. 1104." and insert in lieu thereof "Sec. 1105."

Page 385, line 7, strike out "Sec. 1105." and insert in lieu thereof "Sec. 1106."

Page 390, line 16, strike out "Sec. 1106." and insert in lieu thereof "Sec. 1107."

Revise the table of contents accordingly.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, the amendments I am offering will remove the bias contained in certain sections of the Civil Service laws in title 5, United States Code.

The amendments make only changes which are necessary, because the rules for construction of the United States Code contained in title 1, section 1, of the Code do not cover them. That section is as follows:

SECTION 1. Words importing singular number, masculine gender, etc.; extended application. In determining the meaning of any Act or resolution of Congress, words import-

Mrs. SCHROEDER. I yield to the gentleman.

Mr. JOHN L. BURTON. Mr. Chairman, how does the gentlewoman handle "grandparents"?

Mrs. SCHROEDER. "Grandparents" is already neutered.

Mr. JOHN L. BURTON. Neutered?

Mrs. SCHROEDER. "Grandparents"? I am totally unaware of any sexual implication by the word "grandparents."

Mr. JOHN L. BURTON. But "grandmother" or "grandfather" would be changed to "grandparents"?

Mrs. SCHROEDER. That is right.

Mr. JOHN L. BURTON. And the same for "great grandparents"?

Mrs. SCHROEDER. That is right.

Mr. JOHN L. BURTON. I thank the gentleperson.

Mr. UDALL. Mr. Chairman, will the gentleperson yield?

Mrs. SCHROEDER. I would be delighted to yield to the gentleperson from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I hate to break up a happy party, but I want to raise a serious question about this amendment. It really does two things, one is we get away from gender based references, and, in that respect, I support what the gentleperson is trying to do, and I think she is right on target, I think it is a good move. But, there have been no hearings held on this amendment and no study has been made of it. I am told by the staff that this could mean making a lot of substantive changes in the law, different laws relating to civil service. I am concerned about that and I want to raise that question.

For example, we now have a law which

lot of arguments made to the cases involving the civil service system, and that there might be a tremendous budget impact. I do not know how many millions of dollars are involved if we put fathers of disabled servicemen in the same status as we put mothers.

I would just suggest that maybe we go a little bit slower for the moment in passing such drastic changes as the amendment here well might.

But, so far as the gender references, I would have no problem with that, but I think that there may be major changes in national policy involved and I am concerned about that.

Mrs. SCHROEDER. I think you will find that in changing the gender references we are in accord with the law as interpreted by the Civil Rights Commission. So I do not think you will find we are really changing the laws, we are just conforming this in compliance with the law.

Mr. SEIBERLING. Mr. Chairman, will the gentleperson yield?

Mrs. SCHROEDER. I yield to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Could you incorporate a reverse grandparent clause so that it would not affect anybody or change their status at all?

The CHAIRMAN. The time of the gentlewoman has expired.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, I have taken this time in order to ask the gentlewoman from Colorado (Mrs.

SCHROEDER) a question. I am informed there is some indication that there may be a problem of jurisdiction involved here in what we are doing so far as the Committee on Education and Labor is concerned, possibly affecting legislation within that committee and possibly having a substantive effect on the legislation.

Has this amendment been cleared on the jurisdictional question with that committee?

Mrs. SCHROEDER. I am not sure it has been cleared, but it clearly is title V of the bill and the Committee on Civil Service has full jurisdiction over title V. We are strictly dealing with the sex bias portion of the United States Code in title V dealing with people who are in civil service.

Mr. FORD of Michigan. I am not at all certain that that is what we are dealing with, although for the purpose of administering this law and a number of other laws, as a matter of fact, with respect to Federal employees, title V of this bill is operative since it deals with the classified service.

The fact is that an exercising their jurisdiction here to administer the law, they are administering laws under the jurisdiction of the Committee on Education and Labor, substantive laws; and we have no way of knowing whether the gender changes in the amendment, when read in the context of those existing statutes, to be administered with respect to Federal employees, constitute a substantive change in rights or not.

For example, we still—perhaps archa-

much more far-reaching amendment than we think. Therefore, I think it would be much wiser if we took a good, hard look at this amendment. Certainly there is no real opposition to the principle, but I think there should be some questions raised as to the real applications of the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Colorado (Mrs. SCHROEDER). The amendments were rejected.

PARLIAMENTARY INQUIRY

Mr. HARRIS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARRIS. Mr. Chairman, I have an amendment to the bill which would amend the bill so as to establish a new title in the bill. If I understand the current parliamentary situation, we are still under title XI, and such an amendment would be in order after we had completed action on title XI. Am I correct in that interpretation, and are my rights reserved in offering an amendment for this title if I do not make that motion until after we finish title XI?

The CHAIRMAN. The gentleman's observation is correct. The committee is presently considering title XI; and if and when there are no further amendments to title XI, it will be proper to offer an amendment, adding a new title.

Mr. HARRIS. I thank the Chair.

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. COLLINS of Texas. Mr. Chairman,

already spoken on this issue, and I believe we should make it clear, by adopting this amendment, that we are not altering our position in any way.

Specifically, this amendment would cut off funds for the so-called Sugarman plan to ignore merit principles and appoint Federal employees on what can only be called a quota basis. This amendment is necessary to preserve the essence of merit principles; namely, that Federal positions should be filled by the best qualified applicant, regardless of sex, or racial or ethnic background.

This bill states, in title I on page 133 and 134, that:

*** recruitment should be from qualified vancement should be determined solely on endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills.

My amendment would emphasize the crucial word "solely." In approving this amendment we would not be forbidding the search for qualified personnel from every segment of society, but we would deny funds to any initiative which implies that each of these segments should be represented, without regard to merit, on the Federal civilian payroll.

Because the Federal work force is responsible to all the people, and not merely to those of a particular racial or ethnic background, job appointments should go to the best qualified applicant and to no one else. We must choose between a quota system which would parcel out

ically, from the gentlewoman's point of view—refer to "widows" in legislation; and that is not a term that is without gender.

Mrs. SCHROEDER. If the gentleman will yield further, there are no substantive changes, I can assure the gentleman. In section 81 what we are talking about is surviving spouses rather than widows, but there are no substantive changes, per se. It is strictly within the confines of title V.

Mr. FORD of Michigan. Mr. Chairman, let me, at the risk of having somewhat cleansed my soul by voting for the extension of ERA and sounding like a sexist and a conservative at the same time—both labels I would not like to carry for very long—say that I would have to reluctantly oppose the gentlewoman's amendment, because we just cannot understand it well enough to be secure in adopting it at this time. I really think that as laudable as her objectives may be, it is not worth taking the risk.

For that reason, Mr. Chairman, I would urge a "no" vote on the gentlewoman's amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been looking at the RECORD since the gentleman from Colorado had filed her amendment in the RECORD. There is a little more to it than just substituting "parent" for "wife" or "husband" and so forth.

I support the point made by the gentleman from Michigan (Mr. FORD) and the gentleman from Arizona (Mr. UDALL), that this amendment really could be a

I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Page 384, line 18: strike out "Act." and insert in lieu thereof the following: "Act, except that no part of any appropriation contained in this Act may be obligated or expended in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order which includes any ratio, quota, or other numerical requirement related to race, creed, color, national origin or sex, and which requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity."

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, my amendment would deny funds for the purpose of initiating or continuing appointment or promotion programs based on criteria other than merit, as defined in the merit system principles of title I of this bill. The language of this amendment is virtually identical to that which the House accepted last June to H.R. 12929, the Labor-HEW appropriations bill, by a vote of 232 to 177. We have

Government jobs to special groups in accordance with the latest census and a Federal civil service which administers all the people's laws and embodies the best available talent for each job.

My amendment would not affect the veterans preference laws and regulations established over the years and embodied in title III of this bill. Veterans' preference status is not a prejudicial exemption from merit principles, because the preference itself is based on meritorious service rendered to the Nation by persons of all backgrounds.

Mr. Chairman, I urge my colleagues to affirm the ideals which prompted them to deny taxpayer funds to quota systems within the HEW-Labor appropriations. I urge the House to accept this amendment.

SUGARMAN PLAN

One of the great strengths of our Civil Service System in the Federal Government is the removal of Government workers from partisan political influence.

The 19th century gave us numerous examples of the abuses when employment by the Federal Government was used as a political reward. Political connections, not qualifications, became the main factor in determining whether one individual or another secured a job or whether a person remained in a Government job or lost a Government job. The latter part of the 19th century brought us reform through the Pendleton Act, a measure which replaced the old spoils system with merit considerations for Federal employment. Stemming from political pressures on Federal employees

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in the 1930's, the Hatch Act was enacted. This measure prohibited Federal employees from participating in partisan political activities and served as a "bill of rights" to protect Federal employees from political pressures. The debate and discussion last year over changing the Hatch Act raised the issue of maintaining Federal employment free from political influence and political pressure.

Another grave threat to merit Federal employment surfaced last December when Washington, D.C., newspapers carried stories of a Civil Service Commission proposal to create a special emphasis program (SEP) or the so-called Sugarman plan which would apply to Federal civil service employees. The special emphasis program, in order to carry out the Federal Government's affirmative action program under title VII of the Civil Rights Act, would remove civil service coverage from a sizable number of middle and upper level Federal jobs. These jobs, specifically set aside for women, black Americans, Hispanic Americans, and other minorities, could be secured by the applicants without the necessity of these individuals taking competitive examinations with other Federal job applicants. This special class could be hired for these positions without regard to the regular civil service job registers and, once hired, could secure regular civil service status after 2 years.

The Civil Service Commission would

Racial, sexual, and/or economic and social background will become the predominant consideration for filling these civil service positions and thus relegating merit to a secondary, or even an insignificant role. Civil Service Commission Chairman Alan K. Campbell and the plan's author, Civil Service Commission Vice Chairman Jule Sugarman, support the measure. It is being promoted as the Government's plan to promote "affirmative action" in Federal employment.

We should look at some of the obvious problems with the Sugarman plan and consider carefully if we wish to allow the Civil Service Commission to take this monumental change affecting Federal employment.

The removal of a large number of civil service jobs from competitive examinations would open up the possibility that jobs removed from merit competition could become political patronage positions. Jobs could be distributed to women and minority members for political favors performed, rather than as part of a procedure to eliminate discrimination. Thus, we would be granting governmental officials a wide discretionary power to appoint individuals to civil service positions without any merit test. An unscrupulous administration or a politically motivated administration could easily manipulate the system to fill governmental positions on a strictly partisan basis. Merit would be put aside under the guise of carrying out an "affirmative action"

nation; it would promote, perpetuate, and encourage discrimination as part of the Civil Service system.

Although we are in agreement seeking to provide equal opportunity for all, this program would not accomplish the objectives its proponents seek.

We do not need nor do we want a Sugarman plan for the Federal Government service.

It would perpetuate discrimination.

It would upset the merit system in the Federal Government.

It would hurt, not help, women and members of minority groups.

Presently, the Civil Service Commission has postponed implementation until further hearings and further comment from the public. The proposed Sugarman Plan is alive and well and only has been postponed from its original June 1, 1978 implementation date.

I wish to point out to my colleagues the very perceptive comments on the special emphasis program or Sugarman Plan which is contained in the Department of Defense appropriation bill (1979) report (House Report 95-1398, page 84). It noted that while competitive programs needed to be reviewed on a continuous basis to insure freedom from bias, it added that aspects of the Sugarman Plan as presented "appear to violate not only longstanding traditions of selection based solely upon merit, but would open the Federal employment process to the very types of discriminatory abuses that

have the power to determine the types of positions throughout the Federal Government which would be included in the program. The initial determination of the number of jobs set aside would come from a determination of the percentage of women and minority group members in the national work force as compared to the Federal Government in each job category. Women and minority group members graduating college and ready to enter the Federal work force would have these jobs set aside for them without having to take civil service exams. It could be possible that agencies could fill up to 20 percent of these jobs on a non-competitive basis. The Civil Service Commission approved this approach in principle on December 21, 1977. A U.S. Civil Service Commission Bulletin of March 6, 1978, noted that the special emphasis program or Sugarman plan is testing "a 5-year experimental program the kinds of innovations and flexibilities that are essential to the further success of meaningful programs of affirmative action in the Federal Government." It noted that the results would be thoroughly evaluated "to determine whether it produces employees of equivalent competence to those hired through existing methods while at the same time lessening the adverse impact on women and minorities."

During the few months when this program first came to public attention, careful observers have taken a closer look at the implications of such a plan which would tamper with the very essence of our present civil service system—merit selection for Government jobs. Proponents insist merit considerations would be protected but the very procedure leaves this very much in doubt.

program. We need to avoid the opening of loopholes which once again could "politicize" governmental service.

Since those individuals under a Sugarman plan would be brought into Government at middle and upper levels for jobs, it would have a demoralizing job reaction since avenues of promotion would be restricted or closed off for those employees who are already in governmental service under the merit system. This limited access to promotion for merit civil service employees would hurt the very people designed to be aided by the Sugarman plan—women and members of minority groups.

Suspicion would become prevalent in the Federal employment system that certain individuals made their way to the top through merit while others made their way to the top through preferential treatment. We would have the establishment of two separate classes in governmental service. Two different standards would prevail with women and minority members being on the defensive to "prove" their merit. This plan would increase "racial consciousness" or "sexual consciousness" rather than diminish it.

There is also the very real problem of constitutionality which a Sugarman plan would raise. The Antidefamation League, for example, has already served notice that it would challenge the plan in court charging that it would "inevitably lead to a constitutional confrontation on the issues of due process and equal protection." The Sugarman plan is doing exactly what it proposes to eliminate—authorizing discrimination on the basis of sex and race for Federal employment. The Civil Service Commission's Sugarman plan would not eliminate discrimi-

the special emphasis program purports to eliminate." I quote directly from the report which discusses the problem that the Sugarman Plan would create in the Department of Defense:

The Committee is concerned that if this "experiment" is tested in the Department of Defense, up to 200,000 jobs would be unprotected by the merit system, and could conceivably be filled on the basis of discrimination because of race, sex, national origin, religion, age, marital status, or handicapped condition. This plan also states that the granting of schedule A authority is permissive and would not require the agency to use the authority nor to select any specific number or type of individuals under the authority. In other words, a suspension of merit procedures could take place even if specific discriminatory practices did not exist, and even if discrimination were occurring, the expanded authority could be used to continue or even broaden the discrimination outside of established merit practices. Consequently, it is the expressed intent of this Committee that the Special Emphasis Program or any other new program of a similar nature without adequate non-discrimination and merit safeguards not be implemented or tested within the Department of Defense.

It is clear that the Sugarman Plan would not only create problems for merit service in the Department of Defense but all other Government agencies which would adopt this dubious "affirmative action" proposal. It is essential that we in the Congress protect the integrity of the merit aspects of the Civil Service System.

As a remedy for this threat to Federal merit employment, I am introducing a concurrent resolution which states clearly that in seeking to implement title VII of the Civil Rights Act of 1964 or any other law promoting equal employment it is the sense of Congress that the ob-

jective of equal employment does not require excepting positions from the competitive service in the Federal civil service and that compliance with such provisions should be accomplished by means which do not require adjusting the standards for examination, certification, and appointment in the Federal civil service.

It is time that we in Congress make our stand clear and resist some of the absurd and inane activities which go on under the name "affirmative action." While we support nondiscrimination and merit employment, we should not provide special privileges under an "affirmative action" program—special privileges which would undermine our Federal merit system and seriously erode the rights of all Federal employees.

I urge my colleagues to take speedy action in adopting this concurrent resolution which opposes a weakening of our Federal merit system for Government employment. The adoption of this resolution would reaffirm our commitment to merit employment for all regardless of race, color, creed, or sex.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I would like to say to the gentleman from Texas at the outset that I am as strongly opposed to what I know about the alleged Sugarman plan as I think the gentleman is and probably for the same reasons. As a member of the committee, I will stand with the gentle-

going to have a different set of rules for the Federal Government. If anything, we should be willing to go a step further than we ask private enterprise to go.

The EEOC law, for example, is made applicable to Federal employees. I read the gentleman's amendment to say that in spite of the fact that Federal managers have an obligation under the law that we pass on one day to enforce equal employment opportunity under that law, that they, nevertheless, would be prevented from doing their duty under that law by this provision.

Clearly, if we adopt this amendment, it would end up in court rather quickly. Perhaps if the House is ready to surrender its legislative judgment to the all-omnipotent Supreme Court across the way, we ought to vote for the amendment.

For myself, I think we ought to make these decisions ourselves. For that reason, I oppose the gentleman's amendment and reassure the gentleman that I will be standing at his side should Mr. Sugarman try to get his plan through here.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, would the chairman and the gentleman from Arizona assure us they will take the Sugarman plan and handle it as a separate piece of legislation? I realize it is too late this session, but do they believe

ducted under section 1304 of title 5, United States Code, by the Office of Personnel Management (or previously conducted under such section by the Civil Service Commission), and

(2) the security-investigations index required to be established under Executive order numbered 10450, and the reports and files of all investigations covered by the index and which were prepared by the Office or the Commission, including the Security Research Analysis Section Organizational Files, shall be maintained in accordance with the provisions of such Executive order.

Mr. ASHBROOK. Mr. Chairman, throughout this debate my colleague and friend, the able gentleman from Arizona (Mr. UDALL), who is heading this bill to passage through this body, has continually stated that amendments should not be adopted without careful study. I tend to agree with that.

The purpose of this amendment is to prevent the Civil Service Commission from doing something without further study or until the action of this Congress. So I think the amendment is in the spirit of what the gentleman from Arizona (Mr. UDALL) has repeated time and time again.

I call the attention of the Members, although they probably are aware of it—at least those who are on the oversight Subcommittee on Civil Service—to hearings in the U.S. Senate on February 9, 1978. In those hearings they received the testimony of Mr. Campbell and of Robert J. Drummond, who is the head of the Bureau of Personnel Investigations in

man to consider anything that becomes necessary should they attempt to do anything as silly as I believe the proposal, from the limited knowledge I have, is. I think it would turn the Federal work force inside and out and destroy morale completely.

On the other hand, I am constrained to oppose the amendment, because I am afraid it goes much further than dealing specifically with that kind of a scheme.

We cannot really understand what the last two numbered sentences in the amendment mean; for example, denying the use of money for "the hiring or promotion policies or practices of such individual entity, or the admissions policies or practices of such individual entity."

That sounds like you might not be able to even engage in a recruitment plan to try to recruit minorities or try to recruit more women into a particular field or something of that kind, certainly something none of us would disagree with, and certainly not in the same ballpark as the Sugarman plan.

On the other hand, it indicates a Federal official could not even make a recommendation with regard to Executive action.

As the gentleman from Arizona has indicated, we have imposed on the citizens of this country in an attempt to assure fair play for all citizens, regardless of race, creed, color or sex, Federal statutes that have been necessary by the fact that not everybody in our society always plays fair one with another. I do not think we want to go on record here as saying that we tell private enterprise to play by one set of rules with respect to their treatment of minorities, whether by race, creed, color or sex, and we are

we could face this issue early next year? Mr. FORD of Michigan. The best information I have is that wiser counsel has prevailed and that is not a viable probability at this time, anyhow.

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman will yield further, it will not come up this year.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, my views are consistent with those of the gentleman from Michigan with regard to the merits of the Sugarman plan. I will stand with the gentleman to head that plan off or anything that has the same effect it has; but I am generally in accord with the analyses and the principle of the gentleman from Michigan.

Mr. COLLINS of Texas. Mr. Chairman, based on that assurance, I ask unanimous consent to withdraw this amendment so that it can be handled as a separate issue at a later time.

I put that in the form of a unanimous-consent request at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas (Mr. COLLINS) to withdraw the amendment?

There was no objection.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 385, after line 5, insert the following new section:

RETENTION OF SECURITY INVESTIGATION REPORTS

SEC. 1105. Except as may be provided under any law enacted after the date of the enactment of this Act—

(1) the reports of the investigations con-

the Civil Service Commission. They clearly indicate the Civil Service Commission is proceeding with destroying all previous security files without the express authorization of Congress. That is precisely what I am trying to prevent. All I am saying is that we should retain all security investigation reports until the Congress decides on their disposition.

The purpose of this amendment, therefore, is simply to protect until further congressional review of the security files used by the Civil Service Commission in establishing the suitability of applicants for Federal service or for continued Federal employment.

The present Federal employee security program was established in 1953 by Executive Order 10450, which may soon be superseded by another Executive order now before the OMB. That may, of course, take care of this situation. Regardless of the provisions of another Executive order, all reports, files, and other materials maintained under EO-10450 should not be disposed of until Congress by statute makes provision for such materials.

There is a compelling justification for this amendment. In February of this year the Senate Subcommittee on Criminal Laws and Procedures had as a witness the Chairman of the Civil Service Commission, who informed the subcommittee—and I am sure the Members have read it—that the Commission intended to destroy organizational security files used in the Federal security program. Although the proposed action was subsequently postponed, the subcommittee chairman and the ranking minority member charged that—and I quote:

Over the past five years or so, without the knowledge of Congress and contrary to statu-

tory requirement and the Commission's own regulations, there has been a progressive dismantling of the Federal Employee Security Program—until today, for all practical purposes, we do not have a Federal Employee Security Program worthy of the name.

Again let me state that was the statement of the chairman and the ranking minority member.

Recent cases of terrorism and espionage point up the increasing dangers to free world governments from without and from within. My amendment, while not getting into the whole security issue and not suggesting there should be more security checks, simply says those records on file should not be destroyed until the Congress determines in its own wisdom what should be done with them.

As the Members might recall, we dismantled the Internal Security Committee, and the Congress directed that the files be turned over to the Archives, to be sealed for, I believe, something like 50 years.

Mr. Chairman, my amendment would prevent any further destruction of employees' security records until Congress can take another look. I urge the support of the Members of my amendment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I would be glad to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, there is concern on our side about the actual effect of this amendment.

On the one hand, I can see the argument the gentleman makes that the files

Would the gentleman use the words "disposed of" instead of "maintained"?

Mr. ASHBROOK. Shall not be destroyed, that is the intention. With that explanation, I would accept the gentleman's suggestion.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that in the second line from the bottom of the gentleman's amendment the word "maintained" be changed to "disposed of."

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, with that change, I would accept the amendment.

Mr. ASHBROOK. I thank my colleague.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK), as modified.

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. TRIBLE

Mr. TRIBLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRIBLE: Page 390, insert after line 18 the following:

PREVAILING RATE EMPLOYEES; NIGHT DIFFERENTIAL

SEC. 1107. (a) Section 5334 of title 5, United States Code, is amended by adding at the end thereof the following:

"(g) A prevailing rate employee, as defined in section 5342(a)(2) of this title, who together with his position is brought within the purview of this subchapter and chapter

During the late 1960's and early 1970's, NASA converted the pay of many technicians at the Langley Research Center from Wage Board Schedule to General Schedule. Unfortunately, the method by which the General Schedule salaries were calculated left 47 of these employees earning less than their similarly situated coworkers.

These NASA workers rotate between three standard shifts—day, evening, and graveyard. A typical schedule would find employees working 1 week from 8 a.m. to 4 p.m., the next week from 4 p.m. to midnight, and the third week from midnight to 8 a.m. At the same time, other employees would rotate according to other schedules among the three shifts.

For working the day shift, employees would be paid the standard base pay for their positions. When employees worked the evening or second shift, they got the same base pay as the day crew plus an additional 7½ percent. When these employees worked the last shift, they received the base pay plus 10 percent. Thus, over a period of several weeks, the pay of one of these technicians could vary in a day to day comparison by as much as 10 percent, depending on which particular shift the employee was working on the days in question.

Unfortunately, when NASA decided to convert these employees from wage board to GS pay, the regulations for conversion did not allow for the unique rotating schedules which these technicians worked. Instead of averaging the pay of these employees over a true earning pe-

ought to be retained until an orderly decision can be made under the Executive order as to their disposition. Certainly I would have no quarrel with that purpose.

On the other hand, it is believed on this side that perhaps the gentleman would inadvertently or maybe advertently amend the Privacy Act produced by the Government Operations Committee in a way that would deny individuals access to certain charges and information in their files, information that is now available to them under the Privacy Act as it was passed.

Does the gentleman intend just the preservation of the record, or is the gentleman trying to dispose of the access?

Mr. ASHBROOK. In response to my colleague's question; frankly, in looking at the amendment, I do not see how that would happen. That certainly is not my intention. The last part of the amendment says " * * * shall be maintained in accordance with the provisions of such Executive order."

I am only talking about preventing the destruction of files. As to the section the gentleman is talking about, I believe is section (E) (7) of the Privacy Act, I do not in any way intend to impinge in any way on the Privacy Act. My amendment is merely to make sure they are not destroyed.

Mr. UDALL. If the gentleman will yield further, the interpretation comes from the use of the word "maintain," which means you maintain and make them accessible, and so on, in accordance with the law. Well, if you do that, you would tend to overrule the Privacy Act.

51 of this title at any time on or after January 1, 1966, and who within one year before, but not at the time of, such personnel action was receiving night differential on a regular night shift tour worked on a rotational basis or at regularly scheduled intervals or on an irregular basis shall be entitled to inclusion at the time of such personnel action of such night differential as a part of his basic pay, as a result of conversion to the General Schedule, to the same extent as if he was receiving such night differential on a regularly scheduled night shift at the time of such conversion."

(b) The amendment made by this section shall apply with respect to pay periods beginning before, on, or after the effective date of this section. Any sums to which an individual is entitled under this section for pay periods ending before the effective date of this section and which have not been paid to such individual shall be paid to such individual in a lump sum.

Revise the table of contents accordingly.

Mr. TRIBLE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. TRIBLE asked and was given permission to revise and extend his remarks.)

Mr. TRIBLE. Mr. Chairman, I rise to offer an amendment to correct a gross injustice affecting 47 employees of the Langley National Aeronautics and Space Administration (NASA) at Hampton, Va. These hard-working individuals were the victims of an oversight in the laws governing the conversion of Wage Board to GS or General Schedule.

riod, NASA converted their pay based on their earnings for a randomly selected day. As a consequence, the new salaries for many of these technicians significantly understated their true previous earnings. The inequity was most acute for those employees working the first shift on the day selected as the base date for converting the wages. These unfortunate workers received no credit for working a shift with a night differential of 7½ percent or 10 percent.

When the local employee representatives questioned the fairness of this practice, they were given sympathy but no additional pay for the affected employees.

I am here today seeking that back pay and an adjustment in the wages of these employees to assure they are paid properly in the future.

I am assured that the situation at the NASA Langley facility is unique—no other Federal employees have been similarly mistreated. Therefore, this one time only payment of back wages and adjustment in present salaries would cost no more than \$300,000.

I realize some of my colleagues may support the purpose of this amendment but question the appropriateness of adding it to this bill. I can understand these reservations. However, I am also concerned that a "good time" for this amendment may never come.

This problem has existed for some of these employees since 1966. A number of the employees have retired and others have died waiting for more equitable treatment from their Government. In 1975, my predecessor, Congressman Thomas Downing, introduced a bill al-

most identical to the amendment under consideration, but no action was taken on it. Likewise, I introduced the same bill in this Congress and the press of other subcommittee business has prevented any action on it.

Mr. Chairman, I believe 12 years is long enough for these people to wait for a proper recalculation of their wages. I urge the adoption of this amendment.

Mr. LEACH. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentleman from Iowa.

Mr. LEACH. I thank the gentleman for yielding.

Mr. Chairman, I have carefully looked over the amendment offered by the gentleman from Virginia (Mr. TRIBLE), and in the event it is deemed inappropriate for consideration at this time, I would be hopeful that the Subcommittee on Compensation and Employee Benefits of the Committee on Post Office and Civil Service will hold early hearings on the subject. Clearly this inequity should be corrected.

Mr. TRIBLE. Mr. Chairman, I thank the gentleman from Iowa for his comments.

Mrs. SPELLMAN. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentleman from Maryland.

Mrs. SPELLMAN. I thank the gentleman for yielding.

Mr. Chairman, let me commend the gentleman for attempting to address what may very well be an instance of

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: On page 390 after line 14, insert a new section 1106 and renumber accordingly:

"Sec. 1106. All employees covered by this act who are compensated at a pay grade in the General Schedule of Grade 13 or above shall be limited in outside earned income to not more than fifteen percent of their salary."

Mr. ASHBROOK. Mr. Chairman, members of the committee, a few moments ago I indicated that our friend and colleague from Arizona had indicated time and time again in opposing amendments that matters had not come before the committee, that they were new and not thought over. Yet, as legislators there are certain matters before the legislative body that are almost generic. We know what we are talking about when we have sunset laws. We know what we are talking about when we have earnings limitations. These are general matters that we apply broadly so I think we can debate those matters in the context of how we apply these same standards, these same provisions, to other bills, to other legislation before this body.

I do not believe I need to take 5 minutes to tell the Members what I am doing. I am simply saying, as a part of this reform movement, as a part of this new era, everybody says that Congressmen and high executives should have full-time jobs and limitations on outside income. All I am saying is that I think most Members would agree that if one is in the general schedule of grade 13 and

I share the frustration of some of my colleagues on the subject of limitation on outside earned income, where rather heavy restrictions are imposed on Members or Congress and not on others in other branches of Government. We have been trying to avoid loading this bill up with pet grievances different Members have had. We have had considerable success.

May I point out three things to the gentleman from Ohio. One is that we had not a word of hearing on this in our deliberations in committee. There was no attempt to get the views of the Civil Service Commission, who would have to find some way to police and manage and control this situation. The second thing is, I would like to point out that this week the Ethics in Government Act is up, and it is before us for consideration. It would be a much more appropriate time and place to consider this matter in an orderly kind of way. The third thing I wanted to point out is that there is an Executive order on this question which, among other things, prohibits Federal employees from engaging in outside employment which is incompatible with the full and proper discharge of their duties and responsibilities, and it goes on to list some of the restrictions and constraints. That goes clear back to the Johnson administration.

