The original documents are located in Box 3, folder "Civil Service Commission (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

C A C

THE WHITE HOUSE

WASHINGTON

April 8, 1975

Dear Mr. Williams:

This is in reference to your March 30 letter to me, which I am returning to you at this time.

I can understand your desire to obtain assistance but, as a member of the President's staff, it would be inappropriate for me to intervene in the established procedures of the Civil Service Commission.

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

Mr. James T. Williams, Sr.
1016 W. Pershing
Santa Maria, California 93454

Enclosure

C 1C

THE WHITE HOUSE

WASHINGTON

April 23, 1975

Dear Mrs. McGowan:

By this letter, I acknowledge receipt of your correspondence of April 18 concerning your husband, Earl R. McGowan.

It is the President's policy not to interfere with the procedures that have been established to handle the appeal of an administrative decision affecting a civil service employee's career. Usually, if all administrative remedies have been exhausted, the Federal courts are the next appropriate level of review.

I am sorry that this response could not be more favorable.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mrs. Earl R. McGowan
7334 Goff Avenue
Richmond Heights, Missouri 63117

THE WHITE HOUSE

WASHINGTON

Carl Sorrisi

June 3, 1975

Dear Mr. Whitehurst:

I regret the delay in responding to your letter of May 8, 1975, regarding the status of Mr. Charles J. Turrisi as a Civil Service annuitant and a Presidentially appointed member of the Federal Council on Aging.

In view of the question you raised with regard to the opinion of the Civil Service Commission, I requested a member of my staff to consult with the Department of Justice, Office of Legal Counsel, on the interpretation that should be given to the language that you have cited from P.L. 93-29 establishing the Federal Council on Aging. The Justice Department has concluded that the interpretation given by the Civil Service Commission to this statute is correct. My own views on this matter are in accord with these opinions.

I regret that I am not able to report more favorably on behalf of your constituent, but I would welcome any additional information that you may have which you believe would justify a different result.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable G. William Whitehurst
House of Representatives
Washington, D.C. 20515

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 5, 1975

MEMORANDUM FOR PHILIP W. BUCHEN

Jim Lynn requested that we work with you on the issue of the rights of departing federal employees to papers they developed in their official capacity.

Whoever in your office is working on the issue may call Ron Kienlen (5600), who will represent this office.

William M. Nichols
William M. Nichols
Acting General Counsel

CSC

THE WHITE HOUSE

WASHINGTON

June 17, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: RUSS ROURKE

THROUGH: PHIL BUCHEN P.W.B.

FROM: DUDLEY CHAPMAN DC

SUBJECT: John Nidecker -- Disability Retirement

I have discussed the facts of this case anonymously with Thomas Tinsley, Director of the Bureau of Retirement, Insurance and Occupational Health, at the Civil Service Commission. It is his opinion that the facts set forth would justify a disability retirement.

Mr. Tinsley suggested that the procedure could be expedited by forwarding the papers directly to him by messenger at the following address:

Mr. Thomas A. Tinsley
Director of the Bureau of Retirement,
Insurance and Occupational Health
United States Civil Service Commission
1900 - E Street, N.W. - Room 4A-10
Washington, D.C. 20415

THE WHITE HOUSE

WASHINGTON

June 25, 1976

CSC

ES has attachment.

MEMORANDUM FOR: ED SCHMULTS

FROM: PHIL BUCHEN P.

I have asked Ken to obtain a copy of the Federation's Study of the CSC that is mentioned on page 2. I think we should have that study before replying to this letter. I also call you attention to the fact that Ken has reviewed a study made by the staff of the CSC. He reports that the study is critical of some administration practices but in no way impugns the integrity of qualifications of the Commissioner.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D. C. 20405

ADMINISTRATOR

June 27, 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

On October 1, I wrote you endorsing your memorandum on the integrity of the merit system, and expressing my concern about the undue publicity given GSA because of a "supposed all pervasive political system."

Although the issues are not yet completely settled, I want you to know of a decision on June 13 by the Civil Service Commission's Administrative Judge fully exonerating Mr. Ben Schiffman, my Regional Director of Administration in Washington. Mr. Schiffman's case was the first one in which the Commission's charges and evidence, regarding alleged violations of the merit system, against one of the so-called "GSA eight" have been subject to a hearing and cross-examination.

The decision, completely exonerating Mr. Schiffman, is highly significant for three reasons. First, the Commission viewed this as one of the more serious cases, saying that Mr. Schiffman's conduct would have warranted dismissal were it not for his 32 years of Federal Service. Second, Mr. Schiffman was the immediate supervisor of Mr. Palman, the prime complaining witness, whose testimony, along with that of the other key Commission witness, was found lacking in credibility by the Judge. Third, the Commission lost not because of any technical defense or because it failed to establish its case beyond a reasonable doubt, but because the Judge found that the preponderance of the evidence was against it.

During the past year and a half, charges of illegality and personal culpability have been directed at GSA and its employees in connection with the Civil Service Commission matter. It was most gratifying, therefore, to have GSA's position so solidly supported by the Adminis-

trative Law Judge when he wrote: "The point is that actions that are proper, albeit in the realm of 'preferential' or nonroutine treatment, are not transformed into violations of the merit system simply because the beneficiary of the exceptional handling is referred by a 'political' or other influential source."

GSA is continually striving to adhere to the merit principles, and at the same time attract interesting, bright individuals to work for the Federal Government.

Respectfully,

Arthur F. Sampson
Administrator

cc: Honorable Donald Rumsfeld
Assistant to the President

Honorable Philip W. Buchen
Counsel to the President

C5C

THE WHITE HOUSE

WASHINGTON

July 22, 1975

MEMORANDUM FOR: JIM CONNOR

THROUGH: PHIL BUCHEN P.W.B.

FROM: KEN LAZARUS KL

SUBJECT: Labor-Management Relations in the Federal Service

We have reviewed the draft memorandum to the President on the referenced subject and have no substantial disagreement with the writers' recommendation in support of option 2 -- oppose all pending bills as presently drafted and urge further consideration of the underlying issues. However, assuming the representation appearing at the bottom of page 2 of the memorandum to the effect that the Henderson bill likely will be the primary focus of House action, it might be more desirable to direct our attention to its provisions.