So, I hope the gentleman would not ask us to legislate hastily at this time on this important side issue.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

discrimination. I would pledge to the gentleman that at a very, early date we will take up this question. I do not believe that it belongs here in this bill, but I do want to commend the gentleman for addressing the matter. You can be sure we will attempt to assist in looking into the problem—in fact, you have my pledge to do so.

Mr. TRIBLE. I thank the gentlewoman for those words of commitment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. TRIBLE. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I commend the gentleman for his concern about the possible injustice to these employees, and certainly, if it has merit, after study I would join him in trying to redress this inequity.

Mr. Chairman, I have been fighting here these past few days to keep from loading up the bill. I have been trying to unload Christmas tree ornaments.

Mr. TRIBLE. Mr. Chairman, if I might reclaim my time, based on the commitment of the gentlewoman from Maryland (Mrs. SPELLMAN), I would ask unanimous consent to withdraw this amendment.

Mr. UDALL. Mr. Chairman, I thank the gentleman for doing that.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.
The CHAIRMAN. Are there further amendments to title XI?

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

above—I pick grade 13, because that is roughly \$26,000 per year—one should be a full-time employee and one's outside earned income—I put the word "earned" in just as we have it applied to us—should be limited to 15 percent of the salary.

I think it is a matter of equity and fairness. The facts of life are that we all know that some of the lower-grade employees probably do moonlight. It is probably necessary. That is why I picked grade 13. I do not think we should apply the 15-percent standard to an employee coming on the job at \$8,000, \$9,000, or \$10,000 a year with family obligations, if he wants to work and can work and can maintain the job. But at grade 13, or about \$26,000 a year, I think it is proper at that point to have a limitation on outside earned income and that is precisely what this amendment would do.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding to me. All the gentleman wants to do is apply the same standard that is applied to Members of Congress to people in grade 13 and above in the executive branch?

Mr. ASHBROOK. Precisely. That is the purport of this amendment.

Mr. ROUSSELOT. I think that sounds like an excellent idea. I do not think we have any reservations on this side.

Mr. ASHBROOK. I hope I get the same signal from the other side.

Mr. ROUSSELOT. They are all for reform.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. UDALL. I yield to the gentleman from Ohio.

Mr. ASHBROOK. As to the matter of the ethics bill, I fully intend to offer this amendment to the ethics bill. It does seem, in the context of reform of the civil service, that it is an appropriate time at this point. I would only repeat my statement, that there are some things that are almost generic by nature.

And outside income is one. But I think every Member knows whether he wants to apply it specifically or generally, or use a shotgun or a rifeshot. So I do not think I am throwing in a ringer. I would hope my colleague would support it. I can understand why he might not, but I hope my colleagues will support it.

Mr. UDALL. I think under other circumstances I would be prepared to support an amendment of this kind but not on this bill at this time.

Mr. BAUMAN. Mr. Chairman, if the gentleman will yield, at the risk of cracking the conservative monolith on this side of the aisle, I would have to agree with the gentleman from Arizona that this amendment is inappropriate. For one thing it obviously should be amended to permit income from books civil servants might write or income from stock dividends or inheritances or various other incomes such as Members of Congress enjoy under House rules. We would not want to just apply an income limit to the income of working stiff, but also to insurance income and dividends from stocks and bonds. Such outside income should not have an exemption as is granted to our wealthy House colleagues.

I hope when the so-called Quillen

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amendment is offered to the ethics bill that the gentleman from Alabama and I would also agree that outside income should not be limited.

Mr. UDALL. Mr. Chairman, the gentleman from Maryland and I would stand stalwartly together on that.

Mr. ASEBROOK. Mr. Chairman, my friend, the gentleman from Maryland, went astray on this. I said in this the outside earned income, and the stock dividends, and other income to which the gentleman referred would be eliminated. It would be as for congressmen. It will say "earned income." It would apply to earned income.

Mr. BAUMAN. Let us reason together in private. I think we can work this out.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

Mr. UDALL. Mr. Chairman, this is the greatest shock to the Nation's political system since Reagan picked SCHWEIKER to be his running mate.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASEBROOK).

The question was taken; and the chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Mr. UDALL. Mr. Chairman, if the

Poage
Pressler
Begula
Reuss
Bardes
Roberts
Robinson
Rogers
Rose
Rousselot
Rudd
Santini
Sawyer
Schroeder

Addabbo
Akaka
Alexander
Anderson,
Calif.
Anderson, Ill.
Annunzio
Ashley
Badham
Baucus
Bauman
Beard, R.I.
Bellenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Brockinridge
Brodhead
Brooks
Brown, Calif.
Brown, Mich.
Broyhill
Buchanan
Burgener

Schulze
Sharp
Smith, Nebr.
Spence
Stangeland
Stratton
Studds
Thone
Traxler
Tucker
Vanik
Vento
Volkmer
Walker

NOES—254

Garcia
Gaydos
Glaimo
Gilman
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Guyer
Hammer-
schmidt
Hanley
Hannaford
Hansen
Harrington
Harris
Harsha
Heckler
Heftel
Hightower
Holland
Holt
Holtzman
Horton
Howard
Hubbard
Hughes
Hyde
Jefords
Janrette

Watkins
Weaver
Weiss
Whitley
Wilson, Bob
Wilson, C. H.
Wolf
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki

Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, John
Myers, Michael
Natcher
Nedzi
Nichols
Nix
Nowak
O'Brien
Oakar
Ottinger
Patten
Patterson
Pattison
Pease
Perkins
Pettis
Pike
Preyer
Price
Fritchard
Quayle
Quillen
Rahall
Rallsback
Rinaldo
Rodino
Roe
Roncallo
Rooney
Rosenthal

Ammerman
Armstrong
Beard, Tenn.
Breaux
Broomfield
Brown, Ohio
Burke, Calif.
Burke, Fla.
Caputo
Clawson, Del
Cochran
Collins, Ill.
English
Fary
Flowers

NOT VOTING—44

Fraser
Frenzel
Gibbons
Hawkins
Huckaby
Johnson, Colo.
Kasten
Krueger
Lehman
McKinney
Metcalfe
Miller, Calif.
Pursell
Quile
Rangel

Richmond
Risenhoover
Sarasin
Sisk
Stump
Teague
Treen
Tsongas
Vander Jagt
Whitten
Wiggins
Wirth
Young, Alaska
Young, Tex.

Mr. FLORIO and Mr. SKUBITZ changed their vote from "aye" to "no." Messrs. ROBERTS, EDGAR, CRANE, GAMAGE, VENTO, and CORNWELL changed their vote from "no" to "aye." So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments to title XI?

If not, are there other amendments to the bill?

AMENDMENT OFFERED BY MR. HARRIS

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HARRIS: Page 390, after line 18, insert the following new title.

BASIC WORKWEEK OF FIREFIGHTERS

SEC. 1201. (a) Chapter 61 of title 5, United States Code, relating to hours of work, is amended by inserting after section 6101 the following new section:

"§ 6102. Basic workweek of firefighters

gentleman will withdraw his point of order, I will join him in requesting a recorded vote.

Mr. ASHBROOK. Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The point of order has been withdrawn.

The gentleman from Ohio (Mr. ASHBROOK) demands a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 134, noes 254, not voting 44, as follows:

[Roll No. 765]

AYES—134

| | | |
|----------------|----------------|-----------------|
| Abdnor | Delaney | Jacobs |
| Ambro | Derrick | Jenkins |
| Andrews, N.C. | Devine | Johnson, Calif. |
| Andrews, | Dickinson | Jones, N.C. |
| N. Dak. | Duncan, Tenn. | Jones, Okla. |
| Applegate | Edgar | Kelly |
| Archer | Edwards, Okla. | Kildee |
| Ashbrook | Emery | Kostmayer |
| Aspin | Evans, Ga. | Latta |
| AuCoin | Evans, Ind. | Leach |
| Bafalis | Fascall | Levitas |
| Baldus | Fenwick | Lundine |
| Barnard | Fithian | McHugh |
| Bedell | Flippo | Maguire |
| Blouin | Flynt | Mahon |
| Bonior | Fountain | Marlenee |
| Brinkley | Fowler | Marrisset |
| Burleson, Tex. | Frey | Martin |
| Byron | Gammage | Erlenborn |
| Carr | Gephardt | Ertel |
| Cavanaugh | Ginn | Evans, Colo. |
| Cederberg | Green | Evans, Del. |
| Clausen, | Gudger | Findley |
| Don H. | Hagedorn | Fish |
| Cohen | Nall | Fisher |
| Conoran | Hamilton | Flood |
| Cornell | Harkin | Florio |
| Cornwell | Hefner | Foley |
| Cotter | Hillis | Ford, Mich. |
| Crane | Hollenbeck | Ford, Tenn. |
| D'Amours | Ichord | Forsythe |
| de la Garza | Ireland | Fuqua |

Burke, Mass.
 Burdison, Mo.
 Burton, John
 Burton, Phillip
 Butler
 Carney
 Carter
 Chappell
 Chisholm
 Clay
 Cleveland
 Coleman
 Collins, Tex.
 Conable
 Coote
 Conyers
 Corman
 Coughlin
 Cunningham
 Daniel, Dan
 Daniel, R. W.
 Danielson
 Davis
 Dellums
 Dent
 Derwinski
 Dicks
 Diggs
 Dingell
 Dodd
 Dornan
 Downey
 Drinan
 Duncan, Oreg.
 Early
 Eckhardt
 Edwards, Ala.
 Edwards, Calif.
 Elberg
 Erlenborn
 Ertel
 Evans, Colo.
 Evans, Del.
 Findley
 Fish
 Fisher
 Flood
 Florio
 Foley
 Ford, Mich.
 Ford, Tenn.
 Forsythe
 Fuqua

Jones, Tenn.
 Jordan
 Kastenzmeyer
 Kasen
 Kemp
 Keys
 Kindness
 Krebs
 LaFalce
 Lagomarsino
 Le Fante
 Lederer
 Leggett
 Lent
 Livingston
 Lloyd, Calif.
 Lloyd, Tenn.
 Long, La.
 Long, Md.
 Lott
 Lujan
 Luken
 McClary
 McCloskey
 McCormack
 McDade
 McDonald
 McEwen
 McFall
 McKay
 Madigan
 Mann
 Markey
 Marks
 Mathis
 Mattox
 Massoli
 Meeds
 Meyner
 Michel
 Mikulski
 Mikva
 Milford
 Mineta
 Mitchell, Md.
 Mitchell, N.Y.
 Moakley
 Molohan
 Montgomery
 Moorhead,
 Calif.
 Moorhead, Pa.
 Moss

Hostenkowski
 Hoytal
 Bunnels
 Ruppe
 Russo
 Ryan
 Satterfield
 Scheuer
 Sebelius
 Seiberling
 Shipley
 Shuster
 Sikes
 Simon
 Skelton
 Skubitz
 Slack
 Smith, Iowa
 Snyder
 Solarz
 Spellman
 St Germain
 Staggers
 Stanton
 Stark
 Steed
 Steers
 Steiger
 Stockman
 Stokes
 Symms
 Taylor
 Thompson
 Thornton
 Tribie
 Udall
 Ullman
 Van Deerin
 Waggonner
 Walgren
 Walsh
 Wampler
 Waxman
 Whalen
 White
 Whitehurst
 Wilson, Tex.
 Winn
 Wright
 Wylder
 Yates
 Zefertli

"(a) The regularly scheduled administrative workweek of each firefighter shall be an average of 56 hours per week, computed on the basis of a period of 21 consecutive days. The duration and frequency of work-shifts occurring within such period shall be determined under regulations prescribed by the Office of Personnel Management.

"(b) For the purpose of this section 'firefighter' means an employee in an Executive agency, the duties of whose position are primarily to perform or to supervise work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Such term does not include any employee who has a regularly scheduled administrative workweek of 40 hours which is established under section 6101(a)(2)(A) of this title."

(b) (1) Section 5545 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) (1) Each firefighter with a regularly scheduled administrative workweek established under section 6102(a) of this title shall be entitled, in lieu of premium pay provided by other provisions of this subchapter (other than premium pay provided in paragraph (2) of this subsection), to premium pay equal to 25 percent of so much of his annual rate of basic pay as does not exceed the minimum rate of basic pay for GS-10.

"(2) Hours of work officially ordered or approved in excess of the regularly scheduled administrative workweek established under section 6102(a) of this title are overtime work and shall be paid for in accordance with the rates specified in section 5542 of this title.

"(3) For the purpose of this subsection, 'firefighter' has the meaning set forth in section 6102(b) of this title."

(2) Section 5545(c)(1) of title 5, United

States Code, is amended by inserting “, unless subject to subsection (e) of this section,” after “shall receive”.

(3) Section 5547 of title 5, United States Code, is amended by striking out “sections 5542, 5545(a)-(c), and 5546(a), (b)” and inserting in lieu thereof “sections 5542, 5545(a)-(c) and (e), and 5548 (a) and (b)”.

(4) Sections 5895(c), 8114(e), 8331(3)(C), and 8704(c) of title 5, United States Code, are each amended by striking out “section 5548(c)(1)” and inserting in lieu thereof “section 5545(c)(1) and (e)(1)”.

(c) The analysis of chapter 61 of title 5, United States Code, is amended by inserting after the item relating to section 5101 the following new item:

“5102. Basic workweek of firefighters.”.

(d) The amendments made by this section shall take effect at the beginning of the first applicable pay period which begins at least 60 days after the date of the enactment of this Act.

Mr. HARRIS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Chairman, I am offering this amendment which creates a new title to the bill. The amendment is identical to the former title X of the bill which was eliminated by a point of order against both titles IX and XI.

of Defense to hire 4,600 additional employees, at an annual cost of \$46.7 million. The Congressional Budget Office's report to our committee says that for 1979, governmentwide, adding new firefighters would cost \$24.3 million. I do not understand the higher figures.

Finally, it has been said that the legislation would impair the ability of agency heads to manage the work force. Many efforts have been made in recent years to get the agencies to modify hours—with no success. Additionally, no one has ever argued that the standard 40-hour week impairs the ability to manage the work force. Firefighters, under any workweek, would have to be “on call” and the bill would not change this. Finally, since most municipal firefighters work 56 and 54 hours a week, it is imperative that working conditions for Federal firefighters be competitive.

The result of the current schedule has unfortunately been frequent turnover. Last year, about 23 percent of Federal firefighters left their jobs. This means, in essence, that the Federal Government is a training ground for municipal firefighters and we are losing talented individuals to protect our VA hospitals, military and other Federal installations.

This amendment has three basic provisions: First, it provides that the regularly scheduled workweek shall average 56 hours per week over a 21-day period. This would mean that overtime work in excess of 56 hours could not be regularly scheduled. Second, it provides—as does current law—that each firefighter is en-

standing guard at defense bases, veterans hospitals, some civilian airports and other Federal establishments.

While some would like to portray the firefighter as one who “stands idle” much of the time, firefighters actually have a variety of duties, including fire prevention and other fire-related services. A Federal firefighter must maintain a proficiency in a variety of subjects, ranging from the combustibility of materials to general air traffic control techniques. Firefighters are subject to hazard and are often required to work on Sundays and holidays. Our pay, benefits, and working hours policies should reflect the fact that firefighters must be compensated for their knowledge, ability and the considerable risk they incur in protecting lives and property.

It has also been argued that this bill would set up a special class of Federal employees, that other employees, like nurses and medical technicians have to work off-hours or nonstandard hours. To this I answer these other groups of Federal employees are not engaged in potentially hazardous work, like firefighters. And if we should take a look at all hours and pay policies for these various groups, I invite the Civil Service Commission to submit legislation to the Congress. Speaking as one member of the Post Office and Civil Service Committee, I am sure our committee would welcome a proposal.

This legislation has been the subject of complete hearings in the committees and in both Houses of Congress. I hope today

My amendment simply reduces the scheduled working hours of the Nation's 11,500 Federal firefighters from 72 hours to 56 hours. The amendment is identical to H.R. 3161 which the House passed on April 12 on a bipartisan vote of 241 to 129. The Senate passed the bill on a voice vote on June 5. The President vetoed the bill on June 19, 1978.

It has been argued that firefighters' premium pay should be reduced if their hours are reduced. It must be understood that premium pay is designed to compensate for irregular working hours. Under this amendment, firefighters would still be required to work Sundays and holidays, and the concept of premium pay is still valid. Additionally, the computations of our committee show that firefighters will actually lose income. The following comparison shows what the average Federal firefighter, a GS-5, step 4 (\$10,955 per year) earns under current policies and would earn under this amendment:

| | |
|--|---------------|
| I. 72-hour weekly tour of duty (present schedule): | |
| Base pay for 40 hours----- | \$210.80 |
| 25 percent premium pay----- | 52.70 |
| FLSA overtime for 18 hours----- | 32.94 |
| Total ----- | 296.44 |
| II. 56-hour weekly tour under H.R. 3161: | |
| Base pay for 40 hours----- | 210.80 |
| 25 percent premium pay----- | 52.70 |
| FLSA overtime for 2 hours----- | 4.72 |
| Total ----- | 268.22 |
| Loss in FLSA overtime pay----- | 28.22 |

Administration has said that this legislation would require the Department

titled to 25 percent premium pay in lieu of all other premium pay under title 5 for the 56-hour week. Third. It clarifies the overtime pay provision and provides that each firefighter is entitled to overtime pay under title 5 for all official hours of work over the 56-hour per-week standards.

It has been argued that this bill is somehow a salary windfall for Federal firefighters. Our committee's research has shown that not only do municipal firefighters work shorter hours, they also earn at least \$500 more per year. Or stated another way, Federal firefighters now work 33 percent more hours each week than municipals but receive only 12.5 percent to 23 percent more. There is one further point I would like to make. The Civil Service Commission's pay comparisons are with cities with over 10,000 in population. True comparability would compare firefighter salaries with the actual locality, like our Federal blue-collar local prevailing rate system. In other words, in areas like Washington, D.C.—large metropolitan areas—municipal salaries are much higher than in a community of 10,000. It is not fair to lump all municipal salaries together in this fashion.

There are currently 12,500 Federal firefighters in all but a dozen or so States. The Department of Defense is the largest employer of firefighters, with approximately 10,500. The Department of Transportation, the Nuclear Regulatory Commission, the Veterans Administration and other agencies employ the remainder. These firefighters provide important protection for many Federal installations,

we can end this debate, look at the facts and approve the amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, legislation reducing the basic workweek of Federal firefighters is an irrelevant appendage to the civil service reform bill. The hours firefighters work and the compensation they receive have nothing to do with revamping and reinvigorating the Federal bureaucracy.

Legislation to reduce the workweek of the firefighters was vetoed by the President on June 19. In his veto message, the President said:

In extending unwarranted advantages to them (firefighters) H.R. 3161 offends the ideals of fairness that should guide this administration. I am not prepared to accept its preferential approach.

There has been no attempt to override the President's decision which, when measured against the weight of evidence, was a sound and responsible action. Instead, the legislation was added to the reform bill as title X.

Researchers at the Library of Congress have been unable to find a similar instance in modern times where a congressional committee majority amended major legislation of its own administration by adding language already vetoed by the President.

President Carter's approach to civil service reform struck the proper balance between equity and effectiveness in attempting to make the Federal bureaucracy more manageable. The inclusion of this title in the bill is a disruptive in-

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fluence. It should be severed from H.R. 11280 without further delay.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Virginia.

Mr. HARRIS. I thank the gentleman for yielding.

Mr. Chairman, did my colleague describe this as an anti-Carter vote? Is that the way my colleague feels that it should be interpreted?

Mr. DERWINSKI. No. I just describe this amendment as one that would be expected of the gentleman representing the district across the river. I understand it in that respect.

Mr. HARRIS. Mr. Chairman, I want to disabuse my colleague across the aisle that this is an anti-Carter vote. I am sure a number of people might interpret it that way. It is not that at all. Of course, it is overturning the President's veto. But it is not an anti-Carter vote. It is a way of expressing to him that Congress sometimes may be in disagreement with him. We love our President, but we do disagree with him on this one issue.

Mr. DERWINSKI. If the gentleman will allow me to point out, if the membership of the House, the individual Members, have read the President's veto, as I am sure that all 435 of us have, we naturally would support the President and not the gentleman from Virginia.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will be very brief, and

is not the place to do it. We are not going to help them on a pretty good civil service bill.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from California.

Mr. ROUSSELOT. I appreciate the gentleman yielding to me.

Is the gentleman telling us, then, that if this amendment passes—which, by the way, I also supported in committee—the bill will be vetoed?

Mr. UDALL. No, I do not think it will be vetoed, but we will have great difficulty down the road.

Mr. ROUSSELOT. So those who do support the concept of reducing the firefighter's workweek and who also support the Civil Service Reform Act do not endanger the bill by voting for the Harris amendment.

Mr. UDALL. I do not know what will happen from this point on. A lot of Members on the gentleman's side were very anxious not to bring this bill to the floor with the Hatch Act, so we devised a strategy which took the Hatch Act off the Christmas tree and took the firefighters off. Having disposed of the Hatch Act, they are telling us now, "Let's put the firefighters back on." I think we ought to treat both of them separately.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I

a White House decision until we have acted affirmatively and we should not be fervently looking to the White House for guidance. We either believe that 72 hours is a ridiculous work week for firefighters or we do not. The question was before us previously and we spoke to it.

We said, "Seventy-two hours constitutes undue hardship and we ought to lessen the burden." We had the courage at the time to do just that. Now, here we are again, considering the same question. Let's come to the same conclusion. There is no reason why this provision should not be in this bill. We in this House speak cryptically at times. The word "ornament" is used to designate any provision we don't approve. That same "ornament" is a vital part of the legislation to those who favor it. This measure, I feel, is a matter of justice and, therefore, does belong in the bill.

So, let us make the decision based on the merits. Let us not worry about what the reaction is going to be at the White House. Our Constitution spells out very clearly what our function is and what the President's function is. Our function today is to consider this question, and I would ask that we make the determination that 72 hours is a ridiculous number. Let us move right now to change that.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and the Chairman announced that the yeas ap-

I hope our colleagues will stay around for just a few minutes more. We are now down, I think, to this amendment, and our friend, **HERB HARRIS**, wants to get us all on record in connection with his 5½-percent pay cap, which is his last contribution to this bill today. He is an extremely valuable friend of mine, and I wish him well in everything he does. But it has been very clear from the beginning that he does not want a bill. He has tried to sink this bill two or three times. We ruled out the Hatch Act early on, which was part of the Christmas tree ornaments. Having taken firefighters pay bill off of the Christmas tree, he wants to get them back on. He wants to get us on record on this, and we will determine in a minute whether we will have a record vote. Most of us voted for the firefighters' bill. I voted for it. I think the firefighters are entitled to relief. But you are not helping this bill if you put this on; you are going to sink the bill.

My friend from Virginia is not going to be for it if we put this amendment on it, and his next amendment, and his next five amendments on it. He is still not going to be for the bill. We have got a good bill now. We took the Christmas tree ornaments off in the beginning. Let us not start loading it back up again.

This amendment is a gratuitous slap at the President. When the veto came back there were not enough votes to override to have a vote. It was sent back to the committee. Now, the suggestion is that we take up the cudgels on this bill and have another vote.

We are going to find ways to help the firefighters in later legislation, but this

am not quite sure exactly where we go from here, because as I recall, I sat on the stage in Denver, Colo., at the firefighters convention where **Mr. MONDALE** assured us that it was the administration's position that they would do everything for the firefighters' bill. Based on that, that group had endorsed them.

I was in the subcommittee chair when we moved it through, and was most upset to read the veto message, because they had really paid no attention to our hearings, but apparently used hearings from some prior administration.

So, my concern is that maybe they somehow missed this. Did the administration really want to veto this? Perhaps they got it in the out box instead of the in box.

Mr. UDALL, Mr. Chairman, I have not been appointed as spokesman for the administration. I do think that in this case they are really not saying that. It is a limited issue. This has no place in this bill. If we can find some way to hold **Mr. MONDALE** to his promise other than doing it today, I would join that effort.

Mrs. SCHROEDER, I think we tried to hold him to his promise to us before in the act, and we thought maybe they had made a mistake by vetoing it. We thought this was a nice way to help them keep their word, so I guess it is a difference of opinion.

Mrs. SPELLMAN, Mr. Chairman, I move to strike the requisite number of words.

(**Mrs. SPELLMAN** asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN, Mr. Chairman, what we have here before us is a question we should answer here and now. It is not

peared to have it.

Mr. HARRIS, Mr. Chairman, on that I demand a recorded vote, and pending that I make the point of order a quorum is not present.

The **CHAIRMAN**, The Chair will count. One hundred twenty-one Members are present, a quorum.

The pending business is the demand of the gentleman from Virginia (**Mr. HARRIS**) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY **MR. HARRIS**

Mr. HARRIS, Mr. Chairman; I offer an amendment.

The Clerk read as follows:

Amendment offered by **Mr. HARRIS**: Page 390, after line 18, insert the following new title:

TITLE XII—PAY COMPARABILITY
PAY COMPARABILITY

SEC. 1201. Section 5305(c) (1) of title 5, United States Code, is amended by striking out "or economic conditions" affecting the general welfare.

Revise the table of contents accordingly.

Mr. HARRIS, Mr. Chairman, this is a very modest perfection, I think, of a law that has in fact given Congress a great deal of problems in the past. It is the pay comparability law. It was passed by many of my good colleagues before I came to the Congress.

I remember my chairman's great support of the notion of having a comparability law to take the pay raises out of politics and put them on an objective basis so that we were not constantly in a position of trying to determine what the pay raise should be. This was the

notion of the comparability law. If the Members would read the debate on the comparability law they would see this. I could read a number of quotations from my chairman, the Honorable Mr. UDALL from Arizona, about how important it is that this law should work:

The comparability law is a good law setting up a scientific method to compute what salaries and wage rates are in the private sector and to make adjustments in the public sector that would be comparable.

The problem is not what the House and what the Senate did on the law. In the last few minutes of the conference, a section was put into the law or actually 10 words were inserted that said "economic conditions affecting the national welfare." This amendment still gives the President discretion if there is a national emergency. All it does is remove the part that says: "or if there are economic conditions affecting the general welfare."

Obviously it has been these words that have been the mischiefmakers in the whole operation of the law.

I want the law to work like the Congress intended it to, like my colleague intended it to. I want it to work so it does come up with an objective method of computing Federal salaries except where there is a legitimate reason for not putting them into effect.

The amendment makes the law operative unless there is a national emergency, in order to make sure the law is implemented and that it no longer puts Congress in a position year after year after

necessary vote on this basic change in the law.

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, I wish to associate myself with the comments of the gentleman from Arizona (Mr. UDALL). I think he has very properly analyzed this amendment. I would join him in recommending rejection of the amendment.

Mr. HEFTEL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HEFTEL asked and was given permission to revise and extend his remarks.)

[Mr. HEFTEL addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. JOHN L. BURTON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. JOHN L. BURTON asked and was given permission to revise and extend his remarks.)

Mr. JOHN L. BURTON. Mr. Chairman and members of the committee, as we approach this vote on the most important domestic issue facing this nation of ours, more important than national health insurance, more important than full employment and that is the moral equivalent of the energy program, I think that we should all take a moment of silence to consider the ramifications of this important vote.

Thank you.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

Page 228, strike out lines 10 through 12 and insert in lieu thereof the following:

"(e) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(1) is a noncareer appointee; and

"(ii) has the authority to reassign the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any reassignment under section 4314 (b) (3) of this title; or

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before the appointment".

Page 232, line 12, strike out "A career appointee" and insert in lieu thereof "Except as provided in subsection (b) of this section, a career appointee".

Page 232, after line 19, insert the following:

"(b) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(1) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314 (b) (3) or this title or;

year to try to determine by congressional action whether a Presidential action is in accordance with the law or not.

This would correct the problem with it. It would set up the procedure. I urge my colleagues to support it.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is the last amendment to the whole bill of which I am aware except for a unanimous-consent request I will have when we dispose of this. I do not think we need a great deal of discussion on it.

The comparability system has worked fairly well but it has worked fairly well because we had a little bit of flexibility in the President. The pay system works on the comparability figures determined and then before it takes effect the President of the United States has the opportunity to adjust the figures up and down in the light of all the economic conditions.

What this amendment does is strike out of the comparability law the flexibility the President now has. This year, I submit, if the amendment has been in the law there would be an additional billion and a half dollars added to the Federal payroll by the comparability adjustment.

So it is an unwise amendment. It has had no consideration, no hearings. The administration strongly opposes it. It was voted down in committee by a vote of 5 to 19.

I hope my colleagues will not want to go on record on this one again today. We will have an opportunity soon enough to vote on the 5.5 percent pay cap of the President without having an extra, un-

The amendment was rejected.

AMENDMENTS OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I offer five amendments.

The Clerk read as follows:

Amendments offered by Mr. UDALL:

Page 212, line 21, strike out "and".

Page 212, line 23, strike out "executives." and insert in lieu thereof "executives;"

Page 212, insert after line 23 the following: "(12) ensure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) ensure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by non-career appointees, political appointments to such positions are minimized to the maximum extent possible."

Page 227, line 3, insert "(1)" after "(a)".

Page 227, line 4, strike out "(1)" and insert in lieu thereof "(A)" and insert ", subject to paragraph (2) of this subsection," after "may".

Page 227, line 7, strike out "(2)" and insert in lieu thereof "(B)".

Page 227, after line 10, insert the following:

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment—

"(A) at least 15 days in advance of such reassignment; and

"(B) containing a statement of the critical reasons for the reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal the violation to the Merit Systems Protection Board."

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment".

Page 232, line 20, strike out "(b)" and insert in lieu thereof "(c)".

Page 228, insert after the line 12 the following:

"(f) A career appointee may be transferred only if—

"(1) he consents to the transfer; and

"(2) the transfer is part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection not to consent to a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal the personnel action to the Merit Systems Protection Board.

Page 245, after line 15, insert the following:

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction—

"(1) at least 15 days in advance of the reduction; and

"(2) containing a statement of the critical reasons for the reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal the violation to the Merit Systems Protection Board.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with, that they be printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, I have worked these amendments out with the gentleman from Illinois (Mr. DERWINSKI) and they take care of a problem we had the other night in connection with some of the Gilman amendments.

I would hope they would be adopted.

● Mr. GILMAN. Mr. Chairman, I thank the gentleman from Arizona for his unanimous-consent request to move to adopt my five amendments to title IV.

I know that the House, having had an opportunity to study my amendments and review my statement in explanation of them which appeared in the Record of September 11, will recognize their merit and the protection they provide in insuring against further politicization of the Senior Executive Service.

To further clarify the purpose of my amendments, I offer at this point in the Record a brief explanation of each of my five amendments to title IV:

My first amendment adds three important principles to guide the administration of the Senior Executive Service and to insure against further politicization of the Senior Executive Service. The first principle would insure that both career appointees and noncareer appointees enjoy protection from prohibited personnel practices. The second principle represents a policy statement advocating maximum utilization of ca-

on Regulation's telethon in the Longworth Building.

This telethon is a grassroots investigation of the Federal regulatory process. People throughout the country called in on toll free lines to express their views on the Federal Government and on regulations. This is a helpful means for Members of Congress and others in Washington to get a better idea of people's sentiment on the issues of regulatory reform.

Had I been present on rollcall vote No. 764, I would have voted "aye."

Mr. MICHEL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. Mr. Chairman, as we conclude debate on this civil service reform legislation I want to first go on record commending the President for his initiative in pressing for this reform.

Second, I want the record to clearly show that notwithstanding the overwhelming Democrat majority in this House, this legislation would have been dead and buried had it not been for the support we Republicans have given to the effort.

Our good friend and colleague Ed DERWINSKI and his band of followers have done a superlative job in helping the genial gentleman from Arizona (Mr. UDALL) fashion this legislation.

Mr. DERWINSKI can be as caustically partisan as any one in this House if he

The Federal bureaucracy has become incestuous, stultified, and loath to change. It has to be shaken up from time to time. Good conscientious managers have got to be given incentives to do even better and we have to have the mechanism for firing the incompetent and establishing a truly bonafide merit system.

I am glad to give my wholehearted support to this bill and applaud all those on both sides of the aisle who have helped to put it all together. It will have to go down as a truly historical bipartisan victory for the people.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I commend the gentleman from Illinois (Mr. MICHEL) for his statesmanship and for the nobility of his statement.

Mr. Chairman, in my view, the gentleman's position on this bill is so outstanding that it certainly warrants his being in charge of the majority in this House at some point in his service.

Mr. MICHEL. Mr. Chairman, I thank the gentleman.

● Mr. HANLEY. Mr. Chairman, during markup of the civil service reform legislation, the Committee on Post Office and Civil Service adopted an amendment I offered to assure that the complaints of Federal employees who discover wrongdoing are given serious attention. Under the administration's proposal, as

reer appointees. My final principle states a goal for the Senior Executive Service:

Goals for personnel management system and the necessity to assure career members protection from prohibited personnel practices.

My second amendment provides that a career appointee may not be involuntarily reassigned or removed from the Senior Executive Service within 120 days after either an appointment of the head of his or her agency or of a Presidential appointment to whom the career appointee reports, whichever is later in time.

My third and fourth amendments preclude arbitrary action by a Presidential appointee against a career appointee in the Senior Executive Service involving a change in either the career appointee's reassignment or reduction in pay.

My final amendment limits the right of the Director of the Office of Personnel Management or an executive department or agency to involuntarily transfer a career appointee without his or her consent.

Mr. Chairman, I urge the adoption of my amendments.●

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona (Mr. UDALL).

The amendments were agreed to.

Mr. VOLKMER. Mr. Chairman, I move to strike the last word.

(Mr. VOLKMER asked and was given permission to revise and extend his remarks.)

PERSONAL EXPLANATION

Mr. VOLKMER. Mr. Chairman, I was absent on rollcall vote No. 764. I missed the vote while participating in the Forum

wants to be, but as he is given to saying about himself, he is always willing to accept a proposition from the opposition if it is a good one.

We Republicans have felt the need for this legislation for a long time, but when we had the Presidency during the Eisenhower, Nixon, Ford years, we never controlled the Congress nor were we in the position of putting the act together.

When we did win the White House it was most frustrating to know that in all the vastness of the Federal bureaucracy, we could only change at most some 2,700 positions at the top.

That's just not enough for any administration to make any significant change in the direction and/or administration of any department of Government.

Let us face it Cabinet members, deputy secretaries, assistant secretaries and bureau chiefs have to spend so much of their time testifying before congressional committees, and in public appearances, they have little time to actually run their departments or agencies.

Without authority for a more broad sweeping change, we have the same bureaucracy running the show in every agency regardless of the mandate for change.

From a Republican partisan point of view, passage of this legislation may prove to work to our temporary disadvantage, but in the long run it is a good move for the country. As I said any partisan disadvantage for us is only temporary for within 26 months the advantage will be ours and the American people will then also applaud.

strengthened by the amendment of the gentlewoman from Colorado (Mrs. SCHROEDER), Federal employees are protected from reprisal if they publically disclose evidence of violation of law, rule, or regulation, mismanagement, waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. I strongly support this protection.

My amendment complements this protection by providing a mechanism through which those who discover wrongdoing can prompt a meaningful investigation and correction of the situation. Under its terms, an employee can disclose evidence of impropriety to the Special Counsel; the ability of the employee to go to a responsible official outside of his or her agency and separate from his or her chain of command is crucial to make this mechanism work. If the evidence warrants an investigation, the Special Counsel can order the agency which the information concerns to investigate itself.

To assure that the agency investigation is not biased, incomplete, or a whitewash, the report of the agency investigation is sent to the Special Counsel and to the General Accounting Office. The Special Counsel's review of the agency investigation is limited to scrutiny of the quality of the probe; the Special Counsel is not expected to conduct his or her own substantive inquiry. Without the Special Counsel and GAO oversight of agency investigations, employee allegations of illegality or wrongdoing could be ignored or covered up by an agency intent on continuing its improper conduct.

Hence, my amendment adds an internal, in-house dissent channel to allow Federal employees who discover wrongdoing to seek correction without having to go public. Although nothing prevents an employee from giving the information to a newspaper, my amendment encourages honest, dedicated employees to seek internal resolution. I believe that if most agencies are given an opportunity to clean their own houses, without the glare of publicity, they will do a good job. It is this goal which my amendment seeks.

Mr. Chairman, Federal employees can serve as a first line of defense against official wrongdoing. Ernest Fitzgerald alerted us to a huge cost overrun in the C-5A transport plane program. Dr. J. Anthony Morris spoke out against the swine flu vaccine program, warning of serious health dangers—dangers which proved all too real. Robert Tucker, Robert Sullivan, William Buckenhorst, and Arthur Palman all revealed widespread illegalities in the General Services Administration. Without these vigilant officials, illegality would not be stopped and Federal dollars would continue being wasted.

In passing H.R. 11280, the House is supporting a meaningful and workable mechanism to rid the Federal Government of waste, corruption and abuse.●

Mr. RUDD. Mr. Chairman, I will vote in favor of H.R. 11280, as amended in the Committee on the Whole.

In balance, I believe that this is a good bill. Congress desperately needs to re-

of this bill. As I have said, in balance, the good far outweighs the bad, and that is why I am voting in favor of the bill. I am voting "yes," despite my strong disapproval of the legislation's statutory protection of unionization and collective bargaining for Federal employees.

Such protection does not belong in the statutes, and should not be Federal Government policy. But this is a battle that will have to be fought next year.

Unionization and collective bargaining for Federal Government workers are unnecessary, and create an undesirable adversary labor-management situation that has no place in Government, where service to the people is the first and only priority.

Federal workers are paid more, and receive more benefits, than just about any other employees, in or out of Government. They have no reason for collective bargaining, other than to protect the continued employment of less capable performers and to reap more benefits for themselves at the expense of the taxpayers.

Labor-management disputes resulting in lower quality or disrupted service to the people are inevitable when Government employee unionization and collective bargaining are allowed. Government service is unique, for which there is no alternative supply. Some of these services are so critical that their disruption threatens the public well-being and causes extreme hardship to our people and the economy.

Labor unions want unionization and

proposal include: First, whether the bill achieves its purpose of improving management and second, whether the proposal endangers the basic principle of neutrality and professionalism in Government service. The second issue overshadows the first because without confidence of the employees and the public in the impartiality of Government administration, the best management system in the world will not be good enough.

The bill, as amended by the Post Office and Civil Service Committee, does contain features which help to uphold the integrity of the civil service and protect employee rights. The bill will establish in law for the first time the principles on which the merit system should be operated and the personnel practices which are prohibited, including political coercion and discriminatory, unfair, and arbitrary actions in hiring and promotion.

The bill also will give whistleblowers—those who expose mismanagement and inefficiency and who disclose violations of Federal law by other employees—more protection against retaliation. The committee has improved the provisions dealing with employee rights to appeal adverse or disciplinary actions. However, the bill could still be stronger in protecting against the injection of political considerations into the civil service.

The section of the committee bill with the greatest potential for politicizing the civil service was the revision of the Hatch Act to permit partisan political activity

form the bureaucratic inefficiency and abuses that are rampant in the civil service system. We need to cut through the inaction and delays that make it virtually impossible to get rid of incompetent workers, to reward quality work, and to expedite personnel actions.

This bill is certainly not the answer to every problem with the Federal civil service. But it accomplishes a great deal of good. Creation of a personnel management office and Merit Protection Board, a senior executive service, an incentive system for pay increases based on performance rather than mere tenure, and a speedier disciplinary system are all urgently needed reforms.

The House has taken other action on this bill which I support, and which have led to my "yes" vote for this legislation. The proposed repeal of Hatch Act prohibitions against political activities of Federal employees has been removed from the bill, and properly so. Proposed changes in the veterans preference law have been dropped, and current veterans preference provisions will remain intact.

My amendment adding a firm anti-strike provision that will deny any protection or benefits under this bill for any striking Federal worker has been adopted. A similar provision governing labor unions exists in this and the Senate version of the bill.

Furthermore, the bill now includes an important provision requiring a cut of 112,000 employees from the over-bloated Federal workforce, so that total Federal Government civilian employment returns to the January, 1977, level.

Mr. Speaker, these are the good aspects

collective bargaining for Federal employees, because this increases their own power and serves as a convenient vehicle for their own domination of Government and the legislative process.

This is dangerous to our democratic processes and institutions, and to our free society itself.

I am sorry that this bill gives statutory protection to Federal employee unions and collective bargaining. I am voting for the bill in spite of this provision, because of the need for the many good features of this legislation.

But I intend to work hard to reverse this policy in the future.

● Mr. FISHER. Mr. Chairman, civil service legislation is grounded in the belief that the public should be served by a professionally and impartially operated Government. Except for the top leadership which should be chosen freely by the President and subject to change at every election, the Government workers should be chosen for their ability alone and should serve as long as they perform well.

The Carter administration has proposed the first major overhaul of basic civil service legislation in nearly 100 years. The legislation attempts to recognize and encourage competent employees and to improve the system for assisting employees whose performance should be better and for removing employees who do not respond to help. In making these changes the administration hopes to enhance the ability of Government managers to manage.

The issues to be decided by Congress in debating and refining the original

by Federal employees. Fortunately, this section has now been deleted from the bill. I have opposed such revisions of the Hatch Act because I believe that it would expose employees to the possibility of undue, frequently subtle, political pressures. The danger would be increased when combined with the increased flexibility that the bill gives to supervisors—in hiring, assigning, disciplining, and so on. The Hatch Act revision would have made the civil service reform bill unworkable and I am pleased that it is no longer in the bill.

During consideration of the bill, I offered several amendments with the objective of providing a careful review of new programs, such as merit pay, and of the actions of political appointees, and also of keeping politics out of the career civil service. The merit pay system proposal in the bill will substitute merit pay increases and cash awards for superior performance to managers in grades GS 13-15 for the current automatic step increases. These managers will continue to receive annual comparability increases. This system would be an important change with the laudable purpose of providing an incentive for improved management. It is, however, untried and fraught with the possibility for favoritism and political abuse. To check on the feasibility of merit pay, I offered an amendment to test the concept for a 2-year period in three agencies. After evaluating reports by the Office of Personnel Management, Congress could either allow the merit pay system to go into effect governmentwide or could veto it through a concurrent resolution. Unfor-

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unately, this amendment was not accepted by the House.

Another amendment which I offered, and which was accepted, dealt with rules and regulations put forward by the Office of Personnel Management. Under my amendment, the Merit Systems Protection Board will have the authority to review rules and regulations after they have been issued by the OPM. The MSPB itself, the special counsel, or an interested party can request the review. A finding of violation of merit principles or of prohibited personnel practices would be the grounds for invalidating a rule or regulation. This type of review would not interfere with the prerogatives of the OPM, but would make sure that it did not overstep legal bounds.

This legislation breaks new ground in personnel management. I believe that an objective review of these innovations should be conducted on a regular basis. The General Accounting Office should be required to monitor these new functions and report annually to Congress on their performance. I offered an amendment, which passed, to require this review. The specific requirement is necessary so that reviews are not delayed until a problem develops, but can in fact uncover problems before they get out of hand.

An additional amendment of mine, now included in the bill, makes clear that a nonpartisan board composed of career civil servants and outside experts will be reviewing the qualifications of candidates for the SES and certifying them as qual-

controversial features as the right to strike or bargain for pay and benefits, both of which I oppose. It does contain safeguards such as secret ballot elections for union representation.

The veterans' preference in appointment and retention in Federal employment is left essentially as it is in existing law. The committee had proposed altering veterans' preference to limit its use for hiring to the first 15 years after discharge from the Armed Forces and for retention to the first 8 years of civilian service. In effect the House voted against this approach when it rejected an amendment to strengthen the preference for Vietnam veterans only. Then the House went on to vote for retaining the present preference provisions.

The House added a provision placing a ceiling on Federal civilian employment which is over 112,000 below the current number of employees. The ceiling would have to be met by 1 year after the bill becomes law. I opposed this amendment and will be working to see that it is dropped in the House-Senate conference which will be resolving differences between the two bills. This limit on Federal employees was chosen arbitrarily and is a simplistic approach to the concern about "big" Government. Rather than leading to more efficiency, this limit could lead to less efficient Government by taking workers away from much needed tasks to satisfy an artificial ceiling. I hope and have been led to expect that this provision will be deleted from the final bill.

While this is not in all respects the bill

The Clerk read as follows:

Amendments: Page 190, line 8, strike out "Section 2108" and insert in lieu thereof "Effective beginning October 1, 1980, section 2108".

Page 192, strike out line 3 and all that follows down through page 195, line 9.

Page 195, after line 9, inserting the following section heading:

"Appointments".

Page 195, line 10, strike out "(g)" and insert "Sec. 304." in lieu thereof.

Page 196, strike out line 11 and all that follows down through line 5 on page 199.

Page 199, line 7, strike out "306" and insert in lieu thereof "305".

Page 200, line 10, strike out "307" and insert in lieu thereof "306".

Page 200, line 13, strike out "308" and insert in lieu thereof "307".

Page 200, line 23, strike out "309" and insert in lieu thereof "308".

Page 201, line 19, strike out "310" and insert "309" in lieu thereof.

Page 203, line 3, strike out "311" and insert "310" in lieu thereof.

Page 206, line 5, strike out "312" and insert "311" in lieu thereof.

Page 209, strike out line 13 and all that follows down through line 20.

Conform the table of contents accordingly.

Mr. EMERY (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the amendments be dispensed with, and that they be printed in the Record.

The SPEAKER. Is there objection to the request of the gentleman from Maine?

There was no objection.

The SPEAKER. The question is on the amendments.

ified. I think it is crucial that these top level managers be chosen objectively and without regard to partisan considerations. Without my amendment this critical function of certifying persons to serve in the SES could be done by boards with no members drawn from the ranks of career civil servants, or with outside experts chosen primarily for their partisan connections.

In addition to my amendment, the bill contains other protections against undue political influence in the SES. Only 10 percent of the positions in the SES will be filled by political appointees. No agency may have more than 25 percent of its SES positions filled by political appointees. In addition at least 70 percent of the SES employees must have at least 5 years experience in the Federal Government. I believe that taken together the SES provisions will allow a more challenging career to the upper level executives and offer the promise of better, more flexible management to the public.

Another major feature of the civil service reform bill is the labor-management relations section. A labor relations program already exists in the Federal Government, operating under a Presidential Executive order. As passed by the House by a unanimous vote, the new labor program codifies the existing program and adds a few new features. Through some carefully developed compromises, the Members who wanted to expand the role of employee unions and those who opposed this were able to resolve their differences. The bill that the House approved does not contain such

I would have written to improve the civil service system, it is on balance a bill that I can support. After the new system goes into effect I hope that the Congress will keep a close watch on it and make the necessary additional improvements. ●

The CHAIRMAN. Are there any other amendments to the bill?

If not, the question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11280) to reform the civil service laws, pursuant to House Resolution 1307, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. EMERY. Mr. Speaker, I demand a separate vote on the so-called Hanley amendments.

The SPEAKER. Is a separate vote demanded on any other amendment?

If not, the Clerk will report the amendments on which a separate vote has been demanded.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. EMERY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 327, nays 70, not voting 35, as follows:

[Roll No. 766]

YEAS—327

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| Abdnor | Brademas | Cornell |
| Addabbo | Breckinridge | Cornwell |
| Akaka | Brinkley | Cotter |
| Alexander | Brodhead | Coughlin |
| Ambro | Brooks | Crane |
| Anderson, | Brown, Calif. | Cunningham |
| Calif. | Brown, Mich. | D'Amours |
| Andrews, N.C. | Brown, Ohio | Daniel, Dan |
| Andrews, | Broyhill | Daniel, R. W. |
| N. Dak. | Buchanan | Danielson |
| Annunzio | Burgener | Davis |
| Applegate | Burke, Mass. | de la-Garza |
| Archer | Burlison, Tex. | Delaney |
| Ashbrook | Burlison, Mo. | Dent |
| AuCoin | Burton, John | Derrick |
| Badham | Butler | Derwinski |
| Bafalis | Byron | Devine |
| Baldus | Carney | Dickinson |
| Barnard | Carter | Dicks |
| Baucus | Cavanaugh | Diggs |
| Bauman | Cederberg | Dingell |
| Beard, R.I. | Chappell | Dodd |
| Benjamin | Clausen, | Dornan |
| Bennett | Don H. | Duncan, Oreg. |
| Bevill | Cleveland | Duncan, Tenn. |
| Biaggi | Cohen | Early |
| Blanchard | Coleman | Eckhardt |
| Boggs | Collins, Ill. | Edwards, Ala. |
| Boland | Collins, Tex. | Edwards, Okla. |
| Bonker | Conable | Ellberg |
| Bowen | Conte | Emery |

English
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Findley
Fish
Fisher
Fithian
Flippo
Flood
Florio
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frey
Fuqua
Gammage
Gaydos
Gephardt
Gialmo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Gudger
Guyer
Hagedorn
Hall
Hamilton
Hammer-
schmidt
Hanley
Hannaford
Hansen
Harris
Harsha
Hecker
Hefer
Hefkel
Hightower
Hillis

Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McFall
McKay
Madigan
Mahon
Mann
Marks
Marlenee
Marriott
Martin
Mathis
Mattox
Meyner
Michel
Milford
Miller, Ohio
Minish
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead,
Calif.
Moorhead, Pa.
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Gary
Myers, John
Myers, Michael
Natcher

Rodino
Roe
Rogers
Rooney
Rose
Rosenthal
Rostenkowski
Rousselot
Roybal
Rudd
Rudnals
Ruppe
Russo
Ryan
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sharp
Shipley
Shuster
Sikes
Slak
Skelton
Skubitz
Slack
Smith, Nebr.
Snyder
Solarz
Spehman
Spence
St Germain
Staggers
Stangeland
Stanton
Steed
Steiger
Stockman
Stratton
Symms
Taylor
Thompson
Thone
Thornton
Traxler
Trible
Tucker
Udall
Ullman
Van Deertin

Waxman
Weles

Whalen

Yates

NOT VOTING—35

Ammerman
Armstrong
Beard, Tenn.
Breaux
Broomfield
Burke, Calif.
Burke, Fla.
Caputo
Clawson, Del
Cochran
Fary
Flowers
Fraser
Frenzel
Gibbons
Huckaby
Johnson, Colo.
Kasten
Krueger
Lehman
McKinney
Metcalfe
Miller, Calif.
Quie
Richmond
Risenhoover
Sarasin
Stump
Teague
Treen
Tsongas
Vander Jagt
Wiggins
Young, Alaska
Young, Tex.

The Clerk announced the following pairs:

On this vote:

Mr. Fary for, with Mr. Richmond against.
Mr. Ammerman for, with Mr. Miller of California against.

Mr. Teague for, with Mrs. Burke of California against.

Until further notice:

Mr. Risenhoover with Mr. Beard of Tennessee.

Mr. Huckaby with Mr. Frenzel.

Mr. Krueger with Mr. Sarasin.

Mr. Metcalfe with Mr. Wiggins.

Mr. Tsongas with Mr. Young of Alaska.

Mr. Gibbons with Mr. McKinney.

Mr. Flowers with Mr. Kasten.

Mr. Breaux with Mr. Burke of Florida.

Mr. Lehman with Mr. Del Clawson.

Mr. Stump with Mr. Broomfield.

Mr. Fraser with Mr. Caputo.

Mr. Treen with Mr. Quie.

Mr. Vander Jagt with Mr. Cochran of Mississippi.

Ms. MIKULSKI and Mr. EDWARDS of California changed their vote from "yea" to "nay,"

Mr. LAFALCE changed his vote from

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 385, nays 10, not voting 37, as follows:

[Roll No. 767]

YEAS—385

| | | |
|------------------|-----------------|---------------|
| Abdnor | Dicks | Kastenmeier |
| Addabbo | Diggs | Kazen |
| Akaka | Dingell | Kelly |
| Alexander | Dodd | Kemp |
| Ambro | Dorman | Keys |
| Anderson, Calif. | Downey | Kildee |
| Anderson, Ill. | Drinan | Kindness |
| Andrews, N.C. | Duncan, Ore. | Kostmayer |
| Andrews, N. Dak. | Duncan, Tenn. | Krebs |
| Annunzio | Early | LaFalce |
| Applegate | Eckhardt | Lagomarsino |
| Archer | Edgar | Latta |
| Ashley | Edwards, Ala. | Le Fante |
| Aspin | Edwards, Calif. | Leach |
| AuCoin | Edwards, Okla. | Lederer |
| Badham | Ellberg | Leggett |
| Bafalis | Emery | Lent |
| Baldus | English | Levitas |
| Barnard | Eriksenborn | Livingston |
| Baucus | Ertel | Lloyd, Calif. |
| Bauman | Evans, Colo. | Lloyd, Tenn. |
| Beard, R.I. | Evans, Del. | Long, La. |
| Bedell | Evans, Ga. | Lott |
| Bellenson | Evans, Ind. | Lujan |
| Benjamin | Fascell | Luken |
| Bennett | Fenwick | Lundine |
| Bevill | Findley | McCloskey |
| Biaggi | Fish | McDade |
| Bingham | Fisher | McDonald |
| Blanchard | Fithian | McEwen |
| Blouin | Flippo | McFall |
| Boggs | Flood | McFugh |
| Boland | Florio | McKay |
| Bolling | Flynt | Madigan |
| Bonior | Foley | Ford, Mich. |
| Bonker | Ford, Mich. | Ford, Tenn. |
| Bowen | Ford, Tenn. | Mahon |
| Brademas | Forsythe | Mann |
| Breckridge | Fountain | Markey |
| Brinkley | Fowler | Marks |
| | Frey | Marlenee |
| | Fuqua | Marriott |

Holland
Hollenbeck
Holt
Horton
Howard
Hubbard
Hughes
Hyde
Ichord
Ireland
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kildee
Kindness
Kostmayer
Krebs
LaFajce
Lagomarsino
Latta
Le Fante
Lederer

Neal
Nedzi
Nichols
Nix
Nowak
O'Brien
Oberstar
Obey
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Pettis
Pickle
Pressler
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Rallsback
Regula
Rhodes
Rinaldo
Roberts
Robinson

NAYS—70

Anderson, Ill.
Ashley
Aspin
Bedell
Bellenson
Bingham
Blount
Bolling
Bonior
Burton, Phillip
Carr
Chisholm
Clay
Conyers
Corcoran
Corman
Dellums
Downey
Drinan
Edgar
Edwards, Calif.
Erlenborn

Evans, Colo.
Fascell
Fenwick
Garcia
Green
Harkin
Harrington
Hawkins
Holtzman
Jacobs
Jordan
Kastenmeier
Keys
Leach
Leggett
McHugh
Maguire
Markey
Mazzoli
Meeds
Mikulski
Mikva

Vanik
Vento
Voikmer
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins
Weaver
White
Whitehurst
Whitley
Whitten
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolf
Wright
Wydler
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

Mineta
Mitchell, Md.
Moffett
Nolan
Oakar
Ottinger
Pattison
Pike
Poage
Pritchard
Rangel
Reuss
Roncalio
Scheuer
Schroeder
Selberling
Simon
Smith, Iowa
Stark
Steers
Stokes
Studds

"nay" to "yea."

So the amendments were agreed to.
The result of the vote was announced as above recorded.

The SPEAKER. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY
MR. ASHBROOK

Mr. ASHBROOK. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ASHBROOK. I am, Mr. Speaker.
The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ASHBROOK moves to recommit the bill, H.R. 11280, to the Committee on Post Office and Civil Service.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. UDAL. Mr. Speaker, on that I demand the yeas and nays.

Brodhead
Brooks
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Mass.
Burleson, Tex.
Burleson, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cederberg
Chappell
Chisholm
Clausen,
Don H.
Clay
Cleveland
Cohen
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
de la Garza
Delaney
Dellums
Dent
Derrick
Derwinski
Devine
Dickinson

Gammage
Garcia
Gaydos
Gephardt
Gialmo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Green
Gudger
Guyer
Hagedorn
Hall
Hamilton
Moorhead,
Hammer-
schmidt
Hanley
Hannafor
Hansen
Harkin
Harrington
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holtzman
Horton
Howard
Hubbard
Hughes
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jenkins
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan

Martin
Mathis
Mattox
Mazzoli
Meeds
Meyner
Michel
Mikulski
Mikva
Milford
Miller, Ohio
Mineta
M'inish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead,
Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, John
Myers, Michael
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Perkins
Pettis
Pickle
Pike
Poage
Pressler

September 13, 1978

CONGRESSIONAL RECORD—HOUSE

H 9671

| | | |
|--------------|--------------|--------------|
| Preyer | Schulze | Tucker |
| Price | Sebelius | Udall |
| Fritchard | Seiberling | Ullman |
| Pursell | Sharp | Van Deerlin |
| Quayle | Shipley | Vanik |
| Quillen | Shuster | Vento |
| Rahall | Sikes | Volkmer |
| Rallsback | Simon | Waggonner |
| Rangel | Sisk | Walgren |
| Regula | Skelton | Walker |
| Reuss | Skubitz | Walsh |
| Rhodes | Slack | Wampler |
| Rinaldo | Smith, Iowa | Watkins |
| Roberts | Smith, Nebr. | Waxman |
| Robinson | Snyder | Weaver |
| Rodino | Solarz | Weiss |
| Roe | Spence | Whalen |
| Rogers | St Germain | White |
| Roncallo | Staggers | Whitehurst |
| Rooney | Stangeland | Whitley |
| Rose | Stanton | Whitten |
| Rosenthal | Stark | Wilson, Bob |
| Rostenkowski | Steed | Wilson, Tex. |
| Rousselot | Steiger | Winn |
| Roybal | Stockman | Wirth |
| Rudd | Stokes | Wolf |
| Runnels | Sfratton | Wright |
| Ruppe | Studds | Wydrer |
| Russo | Symms | Wylie |
| Ryan | Taylor | Yates |
| Santini | Thompson | Yatron |
| Satterfield | Thone | Young, Fla. |
| Sawyer | Thornton | Young, Mo. |
| Scheuer | Traxler | Zablocki |
| Schroeder | Trible | Zefaretti |

NAYS—10

| | | |
|----------|---------------|---------------|
| Ashbrook | Mitchell, Md. | Steers |
| Davis | Moss | Wilson, C. H. |
| Harris | Myers, Gary | |
| Holt | Spellman | |

NOT VOTING—37

| | | |
|---------------|----------------|-------------|
| Ammerman | Frenzel | Richmond |
| Armstrong | Gibbons | Risenhoover |
| Beard, Tenn. | Huckaby | Sarasin |
| Breaux | Johnson, Colo. | Stump |
| Broomfield | Kasten | Teague |
| Burke, Calif. | Krueger | Treen |
| Burke, Fla. | Lehman | Teongas |
| Caputo | Long, Md. | vander Jagt |

against the same amendment during the Committee of the Whole's consideration of it, I am strongly in favor of modifying the existing law on veterans preference. I believe that the veterans preference should be used to help veterans readjust to civilian life and to compensate disabled veterans for the sacrifices they made.