Specifically, we recommend consideration of a fourth option -- support the Henderson bill on the condition that the actions of the Board of Union and Management officials are made subject to some level of Administration control.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: July 19, 1975 Time:

FOR ACTION: cc (for information):

Phil Buchen ✓ Bob Hartmann
Jim Cannon Jack Marsh
Max Friedersdorf Brent Scowcroft
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, July 22, 1975 Time: 2 P.M.

SUBJECT:

Memorandum for the President from
Secretary of Labor, Office of Management & Budget
and Chairman of U.S. Civil Service Commission
re
Labor-Management Relations in the Federal Service

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
X For Your Comments
X For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

UNITED STATES

FEDERAL LABOR RELATIONS COUNCIL

1900 E STREET, N.W. • WASHINGTON, D.C. 20415

JUL 28 1975

DECISION

MEMORANDUM FOR THE PRESIDENT

FROM:

John T. Dunlop
Secretary of Labor

James T. Lynn, Director
Office of Management and Budget

Robert E. Hampton
Chairman, U.S. Civil Service Commission

SUBJECT: Labor-Management Relations in the Federal Service

ISSUE: The purpose of this memorandum is to reach an Administration position on labor-management relations legislation for Federal employees.

With AFL-CIO backing, the major affiliated unions (as well as unaffiliated unions) representing Federal workers have intensified their pressure for a collective-bargaining law to replace Executive Order 11491 which now governs labor relations in the Federal service. There appears to be a better-than-ever chance a bill will pass the House and Senate next summer -- possibly arriving on your desk for action around the time of the national political conventions.

Representative David Henderson (D.-N.C.), Chairman of the House Committee on Post Office and Civil Service, held hearings last summer on three labor-management relations bills introduced by himself and members of his Subcommittee on Manpower and Civil Service. Henderson plans to have the Subcommittee report a bill to his full Committee by August 1, 1975. To meet this tight timetable, he is planning to hold mark-up sessions with Administration and union spokesmen later this month.

BACKGROUND:

Labor-management relations in the Federal service have been governed by Executive Orders for 13 years, and supported by four Administrations (Republican and Democrat). As the program has evolved through periodic updatings, union representation has grown to over 1,140,000 employees, or 57 percent of the nonpostal work force -- over twice as heavily organized as the private sector.

Further progress is expected under the Executive Order amendments you issued February 6, 1975, which generally became effective May 7. The changes are designed to increase significantly the scope and level of

union-management negotiations by expanding the range of matters that can be bargained and by promoting broader bargaining units to deal at higher levels in agencies.

Despite their impressive growth under the Executive Order and despite their improved opportunities for bargaining under the current amendments, the unions have stepped-up their efforts to replace the Executive Order with a law.

The giant American Federation of Government Employees (AFGE) with the support of AFL-CIO, whose affiliates represent nearly three-fourths of organized Federal workers, criticizes the Executive Order program as a management-dominated system (subject to Administration control) with an overly restrictive scope of bargaining (since wages and major fringes aren't negotiated), which relegates Federal workers to second-class status (compared to workers in private industry who are covered by a collective-bargaining law).

Union criticism now appears directed toward brinkmanship, charging that the Executive Order program is pushing Federal workers to the edge of crisis and militancy -- obviously designed to muster public, and particularly Congressional, opinion in favor of a law (TAB 1).

The lead bills sought by the unions are H.R. 13 (Nix, D.-Pa.) introduced for AFGE with AFL-CIO backing, and H.R. 1837 (Ford, D.-Mich.) introduced for the independent Council of American Public Employees. H.R. 13 and 1837 generally would supplant the Executive Order with a program very similar to the private sector. The third lead bill, H.R. 4800, introduced by Henderson as a "compromise" measure, would cast most provisions of the Executive Order into law, establish an independent central authority, and create a union-management Board with final and binding authority over inter-agency personnel policies.

We strongly oppose major features of both union bills: Permitting negotiation of different pay and benefit levels in every one of the 3,500 bargaining units in the Federal government; legalizing the strike which could paralyze the functioning of Government operations; authorizing compulsory union membership or dues payment as a condition of continued Federal employment; wiping away, or bargaining away, existing civil service laws basic to merit personnel administration (TAB 2).

Of the pending bills, Henderson's is the least objectionable, and the House Committee is expected to report a bill closer to his measure than the union versions. However, we cannot support the bill's provision for a super-regulatory Board of union and management officials with final say on inter-agency personnel policies. This Board would usurp authorities historically and necessarily reserved to CSC, OMB, Labor, GSA, etc.

In recent weeks, there have been a series of meetings with key personnel and labor relations officials of the major Departments and agencies affected -- Defense, Treasury, Veterans Administration and HEW. While individual views were mixed, their over-all reaction was opposed to legislation. DoD, in particular, strongly opposes any legislation at this time; its Departments and agencies employ over three-fifths of organized Federal workers.

Following these discussions, we met among ourselves to discuss Administration strategies for dealing with the prospect of imminent action in the House Committee, and we formulated options for your consideration and decision.

OPTION 1:

> Oppose any legislation at this time (making clear it would be vetoed).

This is essentially the position Chairman Hampton argued in testimony for the Administration last year. At that time, he predicated our opposition to change on grounds the Executive Order program had been working reasonably well and we saw no demonstrated need for abandoning it in favor of some different program under legislation.

The advantages include -- giving the recent amendments to the Order a chance to work; continuation of the Executive Order program with its built-in Administration control.

The disadvantages include -- the prospect of forcing legislation to a veto decision at the start of the Presidential campaign; or, if a veto is overriden, the risk of being moved under a statutory program we had little or no influence in shaping.

OPTION 2:

> Oppose all of the pending bills as presently drafted and, while not opposing legislation per se, make clear to Congress that the public interest demands full discussion of all the issues through further hearings (an education process essential to fully informed decision-making in the Congress).

This position implies that an acceptable bill would not be vetoed. But it doesn't rule out veto of any bill which is not acceptable. Despite several days of hearings in the last Congress, it has not dealt adequately or in depth with the issues.

The advantages include -- those under Option 1, plus retaining flexibility for the Administration to deal positively (as opposed to negatively or not at all) with Congress if it sees a need for legislation.

including the further hearings that would be required, and to influence any bill that may emerge; making clear through hearings that this is no simple matter (that the union proposals, for example, attempt to deal simplistically with such complex areas as the entire system of Federal compensation, currently the subject of intensive review by your Panel on Federal Compensation); giving us the necessary opportunity to emphasize the substantial impact labor relations legislation would have on the effective and efficient functioning of government; gaining sufficient time for this education process, while taking the pressure off Henderson for immediate action without having fully thought through the implications.

The disadvantages include -- this approach would deprive us of the opportunity to take the initiative in offering a "whole" bill of our own to work with in the Congress, and it might not offer enough to counteract the union push for legislation now.

OPTION 3:

> Prepare an Administration bill to be introduced at the appropriate time, generally making only minimum changes from the Executive Order and meeting our concerns.

This has been the subject of much discussion and contingency planning in recent months primarily in CSC, and we can be ready to offer such a bill as quickly as is necessary.

The advantages include -- all of those under Options 1 and 2, plus maximizing our influence on legislation.

The disadvantages include -- the absolute certainty a bill would be passed in 1976 with no assurance it would be one we could live with: The minimum changes we would find acceptable may not be realistic; such a bill might only continue and intensify the current pressures for change; even a minimum bill could erode Administration control through decisions on appeals to the courts.

RECOMMENDATION:

> We would favor Option 2 as giving us the greatest flexibility for dealing cooperatively with the Congress, while not ruling out possible recourse to other Options if subsequent developments dictate them.

If we do indicate a willingness to deal affirmatively in required hearings, we will have to be able to offer viable alternatives for dealing with the overriding issues involved. We underlined these essentials in testimony at the Henderson hearings last year. For example:

The need to preserve merit-based personnel administration under existing civil service laws;

The need to review areas controlled by Congress and the Administration to determine the extent they are willing to relinquish control to negotiations, including the extent Congress would be willing to appropriate money to pay for negotiated improvements it had no role in determining;

The need to delimit the power of a central labor relations authority and to define its relationship with other Federal agencies and officials;

The need to develop acceptable alternatives to the strike for resolving labor-management disputes and to compulsory union membership or dues payment for ensuring some measure of union security (TAB 3).

These, too, have been the subject of much discussion and planning. We can be ready to offer viable alternatives and to educate others as to their impact in extensive and in-depth hearings as quickly as is necessary.

DECISION:

☐ Option 1

☐ Option 2

☐ Option 3

Attachments

TAB 1--AFGE Government Standard

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

'We want action on H.R. 13 now; the Executive Order is no good'

ASSERTING that the Federal government is orchestrating a "crisis atmosphere" by manipulating the classification system and exploiting the Federal pay systems, AFGE National President Clyde M. Webber called for immediate sup-

sponsored by the Federal Mediation and Conciliation Service, Webber alluded to the "record of history' 'which shows that inaction in labor-management crises has "sparked costly, yes, even bloody, labor management confrontation."

He added that the additional pressures building for the 475,000-plus blue collar workforce included severe disparities in their fringe benefits relative to the private sector, but noted that the white collar work force has suffered

TAB 2 - Comparison of Key Provisions

TAB 2

A COMPARISON OF KEY PROVISIONS OF FEDERAL LABOR-MANAGEMENT RELATIONS BILLS PENDING IN THE 94TH CONGRESS

Note:

AAA	-	American Arbitration Association.
FLRC	-	Federal Labor Relations Council.
A/SLMR	-	Assistant Secretary of Labor for Labor-Management Relations.
FSIP	-	Federal Service Impasses Panel.
FEPC	-	Federal Employees Pay Council, which deals with the white-collar pay system.
FPRAC	-	Federal Prevailing Rate Advisory Committee, which deals with the blue collar pay system.

Source: OFFICE OF LABOR-MANAGEMENT RELATIONS (CSC)

	H.R. 13(AFGE)	H.R. 1837(CAPE)	H.R. 4800(Henderson)
Central Authority	--3 members appointed by President from AAA list. --Combines functions of FLRC, A/SLMR, FSIP.	--5 members, like NLRB, including General Counsel to prosecute violations. --Combines functions of FLRC, A/SLMR (like NLRB).	--3 members appointed by President. --Combines functions of FLRC, A/SLMR FSIP.
Scope of Bargaining	Virtually unlimited.	Virtually unlimited.	Same as under E.O. 11491, except 11-member joint labor-management Board determines inter-agency personnel policies.
Pay Matters	Negotiable in each bargaining unit.	Same as H.R. 13.	No change in present structure (FEPC, FPRAC).
Union Security	Union or agency shop on request.	Agency shop automatic with recognition.	Right to refrain continued.
Impasse Machinery	Permits binding arbitration under auspices of central Authority.	Binding or advisory factfinding at union's option; if it elects binding route, it is estopped from striking to settle impasse.	Provides access to adhoc panel, authorized to take final action, under auspices of central Authority.
Right to Strike	No prohibition against strike. Unclear whether no-strike law superseded.	Makes strike legal.	Prohibits strike.
Supersedure	Supersedes all laws and executive orders concerning same subject-matter.	Supersedes all laws which are inconsistent with its provisions.	Continues existing laws.
Impact on Current Authorities	Collective-bargaining agreements, including those negotiated at the lowest levels, would override any and all regulations inconsistent with the negotiated provisions.	Same as H.R. 13	Could effectively remove CSC, OMB, GSA, etc. from issuing inter-agency regulations on personnel policies.

TAB 3 - Issues in Federal Labor Relations

TAB 3

SUMMARY CHARTS ON

ISSUES FOR CONSIDERATION IN DEVELOPING

AN OVERALL POLICY AND STRUCTURE FOR

LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

* * * * * * *

1. PHILOSOPHY AND POLICY

   What should be the public policy and philosophy for the labor-management program for the Federal service?