The current veterans preference, however, serves as a real deterrent to the recruitment of qualified women to the civil service. The bill reported by the committee would have eliminated the negative aspects of the current veterans preference while maintaining the legitimate and necessary benefits for veterans who are in need of readjustment aid or who are disabled. I, therefore, would have preferred that the committee provision on this issue remain intact and unchanged. As a result, I should have been recorded "no" on the Hanley amendment.●

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 11280

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Clerk, in the engrossment of the bill H.R. 11280, be authorized and directed to make such changes in section numbers, cross references, and other technical and conforming corrections as may be required.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

The motion was agreed to.
The Senate bill was ordered to be read a third time, and was read the third time and passed.

The title was amended so as to read: "A bill to reform the civil service laws, and for other purposes."

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 240) to reform the civil service laws, and for other purposes, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. LEACH. Mr. Speaker, reserving the right to object, one of the amendments that overwhelmingly passed the House involved a cap on Federal employment. I consider this extremely important because it represents the only reflection in this bill of an attempt to deal with the size and scope of Govern-

ment. Unfortunately there is no provision relating to this issue in the Senate bill nor any great sympathy for this amendment on behalf of the administration.

Accordingly, I have a motion to instruct the conferees on this issue, but would prefer not to go forth with this motion if the gentleman from Arizona can assure me that he will do his best to insist that the House position on this issue is upheld in conference.

| | | |
|--------------|----------------|---------------|
| Clawson, Del | McCloskey | Wiggins |
| Cochran | McKinney | Young, Alaska |
| Fary | Metcalfe | Young, Tex. |
| Flowers | Miller, Calif. | |
| Fraser | Quie | |

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Richmond.
 Mr. Lehman with Mr. Metcalfe.
 Mr. Krueger with Mr. Beard of Tennessee.
 Mrs. Burke of California with Mr. Caputo.
 Mr. Breaux with Mr. Vander Jagt.
 Mr. Fary with Mr. Broomfield.
 Mr. Flowers with Mr. Sarasin.
 Mr. Teague with Mr. Del Clawson.
 Mr. Risenhoover with Mr. Treen.
 Mr. Huckaby with Mr. Burke of Florida.
 Mr. Tsongas with Mr. Young of Alaska.
 Mr. Gibbons with Mr. Wiggins.
 Mr. Long of Maryland with Mr. Kasten.
 Mr. Fraser with Mr. McCloskey.
 Mr. Stump with Mr. Cochran of Mississippi.
 Mr. Frenzel with Mr. McKinney.
 Mr. Miller of California with Mr. Quie.

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to reform the civil service laws, and for other purposes."

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

• Mr. SOLARZ. Mr. Speaker, during the separate vote in the full House on the Hanley veterans preference amendment, I mistakenly voted for that amendment. As was indicated by my vote

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on the bill just passed, H.R. 11280.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2640) to reform the civil service laws, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike all after the enacting clause of S. 2640 and insert in lieu thereof the provisions of H.R. 11280 as passed, as follows:

* * * * *

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding. I will be happy to give the gentleman those assurances. I said in the debate that I believe we ought to have a cap on Federal employment. My objection to the gentleman's amendment was that we had not had adequate study, that the administration had not had an opportunity to tell us what an appropriate number might be. So speaking for myself I will go to the conference without any intention of simply capitulating to the Senate, but with the purpose of seeing if we cannot find some modification of the gentleman's language that would carry out the purpose that he was striving to achieve in offering his amendment.

Mr. LEACH. With those assurances, and with deep respect for the leadership of the gentleman from Arizona, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Arizona? The Chair hears none, and appoints the following conferees: Messrs. NIX, UDALL, HANLEY, FORD of Michigan, and CLAY, Mrs. SCHROEDER, Mrs. SPELLMAN, and Messrs. DERWINSKI, ROUSSELOT, and TAYLOR.



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124

WASHINGTON, THURSDAY, OCTOBER 5, 1978

No. 160

H 11624

CONGRESSIONAL RECORD--HOUSE

October 5, 1978

1126

**CONFERENCE REPORT ON S. 2640,
CIVIL SERVICE REFORM ACT OF
1978**

Mr. UDALL submitted the following
conference report and statement on the
Senate bill (S. 2640) to reform the civil
service laws:

* * * * *

(See pages of Volume No. III, for a
reproduction of the Conference
Report.)



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124

WASHINGTON, FRIDAY, OCTOBER 6, 1978

No. 161

House of Representatives

1127

H 11820

CONGRESSIONAL RECORD—HOUSE

October 6, 1978

CONFERENCE REPORT ON S. 2640,
CIVIL SERVICE REFORM ACT OF
1978

Mr. UDALL. Mr. Speaker, I call up the conference report on the Senate bill (S. 2640) to reform the civil service laws.

The Clerk read the title of the Senate bill.

(For conference report and statement, see proceedings of the House of October 5, 1978.)

October 6, 1978

CONGRESSIONAL RECORD—HOUSE

H 11821

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the conference report on the Senate bill S. 2640, Civil Service Reform Act of 1978.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, this bill passed the House several weeks ago by a large vote. We had five or six long sessions with the Senate. Basically we have brought back a bill that I think the Members of the House can approve. Most of the House provisions with regard to title VII, which was the most contentious matter before the conference, were resolved in favor of the position of the House.

The Senior Executive Service which was another key part of the bill, was maintained, in large part, in accordance with the position of the House, although we did modify the so-called Spellman amendment in order to meet objections by the Senate conferees.

Creates a Senior Executive Service of outstanding Federal employees in grades 16 and above to administer Federal programs.

Codifies to a large degree, the Federal labor-management program previously operated under an Executive order;

Establishes a "whistleblower protection" system for employees who disclose illegal or improper Government activity;

Links quality of performance to the granting of pay raises to managers in the grades of 13 through 15; and

Strengthens personnel management by giving authority to the Office of Personnel Management to direct personnel matters in the executive branch.

Many of the Members shared my concern that veterans' preference rights be protected in the reform package. S. 2640 reflects the House position on veterans' preference and efforts to alter the definition of a veteran for the purposes of Federal employment preference were defeated.

The conference report also contains two House amendments which received wide support on the House floor—the Leach amendment placing a cap on Federal employment and the Levitas amendment which made discourtesy and rudeness grounds for an employee's dismissal.

Mr. Speaker, I urge the adoption of the conference report to accompany S. 2640, the Civil Service Reform Act of 1978.

The gentleman from Ohio (Mr. ASH-

of applicants for Federal employment, so that Congress might have the opportunity to study and take action on the question of the disposal of these files. The amendment speaks in terms of the files being disposed of in accordance with the provisions of Executive Order 10450.

There are four files at issue here:

1. The Security Investigations Index covering all persons as to whom security investigations have been conducted by any department or agency under Executive Order 10450, and which includes the central index established and maintained by the Commission under Executive Order 9835 of March 21, 1947. The retention schedule established pursuant to law for this file is 20 years and the file has been purged of all cards for individuals on whom there has been no investigative case since 1955, but they have not yet been destroyed.

2. The Investigations Case Files consisting of the reports of investigations conducted by the Civil Service Commission. The retention schedule established pursuant to law is 20 years, but no files have as yet been destroyed.

3. The Security Research Source File on Organizations. This is a file of numerous documents containing information about individuals and organizations and used as a source of leads information about the activities of organizations and individuals allegedly involved in alien ideological movements.

4. The Name Index to the Security Research File. This is an alphabetical index of the names of individuals and organizations referred to in the source documents included in the file above.

The main files at issue are items 3 and 4. Upon the passage of the Privacy Act of 1974, the Commission reviewed its file holdings for compliance with that Act. It was determined that the two files were not in compliance with the provisions of Section (e) (7) of that Act and that they could not be brought into

All in all, I think this is a good conference report. I strongly recommend it to the House.

I reserve the balance of my time.
(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Speaker, I think that most Members on this side of the aisle were satisfied with the conference report.

I rise in support of the civil service reform conference report. My colleagues will recall that the House version of S. 2640 passed this body on September 13 by a vote of 385 yeas to 10 nays. I can assure those who voted against the bill at that time that the House-Senate conferees have produced a better bill than the one they earlier opposed. I can also assure those who voted for the bill that the House position was protected in most instances. Congressman UDALL, acting as chairman of the conference committee, performed his duties in a fair, reasonable manner to provide the fullest opportunity for debate and compromise on the various points of difference between the two bills.

Briefly, the Civil Service Reform Act of 1978—

Establishes a Merit Systems Protection Board with a special counsel to handle employee appeals and to protect the merit system;

Streamlines the procedure for disciplining and dismissing incompetent, nonproductive employees;

Sets up a performance appraisal system and establishes performance criteria for individual job classifications;

BROOK) wishes to ask a few questions, so I now yield to him.

Mr. ASHBROOK. Mr. Speaker, I thank my colleague, the gentleman from California (Mr. ROUSSELOT) for yielding to me.

I would like to ask my distinguished friend, the gentleman from Arizona (Mr. UDALL) what happened to the amendment that was accepted, that I offered, regarding the personnel files of the Civil Service Commission and the destruction of the former loyalty oath files? That amendment, as I understand it, was stricken out in the conference.

Could my colleague give me a reason why that happened?

Mr. UDALL. Mr. Speaker, if the gentleman will yield, let me say to my friend, the gentleman from Ohio (Mr. ASHBROOK) that we reluctantly had to give up the matter of the gentleman's amendment. I have a letter from the Chairman of the Civil Service Commission, dated September 19, 1978, and I will ask to include that in the Record at this point:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., September 19, 1978.

HON. MORRIS K. UDALL,
Vice Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. UDALL: I would like to call to your attention certain problems which we have with Congressman Ashbrook's amendment to the civil service reform bill, which pertains to the retention of this agency's security investigation reports.

The stated purpose of the Ashbrook amendment, Section 905 of Title IX of S. 2640, as passed by the House, is to prevent the destruction of security files used by the Commission in establishing the suitability

compliance with that Act since the information contained in a large part of them deals with how persons exercised their First Amendment Rights.

Because of that conclusion, the Commission directed that the use of the file be terminated and that both the name index and the source materials be destroyed. Use of the files has been stopped. However, they have not been destroyed because of the request of the Senate, during its investigations of intelligence activities, that all agencies retain investigative or intelligence files until their inquiries were completed. This request was lifted in December, 1977 and we commenced to seek, through the Archivist, the necessary legal authority to accomplish the destruction.

However, during hearings before the Subcommittee on Criminal Laws and Procedures of the Senate's Committee on the Judiciary, Mr. Robert J. Drummond, Jr., then Director of the Commission's Bureau of Personnel Investigations, and I testified that the Commission was planning to destroy the index to the Security Research Organizational Files. Senators Eastland and Thurmond of the Committee, in a letter to me dated March 1, 1978, asked that we postpone taking any action with respect to the index and the Files themselves until Congress had an opportunity to consider the matter and make a finding. In my March 13, 1978 reply, I agreed to comply with their request, pending further discussion with the staff of the Committee. What we have done is stopped using the index, thereby making the organizational files inactive. Copies of this correspondence are enclosed.

Since we have given the Senate Committee this assurance, we view the Section 905 as completely unnecessary and urge that it be stricken entirely from the Bill in Conference.

Should this not be possible, the Section needs technical correction since Executive Order 10450 does not cover the disposition of

the Index File; only its maintenance. Therefore, the words, at the end of the section, "shall be disposed of in accordance with the provisions of such Executive Order" should be stricken and the following words substituted: "shall not be disposed of."

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

Mr. UDALL. In brief, basically what the letter said was that there were inadequate hearings to give us a basis on which to really write an intelligent amendment on this subject, and that it conflicted with the Privacy Act and that the Civil Service Commission would do all in its power to carry out the substance of the gentleman's concerns, which he expressed, and that we would not include the language, and on that basis we did not insist on the Ashbrook amendment.

Mr. ASHBROOK. Mr. Speaker, if my colleague would respond to a further inquiry, I saw that letter, I received a copy of it, the gentleman was kind enough to send it to me several weeks ago when he received it. Of course, all we have in that letter is the assurance of the Chairman of the Civil Service Commission that they would not proceed. But the thing that concerns me the most was that he gave this assurance personally to the senior Senator from Mississippi, Senator EASTLAND, a gentleman who is retiring. I think the thing that concerns me is that when Senator EASTLAND is no longer here, that the Civil Service Chairman has not made that assurance ironclad to any-

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks and to include extraneous material.)

Mrs. SCHROEDER. Mr. Speaker, I rise in support of the conference report to accompanying S. 2640, the Civil Service Reform Act.

Our committee has worked long and hard on this bill.

I want to compliment the gentleman from Arizona (Mr. UDALL) for his 29 straight hours on the floor and who knows how many in conference.

Mr. Speaker, I think this bill is a good piece of legislation; and I think, in all fairness to everyone, we should speedily move to adopt the conference report.

Again, I think it is a very good piece of legislation.

Mr. Speaker, our committee and the entire House has worked long and diligently to consider and improve upon President Carter's proposal to reform Federal personnel management. I think all of us can be proud of what we have accomplished. I do not consider this bill the final word on civil service reform, but I do think this is a worthy and responsible piece of legislation.

Let me touch on a couple of pieces we added to this legislation. A great deal and attention and effort went into devising a workable way to protect Federal employees who disclose illegality or waste and to assure that the complaints of these employees are taken seriously. The conference report provides very strong protections against firing and other

plaints seriously, the legislation establishes a complaint handling mechanism to assure that significant charges are subject to significant investigations. All these investigations are conducted by the agency which allegedly has the illegality within it, with oversight and review by the special counsel, the Congress, and the President. A public log of these charges and the resolution of them is provided for so that the public can make sure that wrongdoing is not covered up in the Federal Government. I believe that this procedure will assure that a scandal like the current one at GSA will never again fester as long before disclosure. Remember that there were GSA whistleblowers in the early seventies; unfortunately, their charges were not taken seriously.

The bill does provide for mandated investigations where the Special Counsel determines that the charges raised by the employee have a significant likelihood of validity. Beyond this requirement, however, is the instruction to the special counsel to send all charges to the agency head involved, regardless of whether the special counsel finds a substantial likelihood of validity. By this, we intended that the agency head should seriously examine all allegations. These complaints should serve as an early warning system to an agency head that trouble may be brewing in the agency. They should give the agency head the opportunity to obviate the trouble before public disclosure and embarrassment force changes. Agency heads should look at these whistleblower complaints as a

body else. I personally feel it should be language that is contained in the civil service reform, but I understand it was not. I also understand that next year there will be hearings on some proposals which will be made regarding this particular bill. As so often happens in a bill of this type, it overreaches in some areas and leaves out some areas.

There will be legislation next year. I would only hope that we could take a good hard look at that at that time because personally I do not look upon the assurance contained in a letter as meaning that much. I would like to have a greater stamp of authority.

Secondly, I do not believe the Congress should give up on its prerogative to legislate where it deems it important, just on the assurance of a Commissioner or on that of the chairman of a Commission who may or may not be in that office in 6 months, a year, 2 years, or 4 years.

I understand what happened. My colleague has answered my question to my satisfaction. If, in the course of events, both of us are back here next year, perhaps we can take a second look at the matter at that time.

Mr. UDALL. I appreciate the gentleman's comment. I appreciate his sincere interest in this subject, and his strong view and perhaps we can get a little more assurance for him next year.

Mr. ASHBROOK. Mr. Speaker, I thank my colleague, the gentleman from Arizona, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I yield such time as she may consume to the gentleman from Colorado (Mrs. SCHROEDER).

forms of job discrimination when they are attempted in reprisal for the disclosure of information. A special counsel is created who can investigate these reprisals, seek discipline against Federal officials who take reprisal actions, protect the employee, and obtain injunctions against continued reprisals on very short order.

The special counsel is an official with broad and necessary prosecutorial powers. I urge the President to appoint an individual to this position who is dedicated to fairness, justice, and the interests of employees. All too often in the past, high civil service employees have lacked some or all of these qualifications.

Special whistleblower protections are provided in the Federal Bureau of Investigations, necessitated, in part, by the woeful history of this agency in terms of eliminating internal wrongdoing. An FBI employee is guaranteed protection if he or she follows the procedures set out. If the employee makes public disclosures of wrongdoing, however, this statute does not serve as authorization for the Bureau to take reprisals. The general policy of protecting whistleblowers runs to all Government instrumentalities.

Along these lines, the bill applies the merit system principles to all units of the Federal Government, regardless of whether they are under the basic civil service system. Hence, while specific enforcement provisions are not mandated for agencies like CIA and GAO, the legislation makes it clear that whistleblowers should be protected in these agencies.

In terms of taking employee com-

valuable resource and not as a nuisance. Nothing in this legislation precludes an agency head from ordering a full scale investigation of any charges forwarded, regardless of whether the special counsel thought an investigation warranted.

One of the crucial aspects of this legislation is that we have provided for a system of personal accountability for Federal officials. If a boss takes a reprisal against an employee, that boss can be punished. If an investigation results in a finding that an agency official engaged in wrongdoing, that agency official can and should be punished. The public log can provide, by listing the name of a culpable official, that an individual suffers personal punishment for his or her misdeeds. In the bureaucracy, responsibility has been diffused and culpability institutionalized. Only when we start treating federal officials as individuals, rewarding them for excellence and punishing them for misconduct, can we expect them to strive for greatness.

Another aspect of this legislation which I consider noteworthy is the direction by Congress to the special counsel to exercise a power which the Civil Service Commission, by administrative fiat, has decided not to exercise. That is the power to investigate improper withholdings of information under the Freedom of Information Act. Although the 1974 amendments to the act have been enormously successful, I believe the Freedom of Information Act would have worked even better if there were oversight of agency compliance by somebody, in this case the special counsel. The Civil Service Commission has not exercised this oversight. In this bill, we instruct

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the special counsel to investigate arbitrary and capricious withholdings of information, regardless of whether there has been an administrative or judicial determination of such.

Mrs. SCHROEDER. Mr. Speaker, when the House passed the Leach amendment to establish a temporary employment ceiling, it included a provision that would require that a part-time career employee be counted as a fraction determined by dividing 40 hours into the average number of hours of the part-time worker's regularly scheduled workweek.

The conference changed this language to permit agencies to count part-time employees by the fractional method, when their number exceeds the number of part-time employees who were on board on September 30, 1977.

However, for agencies to take advantage of this provision in the Leach amendment, OMB must develop regulations that will allow agencies to use the fractional accounting system for agencies which want to hire more part-time employees. I would like to stress that this provision is included in the conference report and that OMB must develop regulations that will give agencies the opportunity to count part-time employees in excess of the September 30, 1977, employment figure by hours worked when ceiling time comes at the end of September 1979.

I am not entirely pleased with the compromise reached on the dual compensation amendment. It provides some

Mr. KAZEN. What are those differences?

Mr. UDALL. We agreed to greater rights for disabled veterans than were contained in the House provision.

Mr. KAZEN. Was there any cutoff date or do they have unlimited preference, the way it is now, as far as the length of time is concerned?

Mr. UDALL. It is unlimited.

Mr. KAZEN. And this applies to all veterans; is that correct?

Mr. UDALL. Yes.

Mr. KAZEN. Mr. Speaker, I thank the gentleman.

Mr. UDALL. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. LEVITAS).

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, I thank the chairman for yielding, and I commend the gentleman from Arizona (Mr. UDALL) on the outstanding work he has done in bringing this important conference report back to the House for final approval.

There is one vital point I would like to inquire about with respect to an amendment, or a series of amendments, which I offered and which was adopted when the bill was in the House. The amendments related to establishing, specifically and expressly, this discourteous conduct to the public by a Federal employee shall be a ground for taking appropriate disciplinary action. I note that a major portion of that amendment

such time as he may consume to the gentleman from New York (Mr. GILMAN).

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Speaker, I want to commend the acting chairman of the committee, the gentleman from Arizona (Mr. UDALL) for having worked so diligently to bring this measure out of conference, and the ranking minority member, the distinguished gentleman from Illinois (Mr. DRAWINSKI) for laboring on behalf of the minority.

Mr. Speaker, I rise in reluctant support for the conference report to accompany S. 2640, the Civil Service Reform Act of 1978.

As my colleagues may recall, I initially expressed strong reservations regarding the merits of this legislation. I believed then, and to a much lesser extent now, that S. 2640 or H.R. 11280, whichever provided first, too much authority to the Director of the Office of Personnel Management, without adequate checks on his authority or safeguards to deter abuse through the unfettered exercise of this overwhelming authority; and second, that this bill permitted a return to the spoils system of an earlier era and all the evils that accompany a political patronage system of rewards in place of merit staffing principles.

However, through amendments that I offered successfully in committee and on the House floor in conjunction with simi-

improvement but it will need to be looked at again to make it more uniform in its application to regular and non-regular military. The exception in the compromise amplifies the unfortunate differences between the two.

Mr. UDALL. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. KAZEN).

Mr. KAZEN. Mr. Speaker, I thank the gentleman for yielding.

I just want to take this time to ask the chairman whether the amendments put in the bill by the House concerning veterans' preference are identical in this report.

Mr. UDALL. Basically, the House position prevailed; but there were some differences with the Senate, and some modest changes were made.

Mr. KAZEN. What were the differences? This subject is a very important one, and I think the position of the House was very clear with respect to veterans' preference.

Mr. UDALL. I am told with regard to the issue of preference and who is eligible for preference, there is no difference whatever and that the House position was maintained. The same is true with regard to employment preference or retention rights. There was no change or retreat from the House position on that score.

Mr. KAZEN. In other words, the veterans' preference, as we have it today and as the House passed it, is intact in this conference report; is that correct?

Mr. UDALL. Eligibility and the rights a veteran has with regard to preference are maintained in the same form. There were some technical differences.

has been retained in the bill. In one area, however, it is not expressly contained in the conference report, as such.

I would like to receive assurance from the chairman that, nevertheless, discourtesy on the part of a Federal employee under certain circumstances can constitute grounds for the application of the provisions of both subchapter 1 and under subchapter 2, as well.

Mr. UDALL. Absolutely. I want to assure the gentleman that the thrust and purpose of the amendment he offered on the House floor has been maintained. There was great concern on the part of the Senate that this very vague standard of discourtesy could be abused as a ground for discharge or a ground for punishing an employee. But the heart and substance of what the gentleman was trying to do is in here. It is stated in slightly different words. I can assure the gentleman that discourtesy can be the basis for removal action, and I hope we will get a little more courtesy out of Federal officials as a result of the good work of the gentleman from Georgia.

Mr. LEVITAS. I thank my distinguished colleague. I might say I am thinking of printing up cards containing this provision on it and distributing them to the citizens of the United States so that they may carry with them a reminder to all concerned that, as people, as citizens, and as taxpayers, they are entitled to be treated courteously.

Mr. UDALL. That is not a bad idea, if I may say to the gentleman.

Mr. Speaker, I have no further requests for time.

Mr. DERWINSKI. Mr. Speaker, I yield

lar efforts by Senator MATHIAS and Senator STEVENS in the Senate, I believed that enough protections were written into this legislation to minimize the dangers posed by this bill and to plug the most glaring loopholes. For these reasons, I deeply regret the failure of the House conferees to protect the substance of a number of my amendments.

Fortunately, Senator MATHIAS and Senator STEVENS were more successful. All of their substantive amendments remained intact, assuring the necessary minimal protection for career employees.

It is for this reason, as well as the public perception for the need for reform within the Federal bureaucracy, that I today vote in favor of this conference report, albeit reluctantly, as I have stated.

In closing, I do wish to commend my colleague and good friend, the gentleman from New York (Mr. HANLEY) one of the House conferees and all of the House conferees for their splendid efforts in defending veterans' preference, and in some instances, actually strengthening preference eligibility rights in this legislation. Again the Congress has successfully fended off an administration attempt to dilute or strip veterans of their hard-earned rights.

There is no question that some civil service reform is needed. Hopefully, in the forthcoming 96th session, there will be an opportunity to make this reform more effective.

Mr. DERWINSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I might add at this point after the long hours in committee and long hours on the floor and in the conference, it seems almost anticlimactic

but the gentleman from Arizona (Mr. UDALL) did an excellent job in managing this bill.

Mr. Speaker, the conference agreement on S. 2640 is a sound, constructive legislative bill that provides the first major overhaul of the Federal civil service system in 95 years.

Although it is complex and comprehensive legislation, it has a strong and clear underlying theme: to create an efficient and responsive civil service system to serve the American public.

To accomplish this, the conference report contains these key features:

Creation of the Office of Personnel Management with strengthened authority to administer civilian personnel policy in the executive branch;

Establishment of an independent Merit Systems Protection Board and a special counsel to provide protection against improper personnel practices and ensure due process for employees;

Creation of a Senior Executive Service to provide flexibility in assignment, ensure management competence, make managers more accountable, and to provide compensation linked to performance;

Establishment of a merit pay system for midlevel managers under which pay adjustments will be determined by performance rather than merely by length of service.

Mr. Speaker, when the record of the 95th Congress is reviewed, this will be remembered as one of our finest hours.

By this action, the House is reaffirming

vamped and revitalized civil service system. Proposition 13 is not exclusively limited to money issues. It encompasses a much broader message, namely, that Government must mend its errant ways and that a shakeup of an unwieldy and unresponsive bureaucracy is long overdue.

The legislation we approve today is not in behalf of any single President. It will benefit and serve future Presidents and their administrations. But, above all, the true beneficiary of this governmental reform is the American taxpayer.

Mr. UDALL. Mr. Speaker, in closing debate I want to pay a special tribute to the gentleman who is here in the Chamber with me today. He is the chairman of our Committee on Post Office and Civil Service. He will be retiring at the end of this Congress. He served for a couple of decades in this institution with real dignity and with real distinction. His role in the bill was important. He was the chairman of our committee through the arduous process of trying to put a bill together, scheduled to have our hearings promptly, kept tempers under control and was there himself through long hours both in the conference and in the committee stages. I think the House and the country owe a real debt of gratitude to the gentleman from Pennsylvania, Mr. ROBERT NIX.

There is a lot of credit to go around, Mr. Speaker, in connection with this historic legislation, and I would be remiss if I did not say that we would not have a bill here today without the help of the

Mr. UDALL. Yes.

Mr. DERWINSKI. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. LEACH) who is the author of one of the major amendments in the bill.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Speaker, I just rise in strong support of this bill.

Mr. Speaker, I rise in strong support of the conference report and am pleased to inform my colleagues that the House-passed amendment to the civil service reform bill to limit Federal employment has in essence been retained.

I would like to commend the conferees, particularly Mr. UDALL and Mr. DERWINSKI, for their efforts to provide a meaningful limit on the size and scope of the Federal Government and would like to take this opportunity to outline to my colleagues what the substitute language will accomplish.

Briefly, the statutory ceiling is set at the total number of civilian personnel in the executive branch, excluding the Postal Service, employed as of September 30, 1977. This figure, according to the Office of Management and Budget, was 2,191,133; which includes 83,395 indirect employees. The number of Federal employees on September 30, 1979, 1980, and 1981, is not to exceed that number. A separate ceiling has been established—numbering 60,000—to protect those students and disadvantaged youth employed

its commitment to good government. It is a demonstration of bipartisan statesmanship which is particularly significant, coming as it does only 4 weeks before congressional elections.

When President Carter transmitted his civil service reform to the Congress this spring he correctly pointed out the serious defects in the present system. "It has become a bureaucratic maze," he said, "which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in redtape, delay, and confusion."

These are logical reasons for seeking reform. Throughout the tedious process of developing this final package, I shared the President's concern, for he was speaking not only for his own administration but for Republican and Democratic administrations before him.

Much of what developed stems from recommendations of the Hoover Commission in the early 1950's. Both Presidents Eisenhower and Nixon made efforts in this direction, so there is a strong and clear Republican influence in what we now consider.

However, the history of the bill will show that of necessity it was a bipartisan effort that in its early stages in committee could well have been scuttled by a majority of the majority.

As a member of the Republican Party, which has long been committed to seeing that the Government truly serves the people, I have been happy to play a role in achieving civil service reform.

The public expects and demands a re-

gentleman from Illinois (Mr. DERWINSKI) who played a very key and constructive role in all of this.

We had an exceptional staff headed by David Minton, Bob Lockhart, and Pierce Myers, without whose help we would not have had this fine bill. I thank all of the staff for the exceptional work they did.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

I also want to commend the gentleman from Arizona (Mr. UDALL) and the gentleman from Pennsylvania (Mr. NIX) for the work they have done on this report. It has been a really thankless job. There are some who are happy and some who are not.

I want to congratulate them for the job they have done.

For the sake of clarification, I will ask the gentleman to tell me what was done with the so-called double-dipping provision. How did that finally wind up?

Mr. UDALL. We retained the essence of the double-dipping provision, though it was modified. It was essentially the House bill.

Mr. KAZEN. How much is the base for a level 5 employee at the executive level?

Mr. UDALL. It is \$47,500 and that is the limit we put on double dipping.

Mr. KAZEN. That is the figure in the bill as it left the House, as I recall.

Mr. UDALL. And that is maintained.

Mr. KAZEN. That figure is maintained?

under special employment programs.

In order to provide incentive for Federal managers to hire part-time personnel, the language provides that in the event the number of part-time employees exceeds the number so employed on September 30, 1977, additional part-time employees may be counted as a fraction of full-time and credited on that basis against the total ceiling.

Further, it is important to note the President is given authority to hire additional employees so long as that number does not exceed the growth in the population at large, if it is in the national interest. I am hopeful the President will give timely notice to the Congress in exercising authority under this provision.

Finally, the language states that the President shall not increase the contracting out of personal services, except in cases in which it is to the financial advantage of the government to do so.