2. MERIT PRINCIPLES

   What would or should be included to maintain a Federal service system based upon merit principles?

3. SCOPE OF NEGOTIATIONS/BARGAINING

   What should be the scope of bargaining?

4. UNION SECURITY

   What union security arrangements should apply?

5. ADMINISTRATIVE MACHINERY

   What should be the structure and authority of a central body (or bodies) to administer the program?

   What functional responsibilities will be placed in such authority or authorities?

6. IMPASSE RESOLUTION

   How should negotiation impasses be resolved?

7. SUPERSEDURE

   Under a Federal LMR program based on statute, what should be the impact of existing laws affecting conditions of employment?

Source: Office of Labor-Management Relations (CSC)

1. PHILOSOPHY AND POLICY

What should be the public policy and philosophy for the labor-management program for the Federal service?

How should the program balance concerns for the representation rights of employees, status of unions, responsibilities of managers to manage, efficient accomplishment of agency mission, and responsiveness to the public interest?

In constructing any Federal Service labor relations system, the following warrant consideration:

-- Protection of the public interest.
-- Impact of any legislated program on existing and future laws affecting Federal personnel and agency management.
-- Recognition of diversity of missions and other special differences among Departments and agencies.
-- Special circumstances and limitations which distinguish Federal personnel administration from private and other public sectors.
-- Assurance of uninterruputed continuity of public services.
-- Protection of Federal management's essential rights to manage, and mission accomplishment.
-- Meaningful opportunity for broad range of collective bargaining, within balanced system reflecting employee needs, union interests, and public expectations that Government operations be efficient, effective, and responsive.

2. MERIT PRINCIPLES

What would or should be included to maintain a Federal service system based upon merit principles?

Merit principles are fundamental to the viability of the Federal Civil Service and effective and efficient public services.

-- That any Federal LMR program recognize, preserve and clearly spell out the supremacy of merit principles.
-- That established rights and responsibilities with respect to merit principles be maintained.
-- That accountability on application of merit principles be specified.
-- That merit principles and collective bargaining be compatible as regards the paramount needs of the public interest.
-- That job related factors, and not solely seniority, be determinative in employee advancement.
-- That merit principles be defined, and specifically excluded from matters subject to collective bargaining.
-- That personnel practices, if any, carried on in name of merit which have nothing to do with merit, and, in fact, may be contrary to merit principles do not serve to bar diversity and innovation in personnel systems.

3. SCOPE OF NEGOTIATIONS/BARGAINING

What should be the scope of bargaining?

-- What items will be specifically allowed?
   Compatibility with merit principles?
-- Some items to be specifically excluded:
   . such as necessary management right under E.O.;
   . ownership of work and right of contracting out.
   In what areas is uniformity of policy desirable
   or necessary?
-- If intended that wages and other major fringes be negotiable,
   how would this work? Bargaining:
   . in each of approximately 3500 units?
   . on a coalition basis? effect on existing
     units?
   . on regional or national basis?
   . in legislatively-defined units more attuned to
     major issues, such as pay, fringes?
-- Will management be able to develop and implement personnel
   programs, including wages and fringes for managers and other
   employees not covered, or will these be controlled by
   Congress?
-- Negotiability determination. Role of Courts?

4. UNION SECURITY

What union security arrangements should apply?

-- Employees free to join or not join union
-- Cost of dues withholding negotiable economic item vs.
   total no-cost withholding
-- What arrangement should be made to provide unions with
   reasonable financial security and membership stability, as
   against compulsory membership or payment of fees and dues?

5. ADMINISTRATIVE MACHINERY

What should be the structure and authority of a central body (or bodies) to administer the program? What functional responsibilities will be placed in such authority or authorities?

Who will have what authority and under what circumstances are considerations vital to success or failure of program?

How will the authority (ies) relate to existing agencies of government, to the President, to Congress?

-- What would be the authority of the central body? Would it be superior to present central personnel policy-setting agencies? Would it have authority to override Executive Orders of the President?
-- To what extent would it be given latitude to make policy determinations presently established through legislative actions of the Congress?
-- Credibility with all parties.
-- Would it be so structured as to facilitate timely and judicious case decisions?
-- Accountability to President and/or Congress.
-- Relationship to the courts.
  • Finality of decision, rulings
  • Scope of judicial review
  • Standards for review

6. IMPASSE RESOLUTION

How would negotiation impasses be resolved?

-- Emphasis on voluntary settlement.
-- Availability of FMCS services.
-- High degree of objectivity in any third-party intervention.
-- Public interest remains paramount.
-- That strikes remain improper and illegal.
-- Speedy and effective resolution of impasses.
-- Impasses panel has option of involvement with authority to implement actions, subject to review by central body.
-- Role that courts may play.
-- That impact of impasse-resolving decisions on public be given weight.
-- That impasses be resolved in the context of the total negotiated package.
-- That in the absence of strikes, nondisruptive dispute resolution machinery be available that is satisfactory to the parties and accountable to public concerns for costs, efficiency of governmental operations, and equity to employees.

7. SUPERSEDURE

Under a Federal LMR program based on statute, what should be the impact on existing laws affecting conditions of employment, such as pay, classification, E.E.O., health and life insurance, veterans preference, retirement, and merit principles?

-- Which laws would or should be superseded, and what would be the effect on various systems?
-- Separate retirement and pay systems for unit members and non-unit members?

-- Would supersedure be selective?
-- What criteria would be used to determine supersedure?
-- What provisions exist for transition and safeguarding of rights?
-- Would statutory benefits serve as floor for collective bargaining?
-- Who would determine which Acts would be replaced?
-- What would be the impact of supersedure on personnel management regulations?
-- Would consultation between agency and non-union groups (i.e., supervisors, professional associations, minority groups, etc.) be continued?
-- Would Federal personnel policies and employee rights and benefits be determined by what happens in about 3500 different bargaining units?
-- How would the costs resulting from such negotiations be met?
-- Is the Congress prepared to relinquish control over matters traditionally determined by statute?

c 5c

THE WHITE HOUSE

WASHINGTON

July 25, 1975

Dear Mr. Harden:

Congressman Bennett has written the President for an answer to your letter concerning the omission of age from a statement by President Ford barring discrimination on the basis of politics, race, creed, or sex.