It should be made clear, at this point, that the adoption of an end of the fiscal year compliance date, instead of a year-long ceiling, is not meant to authorize excessive levels of employment during the remaining 11 months of the year nor is it meant to encourage Federal managers to meet program needs by hiring temporary personnel whose employment may be terminated in time to meet the September 30 deadlines set in the amendment. There will be an effort to maintain strong oversight over the implementation of these provisions. Any indication of hiring, in whatever category of employment, meant to end-run the Congress on this point will be closely scrutinized.

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It should also be emphasized that the ban on additional contracting for personal services shall coincide with the September 30, 1977, date for limiting all Federal employment. Further, it is understood that the President, in establishing regulations on contracting for personal services, shall narrowly interpret the words, "financial advantage of the government." This is necessary in order to prevent wholesale contracting out to circumvent the letter and spirit of the employment limitation. It would violate the intent of this provision to contract for additional services without a commensurate reduction in Federal employment covered under the statutory employment ceiling. Regulations promulgated by the President should also provide that in each instance where the Government determines it is in its financial advantage to contract for personal services and on that basis increases contracting out beyond the level for September 30, 1977, this information will be contained in appropriate reports required to be filed by the Office of Personnel Management.

Mr. Speaker, there was a major effort by all interested parties to reach agreement on these provisions. I believe they represent a balance between limited government and the need for management flexibility.

● Mr. LEHMAN. Mr. Speaker, I rise in strong support of the conference report on the Civil Service Reform Act of 1978.

Today, we are enacting a truly land-

The Office of Personnel Management will handle personnel administration throughout the civil service system. Such activities as examination, training and administration of pay and benefits will fall under OPM's authority.

The Merit Systems Protection Board will act as the enforcement arm of the civil service system. It will have the power to review agency dismissals, demotions, and other adverse action cases against individual employees. In addition, the Merit Systems Protection Board will be authorized to investigate certain matters and take appropriate steps with respect to improper activities reported by so-called "whistleblowers." The "whistleblower" amendment, which I cosponsored during committee markup, will protect those individuals who expose wrongdoing, and at the same time introduce a mechanism for taking remedial action when any kind of improper activity is disclosed.

This provision has the potential to check legal and administrative improprieties which occur at all levels of management and will hopefully discourage bureaucratic abuses and excesses from recurring.

The successful administration of any Federal program or office, depends, to a large degree, on the quality and competence of senior level managers. Currently, our system offers few rewards to attract and retain first rate administrators inasmuch as managers now receive automatic pay raises and promotions based on

union. Presently, labor-management relations are governed by an Executive order issued during the Kennedy administration. During this 16-year period the unions have acted responsibly on behalf of their members. As a result employee unions have earned the statutory recognition and protection provided under this bill.

Mr. Speaker, this is a good bill. It represents the collective efforts of many people. It has balanced the needs of the Federal employee to feel secure from political and personal reprisals against the public's expectations for an honest, hard-working, and efficient civil service system. I intend to support this bill and encourage my colleagues to do the same.●

● Mr. TAYLOR. Mr. Speaker, although I have mixed emotions about some of the "reforms" we are about to enact, I support the civil service conference report because I have reached the conclusion that Congress ought to give our current president some new tools with which to better manage the Federal Government's vast bureaucracy.

Whether President Carter's administration uses these new tools properly, or injects partisan politics into the top levels of Government and endangers the impartial administration of our laws, remains to be seen.

As a conferee who signed the report, I want to note that from the taxpayer's point of view, the measure has been substantially improved in conference with

mark bill which the President correctly cited as the "centerpiece of Government reorganization." This significant accomplishment is a testament to the persistent efforts of the President and the Post Office Committee leadership, especially Mo Udall, to bring about meaningful and fundamental changes in the century-old civil service system.

Seven months have elapsed since the President reported to Congress that:

The [civil service] system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in red tape, delay and confusion.

Accompanying the President's message was a proposed bill to remedy these deficiencies. The Post Office and Civil Service Committee on which I serve conducted 13 days of hearings and nearly an equal number of sessions marking up the legislation. What emerged from the committee and later from the House was basically an affirmation of the President's plan to streamline and update the Federal personnel system.

The conferees have now produced a bill that maintains most of the President's essential proposals.

The conference report recognizes that the Civil Service Commission has acquired responsibilities over the years which oftentimes conflict with one another since it acts as a rulemaker, prosecutor, judge, and employee advocate. Under the reform bill these overlapping duties have been severed and placed under the authority of two distinct entities.

longevity. The creation of the Senior Executive Service will provide high level executives with adequate incentives to excel at their job by correlating salary increases to work performance, thus promoting a competitive atmosphere similar to our free enterprise system. Fortunately, the House amendment which would have limited the SES to 3 Federal agencies for a 3-year trial run was eliminated in conference. Had this amendment prevailed it would have weakened the chance of attracting quality supervisors to the SES. To dispel fears about politicalization of this corps, a Government-wide cap has been imposed on the number of political appointees who may be selected to fill SES positions. Moreover, two-thirds of the SES positions in each agency must be reserved for career Federal employees.

Mr. Speaker, a major criticism leveled against the civil service system dealt with employees rights. The press in particular was quick to pick up on employees who apparently abused the rules by prolonging a transfer, demotion, or dismissal. This will no longer be possible, however. Instead of the "preponderance of evidence rule" a manager now will only have to prove by "substantial evidence" that the employee is performing unsatisfactorily and therefore should be dismissed. The new standard adopted by the conferees will enhance a manager's authority to remove incompetent and inefficient workers within a reasonably shorter length of time.

As a counterbalance to these new procedures the conference report contains stronger measures to allow Federal workers to organize, join, and contribute to a

the Senate. It is better than the version of H.R. 11280 which the House passed, and it is certainly a far cry from the bill that was reported by the Post Office and Civil Service Committee.

There are several areas where the conference report improves the House-passed bill, by moving closer to language contained in the Senate version. There are also areas where the effect of some House provisions have been limited. In addition, amendments offered by our colleagues from Georgia (Mr. LEVITAS) and from Iowa (Mr. LEACH) are retained.

In the area of making it easier to remove, demote or discipline employees for lack of performance, the conference agreed to provisions which will ease the current process.

Instead of continuing to require a supervisor to show by a "preponderance of evidence" that an employee's performance is lacking, in order to have an agency decision upheld when the employee lodges an appeal with the Merit Systems Protection Board, the conference decided to adopt what is known as the "substantial evidence" test.

The agency will still have to prove its charges, but it will be easier for agency managers to document that in at least one critical element of the employee's job, the employee has failed to meet required performance standards.

In this regard, the conference agreed to most of the amendment offered by Mr. LEVITAS to H.R. 11280, to the effect that unacceptable performance will include "conduct that demonstrates a pattern of recurring discourtesy to the public."

In the area of Federal labor-management relations, the conference report is

closer to the Senate bill in several major areas, and as a result, does not go too far beyond the current Executive order.

There is no doubt in my mind that the conference report will increase to some degree the role of Federal employee unions in dealing with Government managers, and there are provisions that I personally would rather see left out.

However, the conference report does guarantee that each employee will have the freedom of choice to join or not to join a union; and the statement of managers specifically mentions that nothing in the conference report authorizes, or is intended to authorize, the negotiation of an agency shop or union shop.

Two additional items contained in the conference report that I believe taxpayers will appreciate, Mr. Speaker, are the adoption of the amendment offered by Mr. LEACH to H.R. 11280 limiting the total number of Federal executive branch employees; and a 2-year restriction on pay and grade retention for employees who are downgraded as a result of grade reclassifications or reductions-in-force due to reorganizations.

While I have my doubts about whether the Senior Executive Service will work as well as the Carter administration thinks, and while I also have reservations about the implementation of the merit pay provisions for middle-level managers, I think this is a worthwhile bill.

Mr. Speaker, this legislation makes major changes in our Federal personnel system. It takes the first step toward a goal of reforming the civil service into a

when its Members were anxious to get credit back home for improving the operation of the Post Office. Congress at that point came up with the politically popular innovation of "reforming" the Post Office by "making it run like a business". It sounded good at the time, but I do not know too many of my colleagues who voted on that measure at the time who do not today regret their hastiness in "reforming" the Post Office.

There is not any question about the popularity of "kicking the bureaucrats" but the advisability of "postalizing" the civil service through the adoption of this "reform" bill today is highly questionable, and my colleagues will be haunted by their failure to enact adequate safeguards against the "quick" solution which seems so plausible to many today. I want the record to reflect that this House was reminded that it was the career civil service kept this Government operating when it was paralyzed in the aftermath of our most recent attempt to politicize the bureaucracy—in the Nixon administration.

The action of the Congress in enacting an open door to political manipulation will require a much greater commitment on the part of Congress to exercise its oversight and investigatory responsibilities with regard to the operation of the civil service. As a member of your Committee on Post Office and Civil Service, I am prepared to take up that commitment.

The Senior Executive Service as proposed by President Carter was meritори-

or serving as a confidential assistant to a political appointee.

Under this bill as passed, although there is a percentage limit on the number of jobs that can be filled by political appointees, this limit has no relationship to the responsibilities of the job. Thus, the head of a division handling grants, contracts, or tax returns can be a political appointee.

By rejecting this approach, Congress failed to exercise clear controls over which positions are filled by career individuals and which by political appointees. And it would have provided that the type of appointment—career or political—would be determined by the responsibilities of the job, not an arbitrary agency—or government-wide "magic" number. ● Mr. GARCIA, Mr. Speaker, I rise in support of the Civil Service Reform Act conference report with a great deal of pleasure.

As a member of the Post Office and Civil Service Committee, I was involved in the development of this long needed reform and noted the many long hours of conscientious consideration and deliberation it received by the members and staffs involved. This conference report reflects their concern and the success of their efforts. I feel proud of this bill for this reason and because it includes my first successful attempt to amend legislation here.

Beyond my own satisfaction of having influenced our country's public policy, I am deeply gratified that my colleagues in committee, on the floor, and in confer-

system where merit will be rewarded and incompetence unprotected.

But this bill, which is being labeled as a major domestic victory for President Carter, is not the final step in that effort of reform.

It will be up to future Congresses to assure the American people that the Civil Service Reform Act of 1978 was worth all the effort. It will be up to future Congresses to maintain vigilant oversight over the new Office of Personnel Management, and over the new Merit Systems Protection Board, and over the new Federal Labor Relations Authority.

Mr. Speaker, I yield back the balance of my time.●

● Mr. HARRIS. Mr. Speaker, the challenge before the Congress with regard to the important matter of civil service reform has been to improve and streamline government operations and efficiency while retaining an independent and professional corps of government workers. I must say to my colleagues today that when the House adjourns shortly and we go back to face the voters, we are going to have to face the fact that we have failed in this mission.

Many of those in this Chamber will gleefully report that much has been done to accomplish this end. It may be a period of months, or even years, before many of my colleagues understand the impact of this bill which will open up our Government to increased politicization of the civil service. I am going to submit though, that the average Federal employee will understand the bill's essential failure much sooner. I remember a time just before I came to this House

in many ways, offering management flexibility and incentives for good performance in office. But its gaping loophole left intact by both Houses and the conference committee, will enable the President to name too many of Government's senior executives from the ranks of his political devotees.

Administration after administration has missed the boat on the issue of "getting control" of the bureaucracy. Each "new team" in Washington comes in with the firmest belief that every civil servant is a political holdover from the administration. Each new administration approached the executive departments with a determination to "place" its people in all of the key positions of authority.

I am going to point out to my colleagues that we will have true civil service reform, and truly improved efficiency of Government operations, when we achieve an understanding in the executive branch of the way to approach both good management and the realization of its objectives. That approach is separate out by function, those employees who are political and those who are career professional.

The Harris substitute to the title of this bill which creates a Senior Executive Service (Title IV) would have accomplished this. The amendment would have made the SES a career service only. Had the President wished to designate certain jobs at grades GS16-18 to be filled by political appointees, the duties of the job would have to have met certain standards prescribed by law, such as engaging in the advocacy of administrative programs

ence have shared by views that such legislation is needed.

As many of you know, the expressed intent of my provision is to increase the number of minorities on the civil service register. It will strengthen the affirmative action program of the civil service, by instituting statutes which enforce a meaningful outreach and recruitment program while in no way even implying hiring quotas. The provision is not a panacea—we all know, too well, the folly of those who attempt to offer simple solutions for deeply rooted social inequities and expect them to disappear. In offering this amendment to the bill, it was my intention and sincerest desire only to increase the accessibility of civil service jobs to the minority communities of our country.

I must say, finally, that I could not have gotten this amendment through without the support and help of my colleagues—in the committee, in the House, and in conference. I will long remember the gracious tolerance shown by the more senior Members of this body to their most junior colleague.●

Mr. UDALL. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HARRIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

October 6, 1978

CONGRESSIONAL RECORD—HOUSE

H 11827

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 365, nays 8, not voting 59, as follows:

[Roll No. 887]

YEAS—365

| | | |
|----------------|-----------------|---------------|
| Abdnor | Downey | Kelly |
| Addabbo | Drinan | Kemp |
| Akaka | Duncan, Oreg. | Keys |
| Ambro | Duncan, Tenn. | Kildee |
| Anderson, | Early | Kindness |
| Calif. | Eckhardt | Kostmayer |
| Anderson, Ill. | Edgar | Krebs |
| Andrews, N.C. | Edwards, Ala. | LaFalce |
| Andrews, | Edwards, Calif. | Lagomarsino |
| N. Dak. | Edwards, Okla. | Latta |
| Annunzio | Ellberg | Le Fante |
| Applegate | Emery | Leach |
| Archer | English | Lederer |
| Ashbrook | Erlenborn | Lehman |
| Ashley | Ertel | Lent |
| Aspin | Evans, Colo. | Levitas |
| AuCoin | Evans, Del. | Livingston |
| Badham | Evans, Ga. | Lloyd, Calif. |
| Bafalis | Evans, Ind. | Lloyd, Tenn. |
| Baldus | Fary | Long, La. |
| Barnard | Fascell | Long, Md. |
| Baucus | Fenwick | Lott |
| Bauman | Findley | Luken |
| Beard, R.I. | Fish | Lundine |
| Beard, Tenn. | Fisher | McClory |
| Bellenson | Fithian | McCloskey |
| Benjamin | Flippo | McCormack |
| Bennett | Flood | McDade |
| Beyll | Florio | McDonald |
| Biaggi | Flynt | McFall |
| Bingham | Foley | McHugh |
| Blanchard | Ford, Mich. | McKinney |
| Blouin | Ford, Tenn. | Madigan |
| Boggs | Forsythe | Maguire |
| Boland | Fountain | Mahon |
| Bolling | Fowler | Mann |
| Bonior | Fraser | Markey |
| Bonker | Frenzel | Marks |
| Bowen | Frey | Marlenee |

| | |
|--------------|--------------|
| Price | Shuster |
| Pritchard | Sikes |
| Pursell | Simon |
| Quayle | Skubitz |
| Quillen | Slack |
| Rangel | Smith, Iowa |
| Regula | Smith, Nebr. |
| Reuss | Snyder |
| Richmond | Solarz |
| Rinaldo | Spence |
| Roberts | St Germain |
| Robinson | Stangeland |
| Roe | Stanton |
| Rogers | Stark |
| Roncalio | Steed |
| Rooney | Steiger |
| Rose | Stockman |
| Rostenkowski | Stokes |
| Rousselot | Stratton |
| Roybal | Studds |
| Runnels | Stump |
| Russo | Symms |
| Ryan | Taylor |
| Santini | Thornton |
| Satterfield | Traxler |
| Sawyer | Treen |
| Scheuer | Trible |
| Schroeder | Tucker |
| Schulze | Udall |
| Sebelius | Ullman |
| Seiberling | Van Deerlin |
| Sharp | Vander Jagt |

NAYS—8

| | | |
|----------|-------------|---------------|
| Davis | Holt | Steers |
| Gonzalez | Myers, Gary | Wilson, C. H. |
| Harris | Spellman | |

NOT VOTING—59

| | | |
|---------------|------------|-------------|
| Alexander | Gammage | Rhodes |
| Ammerman | Glaimo | Risenhoover |
| Armstrong | Hagedorn | Rodino |
| Bedell | Harrington | Rosenthal |
| Breckinridge | Hillis | Rudd |
| Broyhill | Hollenbeck | Ruppe |
| Burke, Calif. | Krueger | Sarasin |
| Caputo | Leggett | Shipley |
| Carny | Lujan | Sisk |
| Chappell | McEwen | Skelton |
| Cleveland | McKay | Staggers |
| Cochran | Martin | Teague |

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves that the House recede from its amendment to the title of the bill S. 2640.

The motion was agreed to.

A motion to reconsider was laid on the table.

| | | |
|-----------------|-----------------|----------------|
| Brademas | Fuqua | Marriott |
| Breaux | Garcia | Mathis |
| Brinkley | Gaydos | Mattox |
| Brodhead | Gephardt | Mazzoli |
| Brooks | Gibbons | Meeds |
| Broomfield | Gilman | Metcalfe |
| Brown, Calif. | Ginn | Meyner |
| Brown, Mich. | Glickman | Michel |
| Brown, Ohio | Goldwater | Mikulski |
| Buchanan | Goodling | Millford |
| Burgener | Gore | Miller, Calif. |
| Burke, Fla. | Gradison | Miller, Ohio |
| Burke, Mass. | Grassley | Mineta |
| Burleson, Tex. | Green | Minish |
| Burlison, Mo. | Gudger | Mitchell, Md. |
| Burton, John | Guyer | Mitchell, N.Y. |
| Burton, Phillip | Hall | Moakley |
| Butler | Hamilton | Moffett |
| Byron | Hammer- | Mollohan |
| Carr | schmidt | Montgomery |
| Carter | Hanley | Moore |
| Cavanaugh | Hannaford | Moorhead, |
| Cederberg | Hansen | Calif. |
| Chisholm | Harkin | Moorhead, Pa. |
| Clausen, , | Harsha | Mottl |
| Don H. | Hawkins | Murphy, N.Y. |
| Clawson, Del | Heckler | Murphy, Pa. |
| Clay | Hefner | Murtha |
| Coleman | Heftel | Myers, John |
| Collins, Tex. | Hightower | Myers, Michael |
| Conable | Holland | Natcher |
| Conte | Holtzman | Neal |
| Corcoran | Horton | Nedzi |
| Corman | Howard | Nichols |
| Cornell | Hubbard | Nix |
| Cornwell | Huckaby | Nolan |
| Coughlin | Hughes | Nowak |
| Cunningham | Hyde | O'Brien |
| D'Amours | Ichord | Oakar |
| Daniel, Dan | Ireland | Oberstar |
| Daniel, R. W. | Jacobs | Obey |
| Danielson | Jeffords | Ottinger |
| de la Garza | Jenkins | Patten |
| Delaney | Jenrette | Patterson |
| Dellums | Johnson, Calif. | Pattison |
| Dent | Johnson, Colo. | Pease |
| Derrick | Jones, N.C. | Pepper |
| Derwinski | Jones, Okla. | Perkins |
| Devine | Jones, Tenn. | Pickle |
| Dickinson | Jordan | Pike |
| Dingell | Kasten | Poage |
| Dodd | Kastenmeler | Pressler |
| Dornan | Kazen | Preyer |

| | |
|---------------|--------------|
| Cohen | Mikva |
| Collins, Ill. | Moss |
| Conyers | Murphy, Ill. |
| Cotter | Panetta |
| Crane | Pettis |
| Dicks | Quie |
| Diggs | Rahall |
| Flowers | Railsback |

| |
|------------|
| Thompson |
| Thone |
| Tsongas |
| Walsh |
| Weaver |
| Whitehurst |
| Wiggins |

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Broyhill.
 Mrs. Burke of California with Mr. Caputo.
 Mr. Cotter with McEwen.
 Mr. Flowers with Mr. Quie.
 Mr. Murphy of Illinois with Mr. Sarasin.
 Mr. Leggett with Mr. Thone.
 Mr. Mikva with Mr. Walsh.
 Mr. Harrington with Mr. Wiggins.
 Mr. Moss with Mr. Cohen.
 Mr. Shipley with Mr. Martin.
 Mr. Rodino with Mr. Railsback.
 Mr. Tsongas with Mr. Crane.
 Mr. Gialmo with Mr. Rudd.
 Mr. Krueger with Mr. Lujan.
 Mr. Staggers with Mr. Ruppe.
 Mr. Teague with Mr. Whitehurst.
 Mr. Thompson with Mr. Cleveland.
 Mr. Weaver with Mr. Cochran of Missis-
 sippi.
 Mr. Skelton with Mr. Hagedorn.
 Mr. McKay with Mrs. Pettis.
 Mr. Diggs with Mr. Hillis.
 Mr. Dicks with Mr. Hollenbeck.
 Mrs. Collins of Illinois with Mr. Bedell.
 Mr. Conyers with Mr. Alexander.
 Mr. Chappell with Mr. Carney.
 Mr. Gammage with Mr. Panetta.
 Mr. Sisk with Mr. Rahall.
 Mr. Rosenthal with Mr. Breckinridge.
 Mr. Risenhoover with Mr. Rhodes.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

TABLE OF CONTENTS—Continued

TITLE III—STAFFING

- Sec. 301. Volunteer services.
- Sec. 302. Exceptions from the competitive service.
- Sec. 303. Definitions relating to preference eligibles.
- Sec. 304. Noncompetitive appointment of certain disabled veterans.
- Sec. 305. Appointments.
- Sec. 306. Training.
- Sec. 307. Travel, transportation, and subsistence.
- Sec. 308. Retirement.
- Sec. 309. Extension of veterans readjustment appointment authority.
- Sec. 310. Notification of vacancies in the civil service.
- Sec. 311. Dual pay for members of the uniformed services.
- Sec. 312. Minority recruitment program.
- Sec. 313. Compensatory time off for religious observances.
- Sec. 314. Temporary employment limitation.
- Sec. 315. Interpreting assistants for deaf employees.

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. General provisions.
- Sec. 402. Authority for employment.
- Sec. 403. Examination, certification, and appointment.
- Sec. 404. Retention preference.
- Sec. 405. Performance rating.
- Sec. 406. Awarding of ranks.
- Sec. 407. Pay rates and systems.
- Sec. 408. Pay administration.
- Sec. 409. Travel, transportation, and subsistence.
- Sec. 410. Leave.
- Sec. 411. Disciplinary actions.
- Sec. 412. Retirement.
- Sec. 413. Conversion to the Senior Executive Service.
- Sec. 414. Limitations on executive positions.
- Sec. 415. Effective date; experimental application.

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.
- Sec. 502. Incentive awards amendments.
- Sec. 503. Technical and conforming amendments.
- Sec. 504. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

- Subtitle A—Research Programs and Demonstration Projects
- Sec. 601. Research programs and demonstration projects.
- Subtitle B—Intergovernmental Personnel
- Sec. 611. Intergovernmental Personnel Act amendments.
- Subtitle C—Mobility Program
- Sec. 621. Amendments to the mobility program.

In the House of Representatives, U. S.,

September 13, 1978.

Resolved, That the bill from the Senate (S. 2640) entitled "An Act to reform the civil service laws", do pass with the following

AMENDMENTS:

Strike out all after the enacting clause, and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

SEC. 2. The table of contents is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

- Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

- Sec. 201. Office of Personnel Management.
- Sec. 202. Merit Systems Protection Board and Special Counsel.
- Sec. 203. Performance appraisals.
- Sec. 204. Adverse actions.
- Sec. 205. Appeals.

TABLE OF CONTENTS—Continued
TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS—Continued

Subtitle D—Federal Employees Flexible and Compressed Work Schedules

- Sec. 631. Congressional findings.*
Sec. 632. Definitions.
Sec. 633. Experimental program.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS

- Sec. 641. Definitions.*
Sec. 642. Flexible scheduling experiments.
Sec. 643. Computation of premium pay.
Sec. 644. Holidays.
Sec. 645. Time-recording devices.
Sec. 646. Credit hours; accumulation and compensation.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

- Sec. 651. Definitions.*
Sec. 652. Compressed schedule experiments.
Sec. 653. Computation of premium pay.

PART 3—ADMINISTRATIVE PROVISIONS

- Sec. 661. Administration of leave and retirement provisions.*
Sec. 662. Application of experiments in the case of negotiated contracts.
Sec. 663. Prohibition of coercion.
Sec. 664. Reports.
Sec. 665. Regulations.
Sec. 666. Effective date.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

- Sec. 701. Federal service labor-management relations.*
Sec. 702. Backpay in case of unfair labor practices and grievances.
Sec. 703. Technical and conforming amendments.
Sec. 704. Miscellaneous provisions.

TITLE VIII—GRADE AND PAY RETENTION

- Sec. 801. Grade and pay retention.*

TITLE IX—MISCELLANEOUS

- Sec. 901. Study on decentralization of governmental functions.*
Sec. 902. Savings provisions.
Sec. 903. Authorization of appropriations.
Sec. 904. Powers of President unaffected except by express provisions.
Sec. 905. Retention of security investigation reports.
Sec. 906. Technical and conforming amendments.
Sec. 907. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information and may file complaints, against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the

executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified managers needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(6) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

(7) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional review, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public; and

(8) the training program of the Government should include retraining of employees for positions in other

agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess.

TITLE I—MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

“Chapter 23—MERIT SYSTEM PRINCIPLES

- “Sec.
 “2301. Merit system principles.
 “2302. Prohibited personnel practices.
 “2303. Responsibility of the General Accounting Office.
 “2304. Coordination with certain other provisions of law.

“§ 2301. Merit system principles

“(a) This section shall apply to—

“(1) an Executive agency;

“(2) the Administrative Office of the United States Courts; and

“(3) the Government Printing Office.

“(b) It is the policy of the Congress that in order to provide the people of the United States with a highly competent, honest, and productive Federal workforce reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with the merit system principles.

“(c) The merit system principles are as follows:

"(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be sep-

arated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which education and training would result in better organizational and individual performance.

"(8) Employees should be—

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

"(A) a violation of law, rule, or regulation,

"(B) mismanagement, a waste of funds, or an abuse of authority, or

"(C) a substantial and specific danger to public health or safety.

"(d) The President shall take actions, including the issuance of rules, regulations, or directives, as the President

determines are necessary to carry out the policy set forth in subsection (b) of this section.

“§ 2302. Prohibited personnel practices

“(a) (1) For the purpose of this title, ‘prohibited personnel practice’ means any action described in subsection (b) of this section.

“(2) For the purpose of this section—

“(A) ‘personnel action’ means—

“(i) an appointment;

“(ii) a promotion;

“(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

“(iv) a detail, transfer, or reassignment;

“(v) a reinstatement;

“(vi) a restoration;

“(vii) a reemployment;

“(viii) a performance evaluation under chapter 43 of this title;

“(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

“(x) a substantial change in duties or responsibilities which may reasonably be expected to result in a reduction in pay or grade; with respect to an employee in, or applicant for, a position in the competitive service in an agency or a position in the excepted service in an agency (other than a position which is excepted from the competitive service because of its confidential, policy-determining, or policy advocating character), or to a career appointee in the Senior Executive Service in an agency.

“(B) ‘agency’ means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

“(i) a Government corporation;

“(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

“(iii) the General Accounting Office.

“(3) If the President does not designate the Federal Bureau of Investigation, in its entirety, under paragraph (2) (B) (ii) of this subsection, functions of the Special Counsel relating to the enforcement of this section with respect to

the Bureau, or any unit thereof, shall be carried out by the President (or his designee) notwithstanding any provision of law to the contrary.

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority—

"(1) discriminate for or against any employee or applicant for employment—

"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

"(C) on the basis of sex, as prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d);

"(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);

"(E) on the basis of marital status or political affiliation, as prohibited under this title; or

"(F) on any basis prohibited under the provisions of any other law, rule, or regulation;

"(2) solicit or consider any recommendation or

statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of the individual; or

"(B) an evaluation of the character, loyalty, or suitability of the individual;

"(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

"(4) deceive or obstruct any person with respect to the person's right to compete for Federal employment;

"(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

"(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any

position) for the purpose of improving or injuring the prospects of any person for Federal employment;

“(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position, any individual who is a relative (as defined in section 3110(a)(3) of this title) of an employee if the position is in the agency in which the employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which the employee exercises jurisdiction or control as a public official (as defined in section 3110(a)(2) of this title);

“(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

“(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation, or

“(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,
if such disclosure is not specifically prohibited by law or if such information is not specifically re-

quired by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

“(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation, or

“(ii) mismanagement, a waste of funds, or an abuse of authority, or a substantial and specific danger to public health or safety;

“(9) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the exercise of any right of appeal granted by law, rule, or regulation;

“(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any

crime of violence or moral turpitude under the laws of any State, of the District of Columbia, or of the United States; or

“(11) take or fail to take any personnel action on the basis of personal favoritism.

“(c)(1) The head of each agency shall be responsible for the prevention of prohibited personnel practices, the compliance with and enforcement of applicable civil service laws, rules, and regulations and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

“(2) In the case of employees and applicants for employment in the Federal Bureau of Investigation, disclosures described in subsection (b)(8)(A) of this section shall be made to the Attorney General or his designee. The Attorney General of the United States shall issue rules and regulations to protect employees and applicants for employment in the Federal Bureau of Investigation from the taking or failure to take any personnel action as a reprisal for such disclosure.

“(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available

to any employee or applicant for employment in the civil service under—

“(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

“(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

“(3) under the Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

“(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition;

“(5) the provisions of this title, and rules and regulations thereunder, prohibiting discrimination on the basis of marital status or political affiliation; or

“(6) the provisions of any other law, rule, or regulation prohibiting discrimination on any such basis.

“§ 2303. Responsibility of the General Accounting Office

“(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the

executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

“(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. Such report shall include a description of—

“(1) significant actions taken by the Board to carry out its functions under this title; and

“(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

“§ 2304. Coordination with certain other provisions of law

“No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), Public Law 86-36 (73 Stat. 63; 50 U.S.C. 402 note), and Public Law 88-290 (78 Stat. 168; 50 U.S.C. 831-835).”.