You may be assured that there was no intention to exclude age from the categories of impermissible discrimination. We have learned informally from the Civil Service Commission the probable reason for the omission of age is that Congress has dealt with this type of discrimination by a different statute from that governing the types of discrimination referred to in the President's statement. There was a purpose to emphasize those forms of discrimination that had been identified as a special problem under 42 U.S.C. § 2000e-16, which contains the same enumeration as the President's statement. A separate statute, 29 U.S.C. 633, prohibits discrimination on the basis of age.

The omission of age appears to have been inadvertent, and I am, therefore, forwarding copies of this correspondence to the Chairman of the Civil Service Commission for appropriate consideration in connection with the preparation of further Presidential statements.

Thank you for your interest.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Grover Harden
4441 Cambridge Road
Jacksonville, Florida 32210

cc: The Honorable Charles E. Bennett
The Honorable Robert E. Hampton

CSC

THE WHITE HOUSE

WASHINGTON

July 30, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BARRY ROTH BR

SUBJECT: Meeting of Agency Ethics Counselors

The General Counsel's office at the Civil Service Commission has contacted me regarding a meeting of agency ethics counselors now planned for November 24-25 at Airlie House in Warrenton, Virginia. CSC believes that this might be a good forum for someone such as yourself or Rod to address the 60 or 70 agency counselors to re-emphasize the President's concerns in this area. (Ken feels that the participation of either you or Rod is unnecessary.) There is no pressing need to make a final decision at this time.

CSC also hopes that either myself or someone else from this office will be able to attend the full two days of meetings discussing standards of conduct and related matters.

C A C

THE WHITE HOUSE

WASHINGTON

August 4, 1975

MEMORANDUM FOR

THE HONORABLE ANTONIN SCALIA
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

SUBJECT: Problems of the U. S. Civil Service Commission with Congressman John Moss and his use of Evaluation Reports

Attached is a copy of a memorandum of June 16 from Robert Hampton to me. This is the memo I discussed with you on the telephone today.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment

THE WHITE HOUSE

WASHINGTON

June 26, 1975

MEMORANDUM FOR: MR. BUCHEN

FROM: BARRY ROTH

SUBJECT: Summary and Comments on Chairman Hampton's Memo Re Congressman Moss

Chairman Hampton's difficulty results from CSC's policy on the handling of Congressional requests to review the Commission's evaluation reports of personnel management in various agencies. These reports are intended to be a highly critical evaluation of each agency and do not attempt to balance an agency's overall program.

For a number of years CSC has made these available to individual members of Congress upon their request, apparently to place leverage on the agencies via Congress to correct deficiencies.

Although these reports are not subject to release under the Freedom of Information Act, they were freely distributed to Congress even though CSC expected that they would not release the information contained in the report.

This presented no apparent problem to CSC until Congressman Moss decided to release, at his discretion, these reports to the media. CSC was not inhibited by these leaks when they were directed toward GSA and HUD, at which time the CSC was quite vocal in its public criticism of these agencies. Now that Congressman Moss has decided to use these same reports to show the ineffectiveness of the management oversight, they don't know what to do and suggest that you may wish to raise Executive Privilege in this matter.

Comment: CSC's policy of releasing the reports to Congress in order to place indirect pressure on an agency

in itself seems somewhat troublesome. Their concern seems to be based more on the Congress' attacks on themselves rather than for the agencies involved. Both Dudley and I feel that it would not be appropriate to invoke Executive Privilege in such circumstances. The President has gone to great lengths to avoid any action which could be construed to impinge upon the merit system.

If Chairman Hampton, on his own, wishes to refuse such individual requests for these records, we would not interpose either an objection or any indication of support. While analogous to the release of FBI materials, these materials are not nearly as sensitive. My own personal opinion is that Chairman Hampton has created his own problem on this and similar issues and to involve the President in them would only bring criticism to the President.

I would be pleased to elaborate orally on this matter, if you so desire.

Attachment

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

MEMORANDUM FOR: JUN 16 1975

Honorable Philip W. Buchen
Counsel to the President
The White House

SUBJECT: Relationships with Congress which undercut use of Freedom of Information Act exemptions

The purpose of this memorandum is to alert you to recent events which, while at the moment relate only to the Civil Service Commission, may have significant implications for the entire executive branch.

The Civil Service Commission's Evaluation Reports

You may have noticed recent press accounts which relate the disclosure to various newspapers by Congressman John Moss of separate batches of evaluation reports which this Commission has furnished him. Each report contains factual data, opinions and recommendations which reflect the Commission's evaluation of the effectiveness of personnel management in a single agency.

These reports are made in great number, and for calendar years 1973 and 1974 exceeded 900. With respect to those same two years, we made available to Congressman Moss at his request about 650 reports. Some reports are general in scope and reach into virtually all areas of personnel management, such as equal employment opportunity, promotions, training, adverse actions, etc. Others deal specially with a single such area, or with several such areas.

Some are agency-wide in scope, and some relate only to a specific agency installation. There are approximately 4000 inspectable establishments in the executive branch, and we conduct about 400-600 evaluations per year.

The evaluation reports are essentially problem oriented and, hence, are typically critical in content and tone. We do not usually describe how well an agency is doing in a particular area, except for

the purpose of comparison with what we may have identified as agency shortcomings in that area. Our aim is to discover errors or problems for the purpose of achieving correction, in the expectation that agencies will understand the difference, correct serious past errors which have affected their employees, and prospectively make systemic improvements which will result in more effective use of their civilian personnel resources, and will insure compliance with the statutes, rules and regulations which govern the Federal personnel system.

It is important to note that findings made in such reports are not the result of an adversary process (such as notice of complaint, answer, cross-examination, etc.) but are ordinarily the determinations of the Commission office making the evaluation. They are sometimes disputed by agency officials and by affected individual employees -- but they are nonetheless observations of agency activities made by knowledgeable evaluators, and we rely on them in our dealings with agencies to achieve improved compliance with merit system requirements. The tentative nature of these preliminary determinations in many of these reports constitutes the identical policy base upon which the Supreme Court, in two cases decided only a month ago, determined that confidentiality, prior to the taking of final administrative action, was wholly appropriate.

Availability of Reports to Congress

For many years we have made such reports available to Members of Congress upon request, with an explicit statement as to their confidentiality and use only for official government purposes. Until this year, no Member of Congress has ever acted contrary to that statement by making the reports public. Plainly, such reports despite their tentative nature, could be very valuable to a Member serving on the Committee on Government Operations or on the Committee on Post Office and Civil Service, since they could be used to make very pointed what might otherwise be amorphous discussions of program or personnel operations within an agency. In addition, a report on a particular agency could also be useful to a Member of Congress serving on an appropriation or oversight committee for that agency.

Reports Not Available to the Public

We have not made such reports available to members of the public, and that determination has been challenged in court under the Freedom of Information Act (FOIA) in a case entitled Vaughn v. Rosen. The Federal Court of Appeals for the District of Columbia Circuit remanded the case to the Federal District Court for further proceedings in line with its opinion, and the District Court rendered its decision, a copy of which is enclosed. That decision is currently pending on appeal to the Court

of Appeals. In essence, the District Court authorized us to protect from disclosure to the public those portions of our reports (1) which linked our evaluations to identifiable individuals or made other references to individuals which would violate their privacy, and (2) which consisted of "Action Items" and advice and recommendations, tentative in nature, as to how agency managers could improve the effectiveness of personnel operations.

Fragmentary Nature of Single Reports

In the normal working out of our evaluation process, our submission of a report to an agency generally constitutes the beginning of a series of discussions and actions in which the agency takes corrective actions both in individual cases and as a matter of prospective systemic improvement. Some of these matters are documented in our files, and only by looking at the reports and this attendant documentation can a balanced judgment be made on the effectiveness of an agency's performance. Subsequent correspondence and reports on a single agency will contain reflections of the shortcomings stated in earlier reports, and assessments of whether the former ills have been cured.

What has been happening with Congressman Moss' disclosures is that he has released only reports containing seriously deficient conditions, and those which reflect inadequate agency action toward curing the ills complained of in an earlier report. He has not requested from us, hence, has been unable to take into account, information on agency improvement which occurred subsequent to completion of any single report. This kind of ad hoc and selective release of information from our reports is (1) unfair to agencies, (2) perhaps unfair to individuals whose functions make them readily identifiable, (3) damaging to the evaluation program, and (4) misleading to the public, and therefore unwarrantedly impairing the citizen's confidence in Government. The general impression created by the disclosures and by Congressman Moss' attendant public statements about them reflect badly, and erroneously, on executive branch agencies. While they also reflect adversely on Congressional oversight capability, Mr. Moss is reported by Reporter Love of the Washington Star, in an article appearing May 22, 1975, as suggesting that inadequate oversight "could have been due to a lack of time or staff." (The quotation is of Mr. Love.)

Current Commission reaction to requests and disclosures

Over several months in late 1974, we had communication with Congressman Moss, and some of this dealt with why the reports deserved confidential treatment. We offered to furnish information that would satisfy legislative needs concerning particular programs for specific agencies, but he declined to accept this. At one point,

in early October 1974, the Commission's Executive Director, its General Counsel and I met with Mr. Moss, and while he expressed his displeasure at the fact that our reports were not released to the public, he said nothing to lead us to believe he would engage in wide-ranging disclosures of the kind he has made. In a letter dated August 23, 1974, he had told us that "As a Member of the Government Operations Committee these reports will be invaluable to me." Subsequently, his investigative assistant, Frank Silbey, told members of our staff that Congressman Moss believed that the kind of systemic subversion reflected in our GSA and HUD special investigative reports had probably been discovered in other agencies. When we finally determined to make reports available to him in late October, we requested in a letter dated October 23, 1974, that he treat the reports in their entirety "For U.S. Government Use Only." He responded by letter dated November 21, 1974 stating "I regretfully cannot accept these reports with such a caveat attached to them, and must reject any attempt, however sincere, to prevent me from exercising my discretion as a Member of the House on any information I receive in that capacity." In furnishing reports to him we have continued to show that they are for "U.S. Government Use Only." A letter dated April 7, 1975, which thanks the Commission for making additional reports available recites that "In the future, I may have a need to obtain some further documentation in order to further my investigation."

From the beginning we believed that Congressman Moss was not acting on a frolic of his own but related his demands to Committee business. Despite his disclaimer of being bound either by judicial decisions under the Freedom of Information Act or our request that he maintain the confidentiality of the reports, until very recently he made no disclosures and we assumed he would treat the reports as all Members of Congress had done in the past.

Obviously in releasing our evaluation reports on his own decision, Congressman Moss is effectively negating the exemptions in the FOIA, and undermines the Congressional policy which authorized their use, a policy which the Federal District Court has already recognized as a valid claim of protection for parts of these reports.

Congressman Moss has released these reports while the Manpower and Civil Service Subcommittee of the House Committee on Post Office and Civil Service is in the midst of investigative hearings into the integrity of the merit system. Of course, under the Rules of the House, other Committees are informed of such hearings and it is customary for members with an interest in the matter to either be a witness or otherwise communicate with the investigating unit. The reach of the Manpower and Civil Service Subcommittee investigation can readily include all of the allegations which Congressman Moss had made in the

public prints. So far as we know Congressman Moss has not attempted to become a witness in the investigation.

In any case, it must be remembered that in dealing with the availability of executive branch information to Congress we are outside the range of the FOIA; so that the only basis for declining to furnish information is executive privilege. We do not believe that the contents of these reports raises any suggestion that it would be appropriate, at any early time, for the President to assert executive privilege with respect to them. However, there is the broader issue which we believe may very well be a matter of Presidential concern; that is, where a Congressman in his individual capacity undertakes to negate an exemption for the executive branch in the FOIA.