(b)(1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

“23. Merit system principles..... 2301.”

(2) Section 7203 of title 5, United States Code (as redesignated in section 703(2)(1) of this Act) is amended—

(A) by striking out “Physical handicap” in the section heading and inserting in lieu thereof “Handicapping condition”; and

(B) by striking out “physical handicap” each place it appears in the text and inserting in lieu thereof “handicapping condition”.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

OFFICE OF PERSONNEL MANAGEMENT

SEC. 201. (a) Chapter 11 of title 5, United States Code, is amended to read as follows:

“Chapter 11—OFFICE OF PERSONNEL
MANAGEMENT

“Sec.

“1101. Office of Personnel Management.

“1102. Director; Deputy Director; Associate Directors.

“1103. Functions of the Director.

“1104. Delegation of authority for personnel management.

“1105. Reports to the Congress.

“1106. Administrative procedure.

“§ 1101. Office of Personnel Management

“The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal which shall be judicially noticed and shall

have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

“§ 1102. Director; Deputy Director; Associate Directors

“(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate.

“(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of the Director is vacant.

“(c) No person shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or by the President.

“(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

“§ 1103. Functions of the Director

“(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed

by the Director, or subject to section 1104(a) of this title, by such employees of the Office as the Director designates:

“(1) securing accuracy, uniformity, and justice in the functions of the Office;

“(2) appointing individuals to be employed by the Office;

“(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

“(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

“(5) executing, administering, and enforcing—

“(A) the civil service rules and regulations of the President and the Office and the statutes governing the civil service; and

“(B) the other activities of the Office including retirement and classification activities;

“(6) reviewing the operations under chapter 87 of this title; and

“(7) the functions prescribed in part I of Reorganization Plan Numbered 2 of 1978.

“(b)(1) The Director shall publish in the Federal Register general notice of any proposed rule or regulation

which affects any agency or its employees. Any such notice shall be in accordance with the notice requirements of section 553(b) of this title. Upon receipt of such notice of any proposed rule or regulation, the agency shall, under regulations which shall be prescribed by the Office of Personnel Management, post such proposed rule or regulation in such locations of such offices of the agency as the agency finds reasonably necessary to ensure notice to the maximum number of employees affected. The issuance of any such rule or regulation shall be in accordance with the rule making requirements of section 553(c) of this title. Any such rule or regulation shall be published in the Federal Register at least 60 days before its effective date.

“(2) Paragraph (1) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency need.

“§ 1104. Delegation of authority for personnel management

“(a)(1) Subject to subsection (b)(3) of this section and notwithstanding any other provision of this title—

“(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

“(2) the Director may delegate, in whole or in

part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service; except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

“(b)(1) The Office of Personnel Management shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

“(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

“(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to ensure compliance with the civil service laws and regulations.

"(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b) (2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a) (2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b) (1) of this section, the agency involved shall take any corrective action the Office may require."

"§ 1105. Reports to the Congress

"Notwithstanding any other provision of law or any rule, regulation, or directive, the Director, or any employee of the Office of Personnel Management designated by the Director, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1106. Administrative procedure

"In the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553."

(b) (1) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(24) Director of the Office of Personnel Management."

(2) Section 5314 of such title is amended by inserting at the end thereof the following new paragraph:

"(68) Deputy Director of the Office of Personnel Management."

(3) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Associate Directors of the Office of Personnel Management (5)."

(c) (1) The heading of part II of title 5, United States Code, is amended by striking out "THE UNITED STATES CIVIL SERVICE COMMISSION" and inserting in lieu thereof "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES".

(2) The item relating to chapter 11 in the table of chapters for part II of such title is amended by striking out "Organization" and inserting in lieu thereof "Office of Personnel Management".

MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

SEC. 202. (a) Title 5, United States Code, is amended by inserting after chapter 11 the following new chapter:

**"Chapter 12—MERIT SYSTEMS PROTECTION BOARD
AND SPECIAL COUNSEL**

^{"Sec.}

^{"1201.} *Appointment of members of the Merit Systems Protection Board.*

^{"1202.} *Term of office; filling vacancies; removal; quorum.*

^{"1203.} *Chairman; Vice Chairman.*

^{"1204.} *Special Counsel; appointment and removal.*

^{"1205.} *Powers and functions of the Merit Systems Protection Board and Special Counsel.*

^{"1206.} *Authority and responsibilities of the Special Counsel.*

^{"1207.} *Hearings and decisions on complaints filed by the Special Counsel.*

^{"1208.} *Reports to Congress.*

**"§ 1201. Appointment of members of the Merit Systems
Protection Board**

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. No member of the Board may hold another office or position in the Government of the United States. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

**"§ 1202. Term of office; filling vacancies; removal;
quorum**

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring

before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term.

"(d) Members may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(e) Except as otherwise provided in this title, the Board shall act upon majority vote of those members present, and any 2 members present shall constitute a quorum for the transaction of business of the Board.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time designate one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Merit Systems Protection Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"§ 1204. Special Counsel; appointment and removal

"The Special Counsel of the Merit Systems Protection

advice and consent of the Senate, for a term of 7 years. The Special Counsel may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

“§ 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

“(a)(1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, and receive evidence.

“(2) Any member of the Merit Systems Protection Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may—

“(A) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, and

“(B) take or order the taking of depositions and order responses to written interrogatories.

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which

the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

“(d)(1) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management in carrying out its functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

“(A) on its own motion;

“(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

“(C) on the filing of a written complaint by the Special Counsel requesting such review.

“(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

“(A) invalid on its fact, if the Board determines

that such provision would, if implemented by any agency, on its face—

“(i) require any employee to violate section 2302(b) of this title; or

“(ii) is contrary to any merit system principle; or

“(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision—

“(i) has required any employee to violate section 2302(b) of this title; or

“(ii) has been contrary to any merit system principle.

“(3)(A) The Director of the Office of Personnel Management, and any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

“(B) Any review conducted by the Board pursuant to this paragraph shall be limited to determining—

“(i) the validity in its face of the provision under review; and

“(ii) whether the provision under review has been validly implemented.

“(C) The Board shall require any agency—

“(i) to cease compliance with any provision of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

“(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been so invalidly implemented by the agency.

“(e) In addition to functions otherwise provided in this title, the Board shall have the functions prescribed in part II of Reorganization Plan Numbered 2 of 1978.

“(f) The Board shall conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

“(g) The Merit Systems Protection Board shall submit its request for annual appropriations to the Office of Management and Budget and to the Congress.

“§ 1206. Authority and responsibilities of the Special Counsel

“(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investi-

gate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

“(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

“(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred.

“(b)(1) If the Special Counsel determines that there are reasonable grounds to believe—

“(A) that a personnel action was taken, or is to be taken, as a result of a prohibited personnel practice; and

“(B) except with regard to a prohibited personnel practice described in section 2302(b)(8) of this title, that the personnel action would have a substantial and adverse impact on the employee involved;

the Special Counsel may order a stay of the personnel action for 30 calendar days or any longer period the Board may prescribe under paragraph (2) of this subsection.

“(2) If the Board—

“(A) has received a petition of the Special Counsel for an extension of a stay ordered under paragraph (1) of this subsection, and

“(B) concurs in the determination of the Special Counsel under paragraph (1), after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved,

the Board may extend the period of such stay for any period it considers appropriate. If the aggregate period of the stay, as proposed to be extended, will not exceed 60 days, the function of the Board under this paragraph may be performed by any one member of the Board.

“(c)(1) In any case involving—

“(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation; or

“(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

“(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency or another employee designated by the head of the agency to receive such disclosures, of information, other than foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation; or

“(ii) mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (2) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to effectively carry out the investigation.

“(2) Within 15 days after receiving any information under paragraph (1)(B) of this subsection, the Special Counsel shall determine whether the information warrants an investigation. If an investigation is determined to be warranted, the Special Counsel shall—

“(A) transmit the information to the head of the agency involved;

“(B) require the head of the agency to—

“(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

“(ii) submit a written report to the Special Counsel and to the General Accounting Office setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel; and

“(C) transmit a copy of the report to the employee or applicant for employment who disclosed the information.

“(3) Any report required under paragraph (2) of this subsection shall be reviewed and signed by the head of the agency and shall include—

"(A) a summary of the information with respect to which the investigation was initiated;

"(B) a detailed description of the conduct of the investigation;

"(C) a summary of any evidence obtained from the investigation;

"(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(E) a description of any corrective action taken or planned as a result of the investigation, such as—

"(i) changes in agency rules, regulations, or practices;

"(ii) the restoration of any aggrieved employee;

"(iii) disciplinary action against any employee; and

"(iv) referral to the Attorney General of any evidence of a criminal violation.

"(4) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (2) of this subsection is referred to the Attorney General, the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(5) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this sub-

section, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency are reasonable;

"(B) the agency's investigation was complete and unbiased; and

"(C) the corrective action taken or planned is sufficient in light of any violations found to have occurred.

"(6) Upon receipt of any report of the head of any agency required under paragraph (2)(B)(ii) of this subsection, the General Accounting Office shall review the report and determine whether the agency investigation involved was adequate and whether the corrective action, if any, taken or planned by the agency is adequate. The General Accounting Office shall report the results of its review to the Congress if it determines that the agency's investigation or any corrective action taken or planned by the agency is inadequate.

"(7) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by the Congress, any agency, or any person which is—

"(A) specifically prohibited from disclosure by any other provision of law; or

"(B) specifically required by Executive order to be

kept secret in the interest of national defense or the conduct of foreign affairs.

“(8) The Special Counsel may, with the consent of the employee or applicant for employment involved, participate in any proceeding before the Merit Systems Protection Board under section 7701 of this title, to the extent the Special Counsel determines appropriate, if the Special Counsel believes the personnel action which is the subject of the proceeding involves a reprisal for a disclosure of information described in paragraph (1) (A) or (B) of this section.

“(9) In any case under subsection (c)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, or in any case in which the Special Counsel, in consultation with the head of an agency under subsection (d)(3) of this section, determines that information involved is prohibited from disclosure by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

“(d)(1) If, in connection with any investigation under

this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice exists or has occurred which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Merit Systems Protection Board, the agency involved, and to the Office of Personnel Management, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken, but the final decision on the corrective action to be taken shall be made by the Merit Systems Protection Board after opportunity for comment by the agency concerned and the Office of Personnel Management.

“(2) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

“(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule,

or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

“(A) that the head of the agency has personally reviewed the report; and

“(B) what action has been, or is to be, taken, and when the action will be completed.

The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies and their certifications under this paragraph, except that prior to including any information in a public list, the Special Counsel shall consult with the head of the agency involved to determine if any of the information to be contained therein is prohibited from disclosure by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, in which case the information shall not be included in such a public list.

“(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

“(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

“(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

“(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

“(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

“(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

“(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be

resolved more ^{*}appropriately under an administrative appeals procedure.

“(f) During any investigation initiated under subsection (a), (c), or (e) of this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

“(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

“(A) after any investigation under this section, or

“(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order or requirement of the Special Counsel under subsection (b), (c), or (d)(3) of this section or an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

“(2) In the case of an individual appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the

United States), the complaint and statement referred to in paragraph (1) of this subsection shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

“(h) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

“(i) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

“(j) The Special Council shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

“(k) The Special Counsel shall prepare and submit an annual report to the President and to the Congress on—

“(1) the investigation and disposition of each case considered by the Special Counsel during the annual period covered by the report; and

“(2) actions by the Special Counsel on each case referred by the Special Counsel to the President during the annual period covered by the report.

“§ 1207. *Hearings and decisions on complaints filed by the Special Counsel*

“(a) *Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206 (g) of this title shall be entitled to—*

“(1) *a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;*

“(2) *be represented by an attorney or other representative;*

“(3) *a hearing before the Board, an administrative law judge appointed under section 3105 of this title and designated by the Board, or any other employee of the Board designated by the Board to conduct the hearing;*

“(4) *have a transcript kept of any hearing under paragraph (3); and*

“(5) *a written decision and reasons therefor at the earliest practicable date including a copy of any final order imposing disciplinary action.*

“(b) *A final order of the Board may impose disciplinary action—*

“(1) *in the case of political activity prohibited under subchapter III of chapter 73 of this title, as provided in section 7327 of this title; or*

“(2) *in any other case, consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.*

“(c) *There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States district court for the judicial district in which the employee resides.*

“(d) *In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.*

“§ 1208. *Reports to the Congress*

“*Notwithstanding any other provision of law or any rule, regulation or directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.*”

(b) *Any term of office of any member of the Merit Systems Protection Board serving on the effective date of*

this Act shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).

(c)(1) Section 5314(17) of title 5, United States Code, is amended by striking out "Chairman of the United States Civil Service Commission" and inserting in lieu thereof "Chairman of the Merit Systems Protection Board".

(2) Section 5315(66) of such title is amended by striking out "Members, United States Civil Service Commission" and inserting in lieu thereof "Members, Merit Systems Protection Board".

(3) Section 5315 of such title is further amended by adding at the end thereof the following new paragraph:

"(123) Special Counsel of the Merit Systems Protection Board."

(4) Paragraph (99) of section 5316 of such title is hereby repealed.

(d) The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

"12. Merit Systems Protection Board and Special Counsel.... 1201".

PERFORMANCE APPRAISAL

SEC. 203. (a) Chapter 43 of title 5, United States Code, is amended to read as follows:

"Chapter 43.—PERFORMANCE APPRAISAL

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.

"4301. Definitions.

"4302. Establishment of performance appraisal systems.

"4303. Actions based on unacceptable performance.

"4304. Responsibilities of Office of Personnel Management.

"4305. Regulations.

"§ 4301. Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) the Administrative Office of the United States Courts; and

"(C) the Government Printing Office;

but does not include—

"(i) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency, but does not include—

"(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

"(B) an individual in the Foreign Service of the United States;

"(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

"(D) an administrative law judge appointed under section 3105 of this title;

"(E) an individual in the Senior Executive Service; or

"(F) an individual appointed by the President; and

"(3) 'unacceptable performance' means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position, which shall include, but not be limited to conduct that demonstrates a pattern of recurring, discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.

"§ 4302. Establishment of performance appraisal systems

"(a) Each agency shall develop one or more performance appraisal systems which—

"(1) provide for periodic appraisals of job performance of employees;

"(2) encourage employee participation in establishing performance standards;

"(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees; and

(4) shall be the basis, notwithstanding any other provision of law, for promotions of one or more grades during any 12-month period in individual cases of exceptionally meritorious performance.

"(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

"(1) establishing performance standards which will permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee under such system;

"(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following ap-

praisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

"(3) evaluating each employee during the appraisal period on such standards;

"(4) recognizing and rewarding employees whose performance so warrants;

"(5) assisting employees in improving unacceptable performance;

"(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance; and

"(7) promoting employees one or more grades during any 12-month period, notwithstanding any other provision of law, in individual cases of exceptionally meritorious performance, subject to limitations prescribed by the Office of Personnel Management on the number or proportions of such promotions.

"§ 4303. Actions based on unacceptable performance

"(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

"(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

"(A) 30 days' advance written notice of the proposed action which identifies—

"(i) each instance of unacceptable performance by the employee on which the proposed action is based; and

"(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

"(B) be represented by an attorney or other representative;

"(C) a reasonable time to answer orally and in writing;

"(D) an opportunity during the notice period to demonstrate acceptable performance; and

"(E) a written decision which—

"(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

"(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

"(2) An agency may, under regulations prescribed by

the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

“(c) The decision to retain, reduce in grade, or remove an employee—

“(1) shall be made within 30 days after the date of the expiration of the notice period, and

“(2) in the case of a reduction in grade or removal, may be based only upon those instances of unacceptable performance by the employee—

“(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

“(B) for which the notice and other requirements of this section are complied with.

“(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this

section shall be removed from any agency record relating to the employee.

“(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.

“(f) This section does not apply to—

“(1) the reduction to the grade previously held of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title,

“(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

“(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

“§ 4304. Responsibilities of the Office of Personnel Management

“(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

“(b) If the Office of Personnel Management determines that a performance appraisal system does not meet the requirements of this subchapter (including regulations prescribed under section 4305 of this title), the Office of Personnel Management shall direct the agency to implement an appropriate system or to correct operations under the system, and the agency shall take any action so directed.

“§ 4305. Regulations

“The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.”.

(b) The item relating to chapter 43 in the table of chapters for part III of title 5, United States Code, is amended by striking out “Performance Rating” and inserting in lieu thereof “Performance Appraisal”.

ADVERSE ACTIONS

SEC. 204. (a) Chapter 75 of title 5, United States Code, is amended by striking out subchapters I, II, and III and inserting in lieu thereof the following:

“SUBCHAPTER I—SUSPENSION FOR 14 DAYS
OR LESS

“§ 7501. Definitions

“For the purpose of this subchapter—

“(1) ‘employee’ means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has

completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

“(2) ‘suspension’ means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

“§ 7502. Actions covered

“This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

“§ 7503. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service, including conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate supervisor’s report of four such instances within any one year period and any other pattern of discourteous conduct.

“(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

"(1) an advance written notice stating the specific reasons for the proposed action;

"(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

"(d) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7504. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER II—REMOVAL, SUSPENSION
FOR MORE THAN 14 DAYS, REDUCTION IN
GRADE OR PAY, OR FURLOUGH FOR
30 DAYS OR LESS

"§ 7511. Definitions; application

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

"(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by

law or administrative action for the position held by an employee; and

“(5) ‘furlough’ means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

“(b) This subchapter does not apply to an employee—

“(1) whose appointment is made by and with the advice and consent of the Senate;

“(2) whose position has been determined to be of a confidential, policy-determining, or policy-advocating character by—

“(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

“(B) the head of an agency for a position which is excepted from the competitive service by statute.

“(c) The Office of Personnel Management may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office of Personnel Management.

“§ 7512. Actions covered

“This subchapter applies to—

“(1) a removal;

“(2) a suspension for more than 14 days;

“(3) a reduction in grade;

“(4) a reduction in pay; and

“(5) a furlough of 30 days or less;

but does not apply to—

“(A) a suspension or removal under section 7532 of this title,

“(B) a reduction in force action under section 3502 of this title,

“(C) the reduction in grade of a supervisor who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor,

“(D) a reduction in grade or removal under section 4303 of this title, or

“(E) an action initiated under section 1206 or 7521 of this title.

“§ 7513. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee for such cause as will promote the efficiency of the service, including for conduct that demonstrates a pattern of recurring discourtesy to the public, including discourteous conduct confirmed by an immediate

supervisor's report of four such instances within any one year period and any other pattern of discourteous conduct.

"(b) An employee against whom an action is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer

of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

"§ 7514. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

"SUBCHAPTER III—ADMINISTRATIVE LAW

JUDGES

"§ 7521. Actions against administrative law judges

"(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

"(b) The actions covered by this section are—

"(1) a removal;

"(2) a suspension;

"(3) a reduction in grade;

"(4) a reduction in pay;

"(5) a furlough of 30 days or less; and

"(6) a written reprimand or admonition based on the performance or nonperformance of adjudicatory duties;

but do not include—

"(A) a suspension or removal under section 7532 of this title;

"(B) a reduction in force action under section 3502 of this title; or

"(C) any action initiated under section 1206 of this title."

(b) So much of the analysis for chapter 75 of title 5, United States Code, precedes the items relating to subchapter IV is amended to read as follows:

"Chapter 75.—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

^{"Sec.}

^{"7501.} Definitions.

^{"7502.} Actions covered.

^{"7503.} Cause and procedure.

^{"7504.} Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

^{"7511.} Definitions; application.

^{"7512.} Actions covered.

^{"7513.} Cause and procedure.

^{"7514.} Regulations.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

^{"7521.} Actions against administrative law judges."

APPEALS

SEC. 205. Chapter 77 of title 5, United States Code, is amended to read as follows:

"Chapter 77.—APPEALS

^{"Sec.}

^{"7701.} Appellate procedures.

^{"7702.} Judicial review of decisions of the Merit Systems Protection Board.

"§ 7701. Appellate procedures

"(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

"(1) to a hearing for which a transcript will be kept; and

"(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

"(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to

each party to the appeal and to the Office of Personnel Management.

“(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency’s decision is supported by a preponderance of evidence.

“(2) Notwithstanding paragraph (1), the agency’s decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

“(A) shows harmful error in the application of the agency’s procedures in arriving at such decision;

“(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

“(C) shows that the decision was not in accordance with law.

“(d)(1) Except as provided in subsection (e) of this section, any decision under subsection (b) of this section shall be final unless—

“(A) a party to the appeal or the Director of the Office of Personnel Management petitions the Board for a review within 30 days after the receipt of the decision; or

“(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

“(2) The Director of the Office of Personnel Management may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on civil service laws, rules, or regulations under the jurisdiction of the Office of Personnel Management.

“(e) The Equal Employment Opportunity Commission may delegate to the Merit Systems Protection Board the authority to provide an employee or applicant with a preliminary determination on the issue of discrimination whenever, as part of a complaint or appeal before the Merit Systems Protection Board on other grounds, the employee or applicant involved alleges a violation of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the Equal Pay Act of 1963 (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). Nothing in the subsection shall be construed to authorize

the Equal Employment Opportunity Commission to delegate the function of making a final determination concerning the issue of discrimination.

“(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

“(1) consolidate appeals filed by two or more appellants, or

“(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals being processed more expeditiously and would not adversely affect any party.

“(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted.

“(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance

with the standards prescribed under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

“(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

“(i) The Merit Systems Protection Board may prescribe regulations to carry out the purpose of this section.

“§ 7702. Judicial review of decisions of the Merit Systems Protection Board

“(a) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

“(b) A petition to review a final order or decision of the Board shall be filed in the Court of Claims or a United States district court as provided in chapters 91 and 85, respectively, of title 28 except that cases of discrimination shall be filed under section 717(c) of the Civil Rights Act of 1964 (42

U.S.C. 2000e-16(c)) under section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216 and 217), as applicable. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

“(c) The court shall review the record for the purpose of determining whether the findings are in accordance with law, and whether the procedures required by statute and regulations were followed, except that in a case of discrimination brought under 42 U.S.C. 2000e-16(c), 29 U.S.C. 633a(c), or 29 U.S.C. 216 and 217, the proceeding shall be *de novo*. The findings of the Board are conclusive if supported by the evidence in the record. If the court determines that further evidence is necessary, it shall remand the case to the Board. The Board, after such further proceedings as may be required, may modify its findings, and shall file with the court the record of such proceedings. The findings of the Board are conclusive if supported by the evidence in the record as supplemented.

“(d) If the Director of the Office of Personnel Management determines, in his sole discretion, that the Board erred in interpreting a civil service law, rule, regulation, or policy

directive affecting personnel management and that the Board's final decision or order will have a substantial impact on any civil service law, rule, or regulation, the Director may file a petition for judicial review of the order or decision in the United States District Court for the District of Columbia. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court. The granting of the petition for judicial review shall be at the discretion of the court.”

TITLE III—STAFFING

VOLUNTEER SERVICES

SEC. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 3111. Acceptance of volunteer service

“(a) For the purpose of this section, ‘student’ means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if the individual shows to the satisfaction of the Office of Personnel Management that the individual

has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

“(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the United States if the service—

“(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for students;

“(2) is to be uncompensated; and

“(3) would not, under the facts and circumstances involved, be performed by an employee in the absence of voluntary service under this section.

“(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).”.

(b) The analysis for chapter 31 of title 5, United States

Code, is amended by adding at the end thereof the following new item:

“3111. Acceptance of volunteer service.”.

EXCEPTIONS FROM THE COMPETITIVE SERVICE

SEC. 302. (a) Section 2103 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

“(c)(1) The President may, by Executive order, except any position from the competitive service if the President determines that—

“(A) the duties of such position—

“(i) require significant involvement in the advocacy of Presidential administration programs and support of their controversial aspects,

“(ii) require significant participation in the determination of major policies of such administration, or

“(iii) principally involve serving as a personal assistant to or advisor of a Presidential appointee, or serving in a confidential relationship directly under such a personal assistant or advisor; or

“(B) it would be impracticable to apply competitive examination procedures in the filling of such position because of—

“(i) national security,

“(ii) statutory or other significant requirements establishing special employment conditions,

“(iii) the unusual nature of the duties of such position,

“(iv) duration and frequency of service,

“(v) work location, or

“(vi) inadequate number of applicants.

“(2) Periodically (but not less often than 2 years), the President shall review exceptions from the competitive service under Presidential authority, and shall revoke an exception if the President determines that, because of changed circumstances, the exception is no longer appropriate under the provisions of paragraph (1) of this subsection.

“(3) The President shall periodically review exceptions from the competitive service in the Executive agencies made by or under statute, and shall prepare and transmit a report on each such review to each House of the Congress containing such legislative and administrative changes as the President considers appropriate.”

(b) Section 3302(1) of title 5, United States Code, is amended by inserting ~~to~~ to the extent authorized under section 2103(c) of this title,” after “necessary exceptions”.

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

SEC. 303. Effective beginning October 1, 1980, section 2108 of title 5, United State Code, is amended—

(1) by striking out “and” at the end of paragraph (2);

(2) by inserting in paragraph (3) after “means” the following: “, except as provided in paragraph (4) of this section”;

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

“(4) except for the purposes of chapters 43 and 75 of this title, ‘preference eligible’ does not include a retired member of the armed forces unless—

“(A) the individual is a disabled veteran; or

“(B) the individual retired below the rank of major or its equivalent; and

“(5) ‘retired member of the armed forces’ means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.”

NONCOMPETITIVE APPOINTMENT OF CERTAIN DISABLED VETERANS

SEC. 304. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 3112. Preference eligibles; disabled; noncompetitive appointment

“Under regulations prescribed by the Office of Personnel Management, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who—

“(1) has a compensable service-connected disability of 30 percent or more, or

“(2) is enrolled in or has successfully completed a course of job related training prescribed by the Administrator of Veterans' Affairs under chapter 31 of title 38.”.

(b) The analysis for chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

“§118. Preference eligibles; disabled; noncompetitive appointment.”.

APPOINTMENTS

SEC. 305. Section 3321 of title 5, United States Code, is amended to read as follows:

“§ 3321. Competitive service; probations; period of

“(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant, for a period of probation—

“(1) before an appointment in the competitive service becomes final; and

“(2) before an initial appointment as a supervisor or manager becomes final.

“(b) An individual—

“(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

“(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position occupied by the individual immediately before the transfer, assignment, or promotion of the individual to the supervisory or managerial position. Nothing in this section prohibits the taking of an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.”.

TRAINING

SEC. 306. Section 4103 of title 5, United States Code, is amended by inserting “(a)” before “In order to increase” and by adding at the end thereof the following new subsection:

“(b)(1) Notwithstanding any other provision of this

chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

"(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

"(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

"(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

"(B) the employee's capability to learn new skills and acquire knowledge and abilities needed in the new position; and

"(C) the benefits to the Government which would result from retaining the employee in the Federal service."

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 307. Section 5723(d) of title 5, United States Code, is amended by striking out "not".

RETIREMENT

SEC. 308. Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;"

EXTENSION OF VETERANS READJUSTMENT

APPOINTMENT AUTHORITY

SEC. 309. Section 2014(b) of title 38, United States Code, is amended to read as follows:

"(b) To further this policy, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe for veterans readjustment appointments and subsequent career-conditional appointments, under the terms and conditions of Executive Order Numbered 11521 (March 26, 1970), except that these appointments may be made up to and including GS-7 of the General Schedule described in section 5104 of title 5, or its equivalent, and, for disabled veterans, the fourteen years of education limit shall not apply. Notwithstanding any limitations with respect to the period of eligibility as prescribed in Executive Order Numbered 11521, a

veteran of the Vietnam era who was eligible for appointment under such Executive order on April 9, 1970, or a veteran of the Vietnam era who was separated on or after such date, may be appointed at any time. No veterans readjustment appointment may be made under the authority of this subsection after September 30, 1980."

NOTIFICATION OF VACANCIES IN THE CIVIL SERVICE

SEC. 310. Chapter 33 of title 5, United States Code, is amended by inserting at the end thereof the following new section:

"§ 3327. Notification of vacancies in the civil service

"(a) For the purpose of this section—

"(1) 'agency' has the meaning set forth in section 5102 of this title; and

"(2) 'vacant position' means a position in an agency which is considered by the agency to be available for employment.

"(b) Each agency shall promptly notify the Office of Personnel Management of—

"(1) each vacant position in the agency together with the address to which requests for information concerning the position may be sent; and

"(2) each position of which the Office was notified under paragraph (1) of this subsection and which has

since been filled or is otherwise no longer considered by the agency to be available for employment.

"(c) The Office shall transmit to the United States Employment Service, and make available to each employment office established by the Service, a comprehensive listing of all vacant positions and addresses of which the Office has been notified under subsection (b) (1) of this section. The Office shall revise the listing each month in accordance with the notifications of filled or otherwise unavailable positions received by the Office under subsection (b) (2) of this section and shall promptly transmit to the Service each revision."

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3326 the following new item:

"§ 3327. Notification of vacancies in the civil service."

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 311. Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by striking out so much of such section as precedes subsection (c) and by inserting in lieu thereof the following:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay

"(a) If any member or former member of a uniformed

service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay, exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under subsection (b) of this section. The amounts or the reductions shall be deposited to the general fund of the Treasury of the United States.

"(b) The amount of each reduction under subsection (a) of this section allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period, except that the amount of the reduction may not result in the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule."

(b) Section 5531 of title 5, United States Code, relating to definitions, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101(23) of title 37,";

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired or retainer pay' means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10."