And, in this connection, if Congressman Moss may be treated as an individual Member of Congress, there is useful legislative history in the FOIA which indicates that a single Member of Congress has no greater rights under the Act than any member of the public. Thus, if it can be established that Congressman Moss is not acting responsibly with respect to Committee business, but is acting as an individual member, we can decline to furnish him any information reasonably covered by the exemptions of the FOIA. Since it seems clear that Congressman Moss plans to persist in his systematic disclosure of whatever additional reports are made available and, further, since we remain unpersuaded that his activities in this regard are properly anchored in the oversight responsibilities of the Government Operations Committee, we feel confident that we could properly deny his request under exemptions 2, 5 and 6 of the Freedom of Information Act. As explained immediately below, however, we are not at this time prepared to deny Congressman Moss' request on this basis.

The Immediate Future

We have determined that, in view of his present activities, Congressman Moss' pending request for additional inspection reports raises important questions which require more thorough review and consideration. We wish to examine further our past policies and practices when dealing with Members of Congress who are acting in what is tantamount to a personal capacity, and we think that it may also be useful to explore these and related issues with others in the executive branch. Again, in our judgment, the issues presented here do have general implications.

In any case, we have advised Congressman Moss, as the attached letter reflects, that we are extremely troubled by his activities and that we wish to give further consideration to his request. As this matter plays itself out, we will keep you informed on the prospects for

forcing these requests and disclosures into the normal mode by which Congress conducts oversight, namely, balanced investigation, hearings (including opportunity for agency rejoinder), consideration by subcommittee or committee, and publication of a formal committee or subcommittee report, which would, of course, furnish opportunity for concurring and dissenting views. As we have made plain to all who are involved, we are not at all fearful of this kind of oversight; and as I think we evidenced in extensive testimony before Congressman Henderson's investigative committee, we are most mindful of the needs of the service, are not "anti-employee" oriented, have with considerable effectiveness improved personnel management in many agencies, and will continue doing so in the future.

It remains to be said that if our efforts to achieve balanced and effective oversight fail (i.e. oversight in which we have opportunity on a formal record, in public, to counter the erroneous assertions he makes about us and other agencies) we will reassess the nature and extend of the damage disclosures will cause (1) to the current evaluation program, (2) to this Commission's ability to achieve personnel management improvement and (3) to the public's ability to maintain adequate confidence in a deserving, but erroneously characterized executive branch. If the estimated damage is too severe to be tolerated, we would then ask you to reassess whether, indeed, the President could fiarly assert executive privilege with respect to documentation the disclosure of which in piecemeal fashion would have these dire effects. The only alternative we see to that suggestion is major changes in the Commission's evaluation reporting system, changes that at this point do not appear to me to be in the public interest.

We will keep you informed of significant developments as they occur and would welcome any comments you might have.

Robert E. Hampton
Chairman

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D C. 20415

CHAIRMAN

JUN 16 1975

Honorable John E. Moss

House of Representatives

Dear Mr. Moss:

This will constitute an interim response to your letter dated May 16, 1975, requesting 283 evaluation reports completed in 1972, plus additional evaluation reports completed in or after December 1974. Coming quickly on the heels of recent disclosures to the press, from similar reports we have furnished to you in the recent past--disclosures the press reports attribute to you--your current request raises serious questions which require careful consideration.

We will explain below what facets of this matter we are presently considering, but first a few introductory comments. It is very clear to us that there is an obvious relationship between effective personnel management by an agency and its effectiveness concerning the very program operations which constitute the jurisdictional basis for the Committee on Government Operations on which you serve. As a general matter, we welcome your recently expressed interests in the improvement of personnel management in the Federal personnel system; and recognizing the impact of personnel management on agency program operations, we are eager to assist the Committee and its Subcommittees to perform its oversight functions.

It is also clear to us that our evaluation reports on specific agencies might also be useful to other Congressional oversight committees and to appropriation committees as well. For many years, we have made our evaluation reports available, on request by Members of such committees, with the clear designation as to their use only for official Government purposes. Until the release of the reports by your office, to our knowledge no such reports have been released by an individual Member of Congress. The reports of our special investigations of organized efforts in GSA and HUD to subvert the merit system were published in their entirety as a committee print by Chairman Henderson, and these of course were not reports of the type being discussed in this letter.

The reason for limiting their use is the same reason which caused you, many years ago, to place the second, fifth, and sixth exemptions in the Freedom of Information Act. And as we informed you by furnishing a copy of the most recent Federal District Court

decision in Vaughn v. Rosen, the courts have confirmed the validity of your judgment. Even the Supreme Court, in two Freedom of Information Act decisions published within the past month, found wholly appropriate and consistent with the Act the maintenance of confidentiality for documentation which reflected the tentative nature of determinations entertained between agencies prior to final agency action.

You will remember that for several months in late 1974 we had fairly extensive communication with you, and some of this dealt with why the reports deserved confidential treatment. We offered to furnish information that would satisfy legislative needs concerning particular programs of specific agencies, but you declined to accept this. While, when Mr. Rosen, Mr. Mondello, and I visited with you, you expressed your displeasure at the fact that our reports were not released to the public, you said nothing to lead us to believe you would engage in wide-ranging disclosures of the kind you have made. Your letters affirmatively led us to think the reports were needed for Committee use. Your letter dated August 23, 1974, for example, told us that "as a Member of the Government Operations Committee these reports will be invaluable to me." When, in your letter dated November 21, 1974, you declined to accept the "caveat" calling for "U.S. Government Use Only," you based your discretion on being a "Member of the House." And in the letter dated April 7, 1975, you state a need to obtain further documentation in order to further your "investigation." We were therefore disappointed in the ad hoc and selective releases made, and the erroneous statements which attended them.

It should be very clear that the reports are essentially problem oriented and, hence, are typically critical in content and tone. We do not usually describe how well an agency is doing in a particular area, except for the purpose of comparison with what we may have identified as agency shortcomings in that area. Our aim is to discover errors or problems for the purpose of achieving correction, in the expectation that agencies will understand the difference, correct serious past errors which have affected their employees, and prospectively make systemic improvements which will result in more effective use of their civilian personnel resources, and will insure compliance with the statutes, rules, and regulations which govern the Federal personnel system.