(c) Section 5532(c) of title 5, United States Code, is amended—

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer";

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired or retainer pay"; and

(4) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired or retainer pay is computed, in whole or in part,".

(d) Section 5532(d) of title 5, United States Code, is amended by inserting in lieu thereof the following:

"(d) The Office of Personnel Management may authorize exceptions to the restrictions in subsections (a) and (b) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met."

(e) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay."

(f) (1) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed service who is receiving retired pay on or before such date in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

MINORITY RECRUITMENT PROGRAM

SEC. 312. Section 7151 of title 5, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 7151. Antidiscrimination policy; minority recruitment program";

(2) by inserting after such section heading the following new subsection:

"(a) For the purpose of this section—

"(1) 'underrepresentation' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

"(2) 'category of civil service employment' means—

"(A) each grade of the General Schedule described in section 5104 of this title;

"(B) each position subject to subchapter IV of chapter 53 of this title;

"(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.";

(3) by inserting "(b)" before "It is the policy"; and

(4) by adding at the end thereof the following new subsection:

"(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

"(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and

from other sources from which minorities can be recruited; and

"(2) that the Office conduct a continuing program of—

"(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

"(B) evaluation and oversight of such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

"(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

"(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

"(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

"(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

"(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Con-

gress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.”

COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

SEC. 313. (a) Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 5550a. Compensatory time off for religious observances

“(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for

such religious reasons, notwithstanding any other provision of law.

“(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

“(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.”

(b) The analysis for chapter 55 of title 5, United States Code, is amended by adding after the item relating to section 5550 the following:

“5550a. Compensatory time off for religious observances.”

TEMPORARY EMPLOYMENT LIMITATION

SEC. 314. Effective one year after the date of the enactment of this Act the number of individuals employed in or under an Executive agency shall not exceed the number of individuals so employed on January 1, 1977.

(b) The President shall prescribe regulations to carry out the purpose of this section, including regulations to ensure that no increase in the procurement of personal services by contract occurs by reason of the enactment of this section.

(c) In administering this section, an individual employed on a part-time career employment basis shall be

counted as a fraction which is determined by dividing 40 hours into the average number of hours of such individual's regularly scheduled workweek.

(d) For the purpose of this section, "Executive agency" has the meaning set forth in section 105 of title 5, United States Code.

(e) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(f) The provisions of this section shall terminate at noon on January 20, 1981.

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

SEC. 315. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency, that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment

of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows: "A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18.";

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VIII of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work."

(b)(1) The analysis of chapter 31 of title 5, United

States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees."

(2) The caption for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees"

(c) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "open meetings)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)."

TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101a. The Senior Executive Service

"The 'Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title)."

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;"

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or the Senior Executive Service".

(d) Section 2108(3) of title 5, United States Code (as amended in section 302 of this Act), is further amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"but does not include applicants for, or members of the Senior Executive Service."

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"§101a. The Senior Executives Service."

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112 (as added by section 303(a) of this Act), the following new subchapter:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

"§ 3131. The Senior Executive Service

"(a) It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the 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. The Senior Executive Service shall be administered so as to—

"(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on managerial success which is measured on the basis of individual and organizational performance (including such factors as improvements in quality of work or service, cost efficiency, and timeliness of performance);

"(3) recognize exceptional accomplishment;

"(4) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(5) provide for severance pay, retirement benefits, and placement assistance for senior executives who are removed from the Senior Executive Service for non-disciplinary reasons;

"(6) protect senior executives from arbitrary or capricious actions;

"(7) provide for program continuity and policy advocacy in the management of public programs;

"(8) maintain a merit personnel system free of improper political interference;

"(9) ensure accountability for honest, economical, and efficient Government;

"(10) ensure compliance with all applicable civil service laws, rules, and regulations including those relating to equal employment opportunity, political activity, and conflicts of interest;

"(11) provide for the initial and continuing systematic development of highly competent senior executives;

"(12) ensure career appointees and, to the greatest extent possible, noncareer appointees, protection from prohibited personnel practices;

"(13) provide for a professional management system which is guided by the public interest and free from improper political interference; and

"(14) ensure that, notwithstanding the provisions of section 3134 of this title authorizing up to 10 percent of Senior Executive Service positions to be filled by noncareer appointees, political appointments to such positions are minimized to the maximum extent possible.

“§ 3132. Definitions and exclusions

“(a) For the purpose of this subchapter—

“(1) ‘agency’ means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

“(A) a Government corporation;

“(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

“(C) the General Accounting Office;

“(2) ‘Senior Executive Service position’ means any position (other than a position in the Foreign Service of the United States or an administrative law judge position under section 3105 of this title) in an agency which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

“(A) directs the work of an organizational unit;

“(B) is held accountable for the success of one or more specific programs or projects; or

“(C) supervises the work of employees other than personal assistants;

“(3) ‘senior executive’ means a member of the Senior Executive Service;

“(4) ‘career appointee’ means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on—

“(A) approval by the Office of Personnel Management of the managerial qualifications of such individual; and

“(B) selection through a merit staffing process consistent with Office of Personnel Management regulations;

“(5) ‘limited term appointee’ means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

“(6) ‘limited emergency appointee’ means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service

position established to meet a bona fide, unanticipated, urgent need;

"(7) 'noncareer appointee' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

"(8) 'career reserved position' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

"(9) 'general position' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

"(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office of Personnel Management shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for

designating career reserved positions in such agency in accordance with such criteria and regulations.

"(2) A position for which a designation is in effect under this subsection may be held only by a career appointee.

"(3) The Office of Personnel Management shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

"(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

"(c) An agency may file an application with the Office of Personnel Management, setting forth reasons why it, or a unit thereof, should be excluded from any provision or requirement of this subchapter. The Office of Personnel Management shall—

"(1) review the application and stated reasons,

"(2) undertake an investigation to determine whether the agency or unit should be excluded from any provision or requirement of this subchapter, and

"(3) upon completion of its review and investigation, recommend to the President whether the agency or unit should be excluded from any provision or requirement of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from any provision or requirement of this subchapter, the President may, on written determination, make the exclusion to the extent and for the period determined by President to be appropriate.

"(d) The Office of Personnel Management may at any time recommend to the President that any exclusion previously granted to an agency or unit under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

"(e) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (d) of this section,

the Office of Personnel Management shall, within 30 days after the action, transmit to the Congress a report concerning the exclusion or revocation.

"§ 3133. Authorization of positions; authority for appointment

"(a) During each odd-numbered calendar year, each agency shall—

"(1) examine its needs for Senior Executive Serv-

ice positions for each of the 2 fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall be based on—

"(1) the anticipated type and extent of program activities of the agency for each of the 2 fiscal years involved; and

"(2) such other factors as may be prescribed from time to time by the Office of Personnel Management.

"(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (b) of this section, a specific number of Senior Executive Service positions for each agency.

"(d) (1) The Office may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office of Personnel Management shall prescribe.

"(2) The total number of positions in the Senior Execu-

tive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

"(e) Appointments to the Senior Executive Service may be made by appropriate appointing authorities of agencies subject to the requirements and limitations of this title.

"§ 3134. Limitations on noncareer appointments

"(a) During each calendar year, each agency shall—

"(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

"(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

"(b) The number of noncareer appointees in each agency will be determined annually by the Office of Personnel Management on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

"(c) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

"(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

"(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

"(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

"(B) appointments to level IV or V of the Executive Schedule which were not required to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

"§ 3135. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each even-numbered calendar year, a report on the Senior Executive Service. The report shall include—

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) a description of each exclusion in effect during the preceding calendar year under section 132(c) of this title;

"(3) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for such fiscal year;

"(4) the number of limited term appointees and limited emergency appointees, in the aggregate and by agency, employed during the preceding calendar year;

"(5) the titles of career reserved positions designated for such fiscal year;

"(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding calendar year;

"(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding calendar year; and

"(8) such other information regarding the Senior Executive Service as the Office of Personnel Management considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each odd-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

"§ 3136. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section."

(c) The analysis for chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

**"CHAPTER 31—AUTHORITY FOR EMPLOYMENT
"SUBCHAPTER I—EMPLOYMENT
AUTHORITIES";**

and

(2) by inserting at the end thereof the following:

"SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

^{"Sec.}

^{"3131. The Senior Executive Service.}

^{"3132. Definitions and exclusions.}

^{"3133. Authorization of positions; authority for appointment.}

^{"3134. Limitations on noncareer appointments.}

^{"3135. Biennial report.}

^{"3136. Regulations."}

EXAMINATION, CERTIFICATION, AND APPOINTMENT

SEC. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3391. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3152(a) of this title

"§ 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency and shall be in accordance with requirements established by the Office of Personnel Management.

"(b)(1) An individual may be appointed to a Senior Executive Service position only if the appointing authority has determined in writing that the individual meets the qualification requirements of the position.

"(2) Not more than 30 percent of the individuals serving at any time in Senior Executive Service positions may have served less than an aggregate of 5 years in the civil service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government.

"(c) If a career appointee is appointed by the Presi-

dent, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office of Personnel Management may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

"(1) to the extent provided under regulations prescribed by the Office, and

"(2) so long as the appointee continues to serve under such Presidential appointment."

"§ 3393. Career appointments

"(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

"(1) all groups of qualified individual applicants within the civil service; or

"(2) all groups of qualified individual applicants whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office of Personnel Management—

"(1) review the qualifications of candidates for appointment as career appointees; and

"(2) make written recommendations concerning candidates to the appropriate appointing authorities.

"(c)(1) The Office of Personnel Management shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the managerial qualifications of candidates for entry as career appointees into the Senior Executive Service in accordance with regulations prescribed by the Office of Personnel Management. Of the members of each board—

"(A) At least one-half shall be appointed from among career appointees; and

"(B) Up to one-half may be appointed from outside the civil service.

Appointments to such boards shall be made on a non-partisan

basis, the sole selection criterion being the professional knowledge of public management and other appropriate occupational fields of the intended appointee.

"(2) The Office of Personnel Management shall, in consultation with the various qualification review boards, prescribe criteria for establishing managerial qualifications for appointment to the Senior Executive Service. The criteria shall provide for—

"(A) consideration of demonstrated managerial experience;

"(B) consideration of successful participation in a career executive development program which is approved by the Office of Personnel Management; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of managerial success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

"§ 3394. Noncareer and limited appointments

"(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined by the appointing authority.

"(b) An individual may not be appointed as a limited

term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

“§ 3395. Reassignment and transfer within the Senior Executive Service

“(a) (1) A career appointee in an agency—

“(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

“(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

“(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment—

“(A) at least 15 days in advance of such reassignment; and

“(B) containing a statement of the critical reasons for the reassignment.

Any career appointee who is reassigned in violation of subparagraph (A) of this paragraph may appeal the violation to the Merit Systems Protection Board.

“(b) (1) A limited emergency appointee may be reas-

signed to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

“(2) A limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

“(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

“(d) A noncareer appointee in an agency—

“(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

“(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

“(e) (1) Except as provided in paragraph (2) of this

subsection, a career appointee in an agency may not be involuntarily reassigned—

“(A) within 120 days after an appointment of the head of the agency; or

“(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

“(i) is a noncareer appointee; and

“(ii) has the authority to reassign the career appointee.

“(2) Paragraph (1) of this subsection does not apply with respect to—

“(A) any reassignment under section 4314(b)(3) of this title; or

“(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before the appointment.

“(f) a career appointee may be transferred only if—

“(1) he consents to the transfer; and

“(2) the transfer is part of a program designed to enlarge the responsibilities of the career appointee and to advance his career in the Senior Executive Service.

No adverse personnel action shall be taken against a career appointee who exercises his right under this subsection not to

consent to a transfer. Any career appointee against whom an adverse personnel action is taken in violation of this subsection may appeal the personnel action to the Merit Systems Protection Board.

“§ 3396. Development for and within the Senior Executive Service

“(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office of Personnel Management.

“(b) The Office of Personnel Management shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office of Personnel Management finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as many be necessary to bring the program into compliance with the criteria.

“(c) (1) The head of an agency may grant a sabbatical leave to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the ap-

pointee's development and effectiveness. A sabbatical leave shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel and per diem costs as the head of the agency may determine to be essential for the study or experience.

"(2) A sabbatical leave under this subsection may not be granted to any career appointee—

"(A) more than once in any 10-year period;

"(B) unless the appointee has completed 7 years of service—

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions; except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

"(C) if the appointee is eligible for voluntary

retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

"(3)(A) Any career appointee in an agency may be granted a sabbatical leave under this subsection only if the appointee agrees, as a condition of accepting the sabbatical leave, to serve with the agency upon the completion of the leave, for a period of 2 consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency involved) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical leave. The amount shall be treated as a debt due the United States.

"§ 3397. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) The analysis for chapter 33 of title 5, United States

Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"§391. Definitions.

"§396. General appointment provisions.

"§393. Career appointments.

"§394. Noncareer and limited appointments.

"§396. Reassignment and transfer within the Senior Executive Service.

"§396. Development for and within the Senior Executive Service.

"§397. Regulations."

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or to a member of the Senior Executive Service."

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"§ 3591. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency ap-

pointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393(d) of this title; or

"(2) at any time for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b)(3) of this title or;

"(B) in the case of any appointment referred to in paragraph (1) (A) or (B) of this subsection, any disciplinary action initiated before such appointment.

"(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall

be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee—

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful managerial performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c)(1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career appointee is placed under such subsections shall be a continuing, full-time position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) shall be entitled to receive basic pay at the higher of—

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b); and

"(C) the placement of any career appointee under

subsection (a) or (b) may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B) (ii) or (iii) of this subsection is entitled to have the basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) until the rate is equal to the rate in effect under paragraph (1)(B)(i) for the position in which the employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

"Sec.

"3591. Definitions.

"3592. Removal from the Senior Executive Service.

"3593. Reinstatement in the Senior Executive Service.

"3594. Guaranteed placement in other personnel systems.

"3595. Regulations."

PERFORMANCE RATING

SEC. 405. Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

**"SUBCHAPTER II—PERFORMANCE APPRAISAL
IN THE SENIOR EXECUTIVE SERVICE**

"§ 4311. Definitions

"For the purpose of this subchapter, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 5132(a) of this title.

"§ 4312. Senior Executive Service performance appraisal systems

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

"(1) provide for systematic appraisals of performance of senior executives;

"(2) encourage excellence in performance by senior executives; and

"(3) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

"(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the executive and communicated to the executive;

"(2) that written appraisals of performance are

based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing to the appraisal and rating and have the appraisal and rating reviewed by an employee in a higher managerial level in the agency before the appraisal and rating become final.

"(c) If the Office of Personnel Management determines that an agency performance appraisal system does not comply with the requirements of this subchapter or regulations under this subchapter, the Office of Personnel Management shall order the agency to take any corrective action necessary to bring such system into compliance.

"§ 4313. Criteria for performance appraisals

"Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

"(1) improvements in quality of work or service, including any significant reduction in paperwork;

"(2) cost efficiency;

"(3) timeliness of performance; and

"(4) meeting affirmative action goals and achievement of equal employment opportunity requirements.

"§ 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that—

"(1) any appraisal and any rating under such system—

"(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) are conducted at least annually, subject to the limitation of paragraph (3) of this subsection;

"(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) are based on performance during a performance appraisal period the duration of which

shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

"(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award as prescribed in section 5384 of this title;

"(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service, and

"(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

"(c) Each agency shall establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards, as appropriate. It is the function of the boards to make recommenda-

tions to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency. The members of each board shall be appointed by the head of the agency from among employees of the agency other than senior executives with respect to which recommendations are being made the board. In making the recommendation with respect to a career appointee, each board shall include at least 1 career appointee.

“§ 4315. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purposes of this subchapter.”.

(b) The analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end thereof the following:

“SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

“Sec.

“4311. Definitions.

“4312. Senior Executive Service performance appraisal systems.

“4313. Criteria for performance appraisals.

“4314. Ratings for performance appraisals.

“4315. Regulations.”.

AWARDING OF RANKS

SEC. 406. (a) Chapter 45 of title 5, United States Code is amended by adding at the end thereof the following new section:

“§ 4507. Awarding of ranks in the Senior Executive Service

“(a) For the purpose of this section, ‘agency’, ‘senior executive’, and ‘career appointee’ have the meanings set forth in section 3132(a) of this title.

“(b) Each agency shall forward annually to the Office of Personnel Management recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual’s performance over a period of years. The Office of Personnel Management shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

“(c) During any fiscal year, the President may, subject to subsection (d), award to any career appointee recommended by the Office of Personnel Management the rank of—

“(1) Meritorious Executive, for sustained accomplishment, or

“(2) Distinguished Executive, for sustained extraordinary accomplishment.

“(d) During any fiscal year—

“(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

“(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

“(e) (1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-

sum payment of \$2,500, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

"(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of \$5,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title."

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"407. Awarding of Ranks in the Senior Executive Service."

PAY RATES AND SYSTEMS

SEC. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"§ 5381. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', and 'senior executive' have the meanings set forth in section 3132(a) of this title.

"§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability

"(a) There shall be 5 or more rates of basic pay for

the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS-16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5363 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100), equal to the percentage of such rate of basic pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. The adjusted rates of basic pay for the Senior Executive Service shall be included

in the report transmitted to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.

"(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

"§ 5383. Setting individual senior executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed 95 percent of the annual rate payable for positions at level II of the Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction—

"(1) at least 15 days in advance of the reduction; and

"(2) containing a statement of the critical reasons for the reduction.

Any career appointee whose rate of basic pay is reduced in violation of paragraph (1) of this subsection may appeal the violation to the Merit Systems Protection Board.

"§ 5384. Performance awards in the Senior Executive Service

"(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

"(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

"(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"§ 5385. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter, and may provide guidance to agencies concerning the proportion of funds available for Senior Executive Service salary expenses which may be used for performance awards."

(c) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

"Sec.

"5381. Definitions.

"5382. Establishment and adjustment of rates of pay for the Senior Executive Service; comparability.

"5383. Setting individual senior executive pay.

"5384. Performance awards in the Senior Executive Service.

"5385. Regulations."

PAY ADMINISTRATION

SEC. 408. Chapter 55 of title 5, United States Code, is amended—

(1) by inserting "other than an employee or individual excluded by section 5541(2) (xvi) of this section" immediately before the period at the end of section 5504(a) (B);

(2) by amending section 5541(2) by striking out "or" after paragraph (xiv), by striking out the period after paragraph (xv) and inserting "; or" in lieu thereof, and by adding the following paragraph at the end thereof:

"(xvi) member of the Senior Executive Service.";

and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595(a) (2) (i).

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 409. (a) Section 5723(a) (1) of title 5, United States Code, is amended by striking out "; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United

States Code, is amended by adding at the end thereof the following new section:

"§ 5752. Travel expenses of Senior Executive Service candidates

"Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency."

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

"5768. Travel expenses of Senior Executive Service candidates."

LEAVE

SEC. 410. Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a), by striking out "and (e)" and inserting in lieu thereof "(e), and (f)"; and

(2) by adding at the end thereof the following new section:

"(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section."

DISCIPLINARY ACTIONS

SEC. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.

"7541. Definitions.

"7542. Actions covered.

"7543. Cause and procedure.";

and

(2) by adding the following after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an individual in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply

to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

“§ 7543. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

“(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

“(1) at least 30 days advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

“(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(3) be represented by an attorney or other representative; and

“(4) a written decision and specific reasons therefor at the earliest practicable date.

“(c) An agency may provide, by regulation, for a hear-

ing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

“(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

“(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.”.

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

“(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful managerial performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.”

(b) Section 8339(h) of title 5, United States Code, is

amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336(d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) For the purpose of this section, "agency", "Senior Executive Service position", "career appointee", "career reserved position", "limited term appointee", "non-career appointee", and "general position" have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title), and "Senior Executive Service" has the meaning set forth in section 2101a of such title 5 (as added by this title).

(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

(B) submit to the Office of Personnel Management a written request for—

(i) a specific number of Senior Executive Service positions; and

(ii) authority to employ a specific number of noncareer appointees.

(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph

(1) of this subsection and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act).

(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such

notification to make the election under paragraph (1) of this subsection.

(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under—

- (1) a career or career-conditional appointment; or
- (2) a similar type of appointment in an excepted service position, as determined by the Office of Personnel Management;

shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393 (c) and (d) of title 5, United States Code (as added by this title).

(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

- (1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;
- (2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or
- (3) a position in the Executive Schedule under sub-

chapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed to an appropriate general position in the Senior Executive Service or shall be separated.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office of Personnel Management, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

(h) Each employee who has elected conversion to a

Senior Executive Service position under subsection (c)(1) (B) of this section and is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position:

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment:

(j) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States

Code (as added by this title). An agency shall take any corrective action which the Merit Systems Protection Board orders in its decision on an appeal under this subsection.

LIMITATIONS ON EXECUTIVE POSITIONS

SEC. 414. (a)(1)(A) Subsections (b) through (g) of section 5108 of title 5, United States Code, relating to special authority to place positions at GS-16, 17, and 18 of the General Schedule, are hereby repealed.

(B) Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) under any such provision to place one or more positions in GS-16, 17, or 18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows: "The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,920) which may at any one time be placed in—

"(i) GS-16, 17, and 18; and

"(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management."

(2)(A) Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102 (a) (1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

“(a) (1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 525) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director of the Office of Personnel Management.

“(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132 (a) of this title).”

(C) Subsection (c) of such section 3104 is amended—

(i) by striking out “(c)” and inserting in lieu thereof “(b)”; and

(ii) by striking out “to establish and fix the pay of positions under this section and section 5361 of this

title” and inserting in lieu thereof “to fix under section 5361 of this title the pay for positions established under this section”.

(3)(A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director of the Office of Personnel Management—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS-16, 17, and 18 of the General Schedule, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established, shall take into account positions to which subparagraph (A) of this paragraph applies.

(b) (1) Section 5311 of title 5, United States Code, is amended by inserting “(a)” before “The Executive Schedule,” and by adding at the end thereof the following new subsection:

“(b) (1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the

Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title; but does not include any Senior Executive Service position, as defined in section 5132(a) of this title."

(2) The President shall transmit to 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.

EFFECTIVE DATE; EXPERIMENTAL APPLICATION

SEC. 415. (a) (1) Except as provided in subsection (b) of this section, the provisions of this title, other than section 414(a), shall take effect on the date of the enactment of this Act.

(2) The provisions of section 414(a) of this title shall take effect 180 days after the date of the enactment of this Act.

(b) (1) Not later than 60 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall prescribe regulations providing for an initial experimental application of the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title. Such regulations shall provide that Senior Executive Service positions will be designated, authorized, and filled only in 3 Executive departments designated by the Director.

(2) Within 30 days after the end of each of the first two full fiscal years to which such amendments apply, the Director shall prepare and transmit to each House of the Congress a report on the Senior Executive Service, including an evaluation of its effectiveness and the manner in which such Service is administered. The second such report shall include proposed regulations which would provide for conversions and other adjustments which would be appro-

appropriate in the event the Senior Executive Service does not continue by reason of paragraph (3).

(3) The provisions of the regulations under paragraph (1) providing for an initial, limited experimental application shall cease to have effect and the amendments made by sections 401 through 412 of this title and the provisions of section 413 of this title shall have full effect (without regard to the limitations under paragraph (1)) beginning on the 90th day of continuous session of Congress following the date on which the second annual report is transmitted to Congress under paragraph (2) of this section, unless the Congress before such day adopts a concurrent resolution which states that the Congress does not favor the continuance of the Senior Executive Service. If such a resolution is adopted before such date, then the provisions of such regulations, and such amendments (and the provisions of section 413), shall cease to have effect on such 90th day (or, if later, 30 days after the date of the adoption of such resolution).

(4) For purposes of paragraph (3), the continuity of a session of Congress shall be considered to be broken only by an adjournment of the Congress sine die, and the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period under such paragraph.

TITLE V—MERIT PAY

PAY FOR PERFORMANCE

SEC. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

“Chapter 54.—MERIT PAY AND CASH AWARDS

“Sec.
“5401. Purpose.
“5402. Merit pay system.
“5403. Cash award program.
“5404. Reports.
“5405. Regulations.
“§ 5401. Purpose

“It is the purpose of this chapter to provide for—

“(1) a merit pay system which shall—

“(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

“(B) use performance appraisals as the basis for determining merit pay adjustments; and

“(C) regulate the costs of merit pay by establishing appropriate control techniques; and

“(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

“§ 5402. Merit pay system

“(a) In accordance with the purpose set forth in section 5401(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall apply to any

supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-13, 14, or 15 of the General Schedule described in section 5104 of this title.

"(b) The merit pay system established under subsection (a) of this section shall provide for a range of basic pay for each grade to which it applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each such grade under chapter 53 of this title.

"(c) (1) Under regulations prescribed by the Office of Personnel Management, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this subsection—

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as—

"(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(ii) cost efficiency; and

"(iii) timeliness of performance;

"(C) shall be subject to review only in accordance

with and to the extent provided by procedures established by the head of the agency; and

"(D) shall be made in accordance with regulations issued by the Office of Personnel Management which relate to the distribution of increases authorized under this subsection.

"(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

"(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of each such fiscal year by the Office of Personnel Management, after consultation with the Office of Management and Budget. The funds available to any agency shall be determined by the Office of Personnel Management on the basis of the amount estimated by the Office to be necessary to reflect within-grade step increases and quality step increases, which would have been paid under subchapter III of chapter 53 of this title during such fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered.

"(d) (1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month

in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the percentage of the annual rate of pay which corresponds to the percentage generally applicable to positions in the same grade as the position.

"(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

"(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

"(e) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

"(f) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

"§ 5403. Cash award program

"(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs an exceptionally meritorious special

act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, his heirs, or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to an agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

"(e)(1) Except as provided in paragraph (2) of this

subsection, a cash award under this section may not exceed \$10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

"§ 5404. Reports

"The Office of Personnel Management shall submit to the appropriate committees of each House of the Congress on or before January 1, 1982, a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

"(1) a statement, together with supporting facts, as to whether the purpose of this chapter has been met dur-

ing the period covered by the report, including, to the extent practicable, quantitative measures of costs and accomplishments of the merit pay system and the cash award program; and

"(2) any recommendations for legislation to amend the provisions of this chapter relating to the merit pay system or the cash award program considered necessary by the Office.

§ 5405. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter."

INCENTIVE AWARDS AMENDMENTS

SEC. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 503. (a) Section 4501(2)(A) of title 5, United States Code, is amended by striking out "title; and" and inserting in lieu thereof "title, but does not include an employee covered by the merit pay system established under section 5402 of this title; and".

(b) Section 4502(a) of title 5, United States Code, is amended by striking out "\$5,000" and inserting in lieu thereof "\$10,000".

(c) Section 4502(b) of title 5, United States Code, is amended—

(1) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) by striking out "\$5,000" and inserting in lieu thereof "\$10,000"; and

(3) by striking out "the Commission" and inserting in lieu thereof "the Office".

(d) Section 4506 of title 5, United States Code, is amended by striking out "Civil Service Commission may" and inserting in lieu thereof "Office of Personnel Management shall".

(e) The second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after "applies" the following: "except an employee covered by the merit pay system established under section 5402 of this title."

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended—

(1) in paragraph (2) of subsection (c), by inserting " or for an employee appointed to a position covered

by the merit pay system established under section 5402 of this title, any dollar amount," after "step"; and

(2) by adding at the end thereof the following new subsection:

"(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent."

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,"

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,"

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new chapter:

"54. Merit Pay and Cash Awards..... 5401".

EFFECTIVE DATE

SEC. 504. The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of posi-

tions before such day to the extent prescribed by the Director of the Office of Personnel Management.

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Subtitle A—Research Programs and Demonstration Projects

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

"Chapter 47.—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

"Sec.
"4701. Definitions.
"4702. Research programs.
"4703. Demonstration projects.
"4704. Allocation of funds.
"4705. Reports.
"4706. Regulations.

"§ 4701. Definitions

"For the purpose of this chapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency,

or any Executive agency or unit thereof which is designated by the President and which conducts foreign intelligence or counterintelligence activities; or

“(C) the General Accounting Office.

“(2) ‘employee’ means an individual employed in or under an agency;

“(3) ‘eligible’ means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

“(4) ‘demonstration project’ means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

“(5) ‘research program’ means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

“§ 4702. Research programs

“The Office of Personnel Management shall—

“(1) establish and maintain (and assist in the establishment and maintenance of) research programs

to study improved methods and technologies in Federal personnel management;

“(2) evaluate the research programs established under paragraph (1) of this section;

“(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and,

“(4) carry out the preceding functions directly or through agreement or contract.

“§ 4703. Demonstration projects

“(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority to take the action contemplated, or by any provision of law then in effect which is inconsistent with the action, including any law or regulation relating to—

“(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) the methods of classifying positions and compensating employees;

"(3) the methods of assigning, reassigning, or promoting employees;

"(4) the methods of disciplining employees;

"(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

"(6) hours of work per day or per week;

"(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

"(8) the methods of reducing overall agency staff and grade levels.

"(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office of Personnel Management shall—

"(1) develop a plan for such project which identifies—

"(A) the purposes of the project;

"(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

"(C) the number of employees or eligibles to be included, in the aggregate and by category;

"(D) the methodology;

"(E) the duration;

"(F) the training to be provided;

"(G) the anticipated costs;

"(H) the methodology and criteria for evaluation;

"(I) a specific description of any lack of specific authority for any aspect of the project; and

"(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project as proposed;

"(2) publish the plan in the Federal Register;

"(3) submit the plan so published to public hearing; and

"(4) transmit a copy of the plan, taking into account any revision resulting from the hearing, to each House of the Congress.

"(c) (1) Any demonstration project under this section may not be undertaken, or any agreement or contract with respect to such project may not be entered into, unless—

"(A) the plan under subsection (b) of this section for the project is approved by each agency involved;

"(B) a copy of the plan, as so approved, is transmitted to each House of the Congress; and

"(C) the plan is not disapproved by either House of the Congress during the first period of 60 calendar days of continuous session of the Congress after the date on which the plan is transmitted to such House.

"(2) For the purpose of paragraph (1) (C) of this subsection—

"(A) the continuity of a session is broken only by an adjournment of the Congress sine die; and

"(B) the days on which either House of the Congress is not in session because of an adjournment of more than 3 calendar days to a day certain are excluded in the computation of the 60-day period.

"(d) No demonstration project under this section may provide for a waiver of—

"(1) any provision of chapter 63 (relating to leave) or subpart G (relating to insurance and annuities) of this title;

"(2) any provision of law—

"(A) referred to in section 2302(b) (1) of this title;

"(B) providing for equal employment opportunity through affirmative action under any such provision of law;

"(C) providing any right or remedy available to any employee or applicant for employment in the civil service under any such provision of law;

"(3) any provision of chapter 15 or subchapter III of chapter 73 of this title (relating to political activity); or

"(4) any rule or regulation issued under the provisions of law referred to in paragraph (1), (2), or (3) of this subsection.

"(e) (1) Each demonstration project shall—

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date of the transmittal to each House of the Congress by the Office of Personnel Management of a copy of the plan for the project under subsection (b) (4) of this section, except that research may continue beyond the date to the extent necessary to validate the results of the project.

"(2) Not more than 10 demonstration projects may be contracted for or conducted at any time.

"(f) Subject to the terms of any written agreement or contract between the Office of Personnel Management and an agency, a demonstration project involving the agency may be

terminated by the Office of Personnel Management, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

"(g) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section—

"(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

"(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

"(h) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under section 7111 of this title shall not be included within any project under subsection (b) of this section unless there has been agency consultation regarding the project with the employees in the unit.

"(i) The Office of Personnel Management shall evaluate

the results of each demonstration project and its impact on improving public management.

"(j) Upon the request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (i) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

"§ 4704. Allocation of funds

"Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office of Personnel Management to any agency conducting demonstration projects or assisting the Office of Personnel Management in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

"§ 4705. Reports

"The Office of Personnel Management shall include in the annual report required by section 1308 of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management

and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

“§ 4706. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.”.

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 45 the following new item:

“47. Personnel Research Programs and Demonstration Projects.. 4701”.

Subtitle B—Intergovernmental Personnel

INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

SEC. 611. (a) Section 208 of the Intergovernmental Personnel Act of 1979 (42 U.S.C. 4728) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

“TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES”;

(2) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (i), respectively, and by inserting after subsection (a) the following new subsection:

“(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of

personnel administration consistent with personnel standards prescribed by the Office of Personnel Management for positions engaged in carrying out such programs. The standards shall include the merit principles in section 2 of this Act.”; and

(3) by inserting after subsection (g), as redesignated by this section, the following new subsection:

“(h) Effective one year after the date of the enactment of this subsection, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

“(1) those requirements listed in subsection (a) of this section;

“(2) those that generally prohibit discrimination in employment or require equal employment opportunity;

“(3) the Davis-Bacon Act (40 U.S.C. 276 et seq.); and

(4) chapter 15 of title 5, United States Code, relating to political activities of certain State and local employees.”

(b) Section 401 of such Act (84 Stat. 1920) is amended by striking out “governments and institutions of higher education” and inserting in lieu thereof “governments, institutions of higher education, and other organizations”.

(c) Section 403 of such Act (84 Stat. 1925) is amended

by striking out "(less applicability to commissioner officers of the Public Health Service)".

(d) Section 502 of such Act (42 U.S.C. 4762) is amended in paragraph (3) by inserting "the Trust Territory of the Pacific Islands," before "and a territory or possession of the United States,"

(e) Section 506 of such Act (42 U.S.C. 4766) is amended—

(1) in subsection (b) (2), by striking out "District of Columbia" and inserting in lieu thereof "District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands"; and

(2) in subsection (b) (5), by striking out "and the District of Columbia" and inserting in lieu thereof "the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands".

Subtitle C—Mobility Program

AMENDMENTS TO THE MOBILITY PROGRAM

SEC. 621. (a) Section 3371 of title 5, United States Code, is amended—

(1) by inserting "the Trust Territory of the Pacific Islands," after "Puerto Rico," in paragraph (1)(A); and

(2) by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph

(2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

"(3) 'Federal agency' means an Executive agency, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other appropriate agencies of the legislative and judicial branches as determined by the Office of Personnel Management; and

"(4) 'other organization' means—

"(A) a national, regional, State-wide, or metropolitan organization representing member State or local governments;

"(B) an association of State or local public officials; or

"(C) a nonprofit organization, one of whose principal functions is to offer professional advisory, research, or development services, or related services, to governments or universities concerned with public management."

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out "executive agency"

and "an executive agency" each place they appear and inserting in lieu thereof "Federal agency" and "a Federal agency", respectively.

(c) Section 3372 of title 5, United States Code, is further amended—

(1) in subsection (a) (1), by inserting after "agency" the following: ", other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy determining, or policy-advocating character.";

(2) in subsection (b) (1), by striking out "and";

(3) in subsection (b) (2), by striking out the period after "agency" and inserting in lieu thereof a semicolon;

(4) by adding at the end of subsection (b) the following:

"(3) an employee of a Federal agency to any other organization; and

"(4) an employee of an other organization to a Federal agency."; and

(5) by adding at the end thereof (as amended in paragraph (4) of this subsection) the following new subsection:

"(c) (1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve with the agency upon the completion of the assignment for a period equal to the length of the assignment.

"(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the Federal agency involved) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States."

(d) Section 3374 of title 5, United States Code, is further amended—

(1) by adding the following new sentence at the end of subsection (b):

"The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.";

(2) in subsection (c) (1), by striking out the semicolon at the end thereof and by inserting in lieu thereof the following: ", except to the extent that the pay

received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;"; and

(3) by striking out the period at the end of subsection (c) and adding the following: ", or for the contribution of the State or local government, or a part thereof, to employee benefit systems."

(e) Section 3375(a) of title 5, United States Code, is further amended by striking out "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) thereof the following:

"(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and".

Subtitle D—Federal Employees Flexible and Compressed
Work Schedules

CONGRESSIONAL FINDINGS

SEC. 631. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by

Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

DEFINITIONS

SEC. 632. For the purpose of this subtitle—

(1) the term "agency" means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

(2) the term "employee" has the meaning set forth in section 2105 of title 5, United States Code;

(3) the term "Office" means the Office of Personnel Management; and

(4) the term "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

EXPERIMENTAL PROGRAM

SEC. 633. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 662 of this subtitle and the terms of any written agreement referred to in section 662(a) of this subtitle, the Of-

office shall establish a program which provides for the conducting of experiments by the Office under parts 1 and 2 of this subtitle. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

(2) Each agency may conduct one or more experiments under parts 1 and 2 of this subtitle. Such experiments shall be subject to such regulations as the Office may prescribe under section 665 of this subtitle.

(b) The Office shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Office will study and evaluate experiments conducted under parts 1 and 2 of this subtitle. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

- (1) the efficiency of Government operations;
- (2) mass transit facilities and traffic;
- (3) levels of energy consumption;
- (4) service to the public;

(5) increased opportunities for full-time and part-time employment; and

(6) individuals and families generally.

(c) The Office shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this subtitle.

(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) of this section would substantially disrupt the agency in carrying out its functions, such agency head shall request the Office to exempt such agency from the requirements of any experiment conducted by the Office under subsection (a) of this section. Such request shall be accompanied by a report detailing the reasons for such determination. The Office shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Office shall exclude the agency from the experiment until the Office has made its determination or until 180 days after the date the request is filed, whichever first occurs.

PART 1—FLEXIBLE SCHEDULING OF WORK HOURS
DEFINITIONS

SEC. 641. For the purpose of this part—

- (1) the term "credit hours" means any hours, within

a flexible schedule established under this part, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

(2) the term "overtime hours" means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

FLEXIBLE SCHEDULING EXPERIMENTS

SEC. 642. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) of this subsection shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle—

(1) any experiment under subsection (a) of this section may be terminated by the Office if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) of this section is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(A) restrict the employees' choice of arrival and departure time,

(B) restrict the use of credit hours, or

(C) exclude from such experiment any employee or group of employees.

(c) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 643. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 642 of this subtitle—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of section 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 646 of this subtitle or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork shall not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work, which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of title 5, United States Code, and section 4107(e)(2) of title 38, United States Code, night differential shall not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which

night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this part—

(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

HOLIDAYS

SEC. 644. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this part is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office).

TIME-RECORDING DEVICES

SEC. 645. Notwithstanding section 6106 of title 5, United States Code, the Office or any agency may use recording clocks as part of its experiments under this part.

CREDIT HOURS; ACCUMULATION AND COMPENSATION

SEC. 646. (a) Subject to any limitation prescribed by the Office or the agency, a full-time employee on a flexible schedule may accumulate not more than 10 credit hours, and a part-time employee may accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule experiment under this part and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

PART 2—4-DAY WEEK AND OTHER COMPRESSED WORK

SCHEDULES

DEFINITIONS

SEC. 651. For the purpose of this part—

(1) the term "compressed schedule" means—

(A) in the case of a full-time employee, an 80-

hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

- (B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and
- (2) the term "overtime hours" means any hours in excess of those specified hours which constitute the compressed schedule.

COMPRESSED SCHEDULE EXPERIMENTS

SEC. 652. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day workweek or other compressed schedule.

(b) (1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) of this section unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) of this section would impose a personal hardship on such employee, shall—

- (A) except such employee from such experiment; or

(B) reassign such employee to the first position within the agency—

- (i) which becomes vacant after such determination,
- (ii) which is not included within such experiment,
- (iii) for which such employee is qualified, and
- (iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this subtitle, but subject to the terms of any written agreement under section 662(a) of this subtitle, any experiment under subsection (a) of this section may be terminated by the Office, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

(d) Experiments under subsection (a) of this section shall terminate not later than the end of the 3-year period which begins on the effective date of this part.

COMPUTATION OF PREMIUM PAY

SEC. 653. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, sec-

tion 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) of this section are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who

performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a), of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended (29 U.S.C. 207), whichever provisions are more beneficial to the employee.

PART 3.—ADMINISTRATIVE PROVISIONS

ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

SEC. 661. For purposes of administering sections 6303 (a), 6304, 6307(a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under part 1 or 2 of this subtitle, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

APPLICATION OF EXPERIMENTS IN THE CASE OF
NEGOTIATED CONTRACTS

SEC. 662. (a) *Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under part 1 or 2 of this subtitle except to the extent expressly provided under a written agreement between the agency and such organization.*

(b) *The Office or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 643 or 653 of this subtitle, as applicable.*

PROHIBITION OF COERCION

SEC. 663. (a) *An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—*

- (1) *such employee's rights under part 1 of this subtitle to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours;*
or

(2) *such employee's right under section 652(b)(1) of this subtitle to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 652(b)(2) of this subtitle.*

For the purpose of the preceding sentence, the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(b) *Any employee who violates the provisions of subsection (a) of this section shall, upon a final order of the Merit Systems Protection Board, be—*

(1) *removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Board may prescribe;*

(2) *suspended without pay from such employee's position for such period as the Board may prescribe; or*

(3) *disciplined in such other manner as the Board shall deem appropriate.*

The Board shall prescribe procedures to carry out this subsection under which an employee subject to removal,

suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

REPORTS

SEC. 664. Not later than 2½ years after the effective date of parts 1 and 2 of this subtitle, the Office shall—

(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this subtitle, and

(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Office shall prepare a final report with regard to experiments conducted under this subtitle and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

REGULATIONS

SEC. 665. The Office shall prescribe regulations necessary for the administration of the foregoing provisions of this subtitle.

EFFECTIVE DATE

SEC. 666. The provisions of section 633 of this subtitle and parts 1 and 2 of this subtitle shall take effect on the 180th day after the date of the enactment of this Act.

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

“Subpart F—Labor-Management and Employee Relations

“Chapter 71—LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“7101. Findings and purpose.

“7102. Employees' rights.

“7103. Definitions; application.

“7104. Federal Labor Relations Authority.

“7105. Powers and duties of the Authority.

“7106. Management rights.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“Sec.

“7111. Exclusive recognition of labor organizations.

“7112. Determination of appropriate units for labor organization representation.

“7113. National consultation rights.

“7114. Representation rights and duties.

“7115. Allowments to representatives.

“7116. Unfair labor practices.

“7117. Duty to bargain in good faith; compelling need; duty to consult.

“7118. Prevention of unfair labor practices.

“7119. Negotiation impasses; Federal Service Impasses Panel.

“7120. Standards of conduct for labor organizations.

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

^{"Sec.}

^{"7181.} *Grievance procedures.*

^{"7182.} *Exceptions to arbitral awards.*

^{"7183.} *Judicial review; enforcement.*

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

^{"Sec.}

^{"7131.} *Reporting requirements for standards of conduct.*

^{"7132.} *Official time.*

^{"7133.} *Subpenas.*

^{"7134.} *Compilation and publication of data.*

^{"7135.} *Regulations.*

^{"7136.} *Continuation of existing laws, recognitions, agreements, and procedures.*

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Fed-

eral Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in such capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities,

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter, and

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

"(v) any person who participates in a strike in violation of 5 U.S.C. 7311;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in

section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority;

or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or non-

preferential civil service status, political affiliation, marital status, or handicapping condition;

“(C) an organization sponsored by an agency;
or

“(D) an organization which participates in the conduct of a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

“(5) ‘dues’ means dues, fees, and assessments;

“(6) ‘Authority’ means the Federal Labor Relations Authority described in section 7104(a) of this title;

“(7) ‘Panel’ means the Federal Service Impasses Panel described in section 7119(c) of this title;

“(8) ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

“(9) ‘grievance’ means any complaint—

“(A) by any employee concerning any matter relating to the employment of the employee;

“(B) by any labor organization concerning any matter relating to the employment of any employee;

or

“(C) by any employee, labor organization, or agency concerning—

“(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement;
or

“(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

“(10) ‘supervisor’ means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ‘supervisor’ includes only those individuals who devote a preponderance of their employment time to exercising such authority;

“(11) ‘management official’ means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to confer, consult, and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an

agency) subject to the jurisdiction of the Equal Employment Opportunity Commission;

"(B) relating to political activities prohibited under subchapter III of chapter 73 of this title; or

"(C) relating to the classification of any position; or

"(D) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual

and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter.

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

"(1) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or security work, and

"(2) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall

engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter,

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General

Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may

from time to time find necessary for the proper performance of its functions.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this

subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

“(1) the date of the action; or

“(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

“(g) In order to carry out its functions under this chapter, the Authority may—

“(1) hold hearings; and

“(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7133 of this title.

“(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

“(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority

and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

“§ 7106. Management rights

“(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

“(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

“(2) in accordance with applicable laws—

“(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

“(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

“(C) with respect to filling positions, to make selections for appointments from—

“(i) among properly ranked and certified candidates for promotion; or

“(ii) any other appropriate source; and

“(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

“(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

“(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

“(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

“(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“§ 7111. Exclusive recognition of labor organizations

“(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

“(b) If a petition is filed with the Authority—

“(1) by any person alleging—

“(1) by any person alleging—

“(A) in the case of an appropriate unit for which there is no exclusive representative that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

“(B) in the case of an appropriate unit for which there is an exclusive representative that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

“(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(a) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved; may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority

of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) Any labor organization described in section 7103 (a) (16) (B) (ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(f) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(g) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) cover-

ing any employees included in the unit specified in the petition, unless—

“(A) the collective bargaining agreement has been in effect for more than 3 years, or

“(B) the petition for exclusive recognition is filed not more than 120 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

“(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

“(h) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

“§ 7112. Determination of appropriate units for labor organization representation

“(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, in-

stallation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

“(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

“(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

“(2) a confidential employee;

“(3) an employee engaged in personnel work in other than a purely clerical capacity;

“(4) an employee engaged in administering the provisions of this chapter;

“(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

“(6) any employee engaged in intelligence, counter-

intelligence, investigative, or security work which directly affects national security; or

“(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to insure that the duties are discharged honestly and with integrity.

“(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

“(1) which represents other individuals to whom such provision applies; or

“(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

“(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

“(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organiza-

tion was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

“§ 7113. National consultation rights

“(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

“(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

“(A) be informed of any change in conditions of employment proposed by the agency, and

“(B) be permitted reasonable time to present its views and recommendations regarding the changes.

“(2) If any views or recommendations are presented

under paragraph (1) of this subsection to an agency by any labor organization—

“(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

“(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

“(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

“§ 7114. Representation rights and duties

“(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

“(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee

shall be informed of that employee's right under paragraph (3)(B) of this subsection to be represented by an exclusive representative.

“(3) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

“(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

“(B) any investigatory interview of an employee in the unit by a representative of the agency if—

“(i) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

“(ii) the employee requests such representation.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choos-

ing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any conditions of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management

officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"§ 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

"§ 7116. Unfair labor practices

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

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

"(2) to encourage or discourage membership in any

labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

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

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

"(5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by this chapter;

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

"(7) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; or

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

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

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

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

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

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

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

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

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

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

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

Nothing in paragraph (7) shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedure negotiated pursuant to section 7121 of this title;

may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

§ 7117. *Duty to bargain in good faith; compelling need; duty to consult*

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the

extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of this subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matters at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 15th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Au-

thority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices

"(a) (1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any

alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

“(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

“(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

“(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

“(5) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5

of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

“(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

“(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

“(B) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

“(C) requiring an award of reasonable attorney fees;

“(D) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

“(E) including any combination of the actions described in subparagraphs (A) through (D) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

“(7) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

“(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

“§ 7119. Negotiation impasses; Federal Service Impasses Panel

“(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

“(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

“(1) either party may request the Federal Service Impasses Panel to consider the matter, or

“(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

“(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

“(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are fa-

familiar with Government operations and knowledgeable in labor-management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7133 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings;

"(2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and

"(3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to its members.

"(b) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official or a supervisor, except as specifically provided in this chap-

ter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment;

or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration. If upon review the Authority finds that the award is deficient because—

"(1) it is contrary to any law, rule, or regulation;

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

“(b) If no exception to an arbitrator’s award is filed under subsection (a) of this section during the 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator’s final award. The award may include the payment of backpay (as provided in section 5596 of this title).

“§ 7123. Judicial review; enforcement

“(a) Any person aggrieved by a final order of the Authority under—

“(1) section 7118 of this title (involving an unfair labor practice);

“(2) section 7122 of this title (involving an award by an arbitrator); or

“(3) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority’s order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

“(b) The Authority may petition any appropriate

United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

“(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority’s order unless the court specifically orders the stay. Review of the Authority’s order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered

as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is

alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or restraining order. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing,

that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

“§ 7132. Official time

“(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

“(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

“(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

“(d) Except as provided in the preceding subsections of this section—

“(1) any employee representing an exclusive representative, or

“(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

“§ 7133. Subpenas

“(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

“(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

“(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is

served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"§ 7134. *Compilation and publication of data*

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

"§ 7135. *Regulations*

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7136. *Continuation of existing laws, recognitions, agreements, and procedures*

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter."

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND
GRIEVANCES

SEC. 702. Section 5596(h) of title 5, United States Code, is amended to read as follows:

“(b) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

“(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(A) an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee normally would have earned or received during the period if the personnel action had not occurred, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

“(B) reasonable attorney fees and reasonable costs and expenses of litigation related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7105(h) of this title; and

“(2) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

For the purpose of this subsection, 'grievances' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practices' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit."

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"Chapter 72—ANTIDISCRIMINATION; RIGHT TO
PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN
EMPLOYMENT

- "Sec.
"7201. Antidiscrimination policy; minority recruitment program.
"7202. Marital status.
"7203. Handicapping condition.
"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION
CONGRESS

"7211. Employees' right to petition Congress."

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO
PETITION CONGRESS

"§ 7211. Employees' right to petition Congress

"The right of employees, individual or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies 710F".

and inserting in lieu thereof

"Subpart P—Labor-Management and Employee Relations

"71. Labor-Management Relations 710I
"72. Antidiscrimination; Right to Petition Congress 720F".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "and 715F" and inserting in lieu thereof "and 720F".

(c) (1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 5, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 5, United States Code, is amended by striking out "chapters 71 (employee policies)"

and inserting in lieu thereof the following: "chapters 72 (anti-discrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority."

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2), and its General Counsel."

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d)(1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

SEC. 801. (a)(1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

**"SUBCHAPTER VI—GRADE AND PAY
RETENTION**

"§ 5361. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 or 5363 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force

due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

"§ 5362. Grade retention following a change of positions

"(a) Any employee—

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

shall be entitled, to the extent provided in subsection (b) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

"(b) For the 2-year period referred to in subsection (a) of this section, the retained grade of an employee under such subsection (a) shall be treated as the grade of his position for all purposes (including pay and pay administration under this chapter and, chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

"(1) for purposes of subsection (a) of this section,

"(2) for purposes of applying any reduction-in-force procedures, or

"(3) for such other purposes as the Office of Personnel Management may provide by regulation.

"(c) The provisions of subsection (a) of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is demoted (determined without regard to this section) for personal cause;

"(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

"(4) elects in writing to have the benefits of this section terminate.

"§ 5363. Grade retention following position reclassification

"(a) An employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled to have the grade of such position before reduction be treated for all purposes (other than the application of reduction-in-force procedures) as the retained grade of such employee so long as such employee continues in such position.

"(b) The provisions of subsection (a) of this section shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher

grade for a continuous period of at least one year immediately before such reduction.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) declines a reasonable offer of a position the grade of which is equal to or higher than the retained grade; or

"(3) elects in writing to have the benefits of this section terminate.

"§ 5364. Pay retention

"(a) Any employee—

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of—

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

"(3) is demoted for personal cause.

"§ 5365. Remedial actions

"Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

"(1) to report to the Office information with respect to vacancies (including impending vacancies);

"(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362, 5363, or 5364 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

"(3) to establish a program under which employees receiving benefits under section 5362, 5363, or 5364 of this title are given priority in the consideration for or placement in positions which are equal to or greater than their retained grade or pay; and

"(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

"§ 5366. Regulations

"(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

"(b) Under such regulations, the Office may provide

for the application of all or portions of the provisions of this subchapter—

“(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

“(2) to individuals to whom such provisions do not otherwise apply; and

“(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

“§5367. Appeals

“(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

“(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

“(A) under section 5112(b) or 5346(c) of this title or otherwise, any reclassification of a position; or

“(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

“(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section)—

“(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

“(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under such appeals procedures.”.

(2) Sections 5334(d), 5337, and 5345 of title 5, United States Code, are hereby repealed.

(3)(A) Chapter 53 of title 5, United States Code, is amended—

(i) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B)(i) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following:

“SUBCHAPTER VI—GRADE AND PAY RETENTION

“5361. Definitions.

“5362. Grade retention following a change of positions.

“5363. Grade retention following position reclassification.

“5364. Pay retention.

“5365. Remedial actions.

“5366. Regulations.

“5367. Appeals.

"SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

- "5371. Scientific and professional positions.
 "5372. Administrative law judges.
 "5373. Limitation on pay fixed by administrative action.
 "5374. Miscellaneous positions in the executive branch.
 "5375. Police force of National Zoological Park."*

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5345, respectively.

(iii) Section 559 of title 5, United States Code, are each amended by striking out "5362," each place it appears and inserting "5372," in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out "section 5361" and inserting "section 5371" in lieu thereof.

(D) Section 5102(c)(5) of title 5, United States Code, is amended by striking out "section 5365" and inserting "section 5375" in lieu thereof.

(E) Sections 5107 and 8704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in lieu thereof "subchapter VI of chapter 53".

(F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".

(G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(H) Section 5349(a) of title 5, United States Code, is amended—

(i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";

(ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and

(iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".

(I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".

(J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90-448; 15 U.S.C. 1715(a)), and section 808(c) of the Act of April 11, 1968 (Public Law 90-284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".

(4)(A) The amendments made by this subsection shall

take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.

(B) An employee who was receiving pay under the provisions of section 5334 (d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 or 5363 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).

(b)(1) Under regulations prescribed by the Office of Personnel Management, any employee—

(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 or 5363 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

(B) who has remained employed by the Federal Government from the date of the reduction in grade to

the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

(ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) Under such regulations, any employee who—

(A) during the period beginning on January 1, 1977, and ending on the effective date of the amendments made by subsection (a) of this section was holding any position under a covered pay schedule when such position was reduced in grade; and

(B) after the date of such reduction in grade and before such effective date, changed to any other position under such a schedule (other than by reason of a demotion for personal cause) and is holding such position on such effective date;

is entitled to the benefits of section 5363 of title 5, United States Code (as amended by subsection (a) of this section) as if such employee had not changed positions.

(3) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(4) (A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(5) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5366 of title 5, United States Code,

with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

TITLE IX—MISCELLANEOUS

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

SEC. 901. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Personnel Management shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include—

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) On the completion of the study under subsection (a)

of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Personnel Management shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any such recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

SEC. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection

Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

SEC. 903. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

SEC. 904. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to—

- (1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or
- (2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

RETENTION OF SECURITY INVESTIGATION REPORTS

SEC. 905. Except as may be provided under any law enacted after the date of the enactment of this Act—

(1) the reports of the investigations conducted under section 1304 of title 5, United States Code, by the Office of Personnel Management (or previously conducted under such section by the Civil Service Commission), and

(2) the security-investigations index required to be established under Executive order numbered 10450, and the reports and files of all investigations covered by the index and which were prepared by the Office or the Commission, including the Security Research Analysis Section Organizational Files,

shall be disposed of in accordance with the provisions of such Executive order.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 906. (a) Title 5, United States Code, is amended—

(1) in sections 5347, 8713, and 8911, by striking out "Chairman of the Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management";

(2) in section 3304 by striking out "a Civil Service Commission board of examiners" and inserting in lieu thereof "the Office of Personnel Management";

(3) in sections 1301, 1302, 1304, 1308, 2105, 2951, 3110, 3304a, 3305, 3312, 3318, 3324, 3325, 3344, 3351, 3363, 3373, 3503, 3504, 4102, 4106, 4113-4118, 5102, 5103, 5105, 5107, 5110-5115, 5303,

5304, 5333, 5334, 5336, 5338, 5343, 5346, 5347, 5351, 5352, 5371, and 5372 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5374 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5504, 5533, 5545, 5548, 5723, 6101, 6304-6306, 6308, 6311, 6322, 6326, 7203, and 7204 (as redesignated in section 703(a)(1) of this Act), 7312, 8151, 8331, 8332, 8334, 8337, 8339-8343, 8345-8348, 8501, 8701-8712, 8714, 8714a, 8716, 8901-8903, 8905, 8907-8910, and 8913, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(4) in sections 1505-1508 and 3333 by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Merit Systems Protection Board" and "Board", respectively;

(5) in section 1504 by striking out "Civil Service Commission. On receipt" and all that follows down through the end thereof and inserting in lieu thereof "Special Counsel of the Merit Systems Protection Board.";

"(6) in section 5335(c)—

"(A) by striking out "Commission" the first place it appears and inserting in lieu thereof "Office of Personnel Management";

(B) by striking out "Commission" the second place it appears and inserting in lieu thereof "Merit Systems Protection Board";

(C) by striking out "Commission" the third place it appears and inserting in lieu thereof "Office"; and

(D) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Board";

(7) in section 8347(d), by striking out "Commission" the first time it appears and inserting in lieu thereof "Merit Systems Protection Board" and by striking out "Commission" the second time it appears and inserting in lieu thereof "Board";

(8) in section 552(a)(4)(F)—

(A) by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof, "Special Counsel"; and

(B) by striking out "us" and inserting in lieu thereof "his";

(9) in section 1303—

(A) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management, Merit Systems Protection Board, and Special Counsel"; and

(B) substituted in paragraph (5) of this subsection, by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(C) in section 1303, 5 U.S.C. § 1303.

of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Personnel Management shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any such recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

SEC. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection

(5) Section 1302 of title 5, United States Code, hereby repealed.

are amended in paragraph (3) of this subsection), by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(13) in sections 1303, 8713, and 8911 (as such sections are amended in paragraph (1) of this subsection), by striking out "Commission" and inserting in lieu thereof "Office";

(14) in section 8344(a), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management";

(15) in section 8906, by striking out "Commission" each place it appears and inserting in lieu thereof "Office of Personnel Management" the first time it appears and "Office" the other times it appears;

(16) in the section heading for section 2951 and in the item relating to section 2951 in the analysis for chapter 29, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(17) in the section heading for section 5112 and in the item relating to section 5112 in the analysis for chapter 51, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management".

(b) Section 1907 of title 5, United States Code, is hereby repealed.

(c)(1) Section 5109(b) of title 5, United States Code, is hereby repealed.

(2) Section 5109 of such title is further amended by redesignating subsection (c) as subsection (b).

(d) The President or his designee shall, as soon as practicable, but in any event not later than 30 days after the date of the enactment of this Act, submit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a draft of any additional technical and conforming amendments to the provisions of title 5, United States Code, and any other provisions of law which have not been made by the provisions of this Act and which are necessary to reflect throughout such provisions the amendments to the substantive provisions of law made by this Act and by Reorganization Plan Numbered 2 of 1978.

EFFECTIVE DATE

SEC. 906. Except as otherwise expressly provided in this Act, the provisions of this Act shall take effect 90 days after the date of the enactment of this Act.

Amend the title so as to read: "An Act to reform the civil service laws, and for other purposes."

Attest:

Clerk.