It is important to note that findings made in such reports are never the result of adversary procedures (such as notice of complaint, answer, cross-examination, etc.) but are ordinarily the determinations of the Commission office making the evaluation. They are sometimes disputed by agency officials and by affected individual employees--but they are nonetheless observations of

agency activities made by knowledgeable evaluators, and we rely on them in our dealings with agencies to achieve improved compliance with merit system requirements. The determinations in many of these reports are tentative.

In addition, it seems that only reports containing evidence of seriously deficient conditions and those which reflect inadequate agency action toward curing the ills complained of in an earlier report have been released. No account was taken of information on agency improvement which occurred subsequent to completion of any single report. As a result, this piecemeal and dated release has been (1) unfair to agencies, (2) perhaps unfair as well to individuals whose functions make them readily identifiable, (3) damaging to the evaluation program, and (4) misleading to the public--therefore unwarrantedly impairing the public's confidence in Government.

This ad hoc approach is to be contrasted with more characteristic forms of Congressional oversight where a subcommittee assures itself that it has seen all relevant documents and interviewed all major participants, holds hearings on the open record which are fair to all concerned, and issues a report of its findings and conclusions (including comment on the necessity or desirability of new legislation) after discussion among subcommittee members and with opportunity for concurring and dissenting statements. The public would, in that fashion, get all of the facts.

We would not shrink from such measured accountability and oversight, as we have proved in recent hearings held by Chairman Henderson on integrity in merit system affairs. Those hearings may well result in new legislation which will advance the cause of effective personnel management, including some of the matters of which you complain.

Had we known that the reports would be used differently from their invariable past use, we would either have insisted on the request being confirmed over the signature of the Committee or a Subcommittee Chairman, or we would have declined to furnish the reports.

In any case, and as I believe you know, the legislative history of the Freedom of Information Act makes it clear that an individual Congressman has no greater right to documentation than any member of the public. And, in this connection, we have regularly denied disclosure of these reports to the public on the basis of exemptions 2, 5, and 6 of the Freedom of Information Act. Before finally

deciding whether to invoke those exemptions in connection with your request, however, we wish thoroughly to review our past policies and practices in this area. Also, and since we think that the issues raised here may well have implications for the Government generally, we shall probably discuss these matters with others in the executive branch before reaching a final decision.

To be sure, we do not have a fixed view that the current evaluation program is the best that can be devised. We are certain, however, that the current spate of disclosures will in time cause major changes in its effectiveness for any purpose. Because we feel keenly our responsibility as the Federal Government's principal personnel agency, we must, of course, act to protect against deterioration of the system's salutary processes. It is for this reason that we feel obliged to take the time necessary thoroughly to consider your request and all of its implications. Obviously, we would welcome any additional comments you may have. In any case, however, you may be assured that we will be writing to you further as soon as we have completed our review of Commission policies and practices with respect to the release of reports to individual Members of Congress.

In the meantime, should you wish to discuss this further, I will be glad to meet with you.

Sincerely yours,

Robert Hampton

Robert E. Hampton
Chairman

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

Honorable Burt Talcott
House of Representatives
Washington, D.C. 20515

Dear Mr. Talcott:

As requested in your letter of May 27, 1975, we have enclosed copies of the following six personnel management evaluation reports.

Review of Personnel Management in the National Technical Information Service, December 1974

Equal Employment Opportunity at the Equal Employment Opportunity Commission (Nationwide), March 1973

Personnel Management at the National Science Foundation (Nationwide), March 1973

Review of the Equal Employment Opportunity Program at the Smithsonian Institution, September 1973

Merchant Marine Academy, Kings Point, New York, February-March 1973 (Also included is the March 7, 1974 follow-up review on this installation)

We are, of course, pleased to be of assistance to you in the discharge of your various legislative responsibilities. Indeed, the Commission has traditionally assisted Members of Congress in this manner and we feel that we have benefited greatly from the feed-back we have received as a result of making copies of these materials available to interested Members of Congress.

At the same time, we are troubled by the recent public disclosures by one Member of Congress, which you note in your letter, of portions of the evaluation reports you have requested. For the reasons discussed later in this letter, we have not in the past made such reports available to the public. While that determination has been challenged in court under the Freedom of Information Act (FOIA) in a case entitled Vaughn v. Rosen, we are confident that our position in this regard will be upheld. Indeed, the United States District Court has already authorized us to protect from disclosure to the public those portions of our reports (1) which linked our evaluations to individuals or made references to individuals which would violate their privacy, and (2) which consisted of "Action Items" and advice and recommendations, tentative in nature, as to how agency managers could improve the effectiveness of personnel operations. The question whether the remaining aspects of the reports are similarly protected from disclosure is currently pending before the United States Court of Appeals for the District of Columbia Circuit.

At all events, and as we have recently explained to the Congressman concerned, if we had known that the reports given to him would be publicly disclosed, we would either have insisted on the request being confirmed over the signature of the pertinent Committee or Subcommittee Chairman, or we would have declined to furnish them. For, obviously, release of our evaluation reports in this fashion effectively negates the exemptions of the FOIA and undermines the Congressional policy which authorized their use. And, in this connection, we believe that the legislative history of the FOIA makes it clear that an individual Member of Congress acting without the sanction of his or her committee or subcommittee has no greater right to documentation than any member of the public.

The point is that the Commission has for many years made its evaluation reports available to interested Members of Congress with the clear designation as to their use only for official Government purposes. Until the release of the reports described above, to our knowledge no individual Member of Congress had ever acted contrary to that statement by releasing reports to the public. Our concern over this recent break with the invariable past practice of Members of Congress is based, among other factors, upon the fragmentary nature of single reports. That is, in the normal working out of our evaluation process, our submission of a report to an agency generally constitutes the beginning of a series of discussions and actions in which the agency takes corrective actions both in individual cases and as a matter of prospective systemic improvement. Some of these matters are documented in our files, and only by looking at the reports and this attendant documentation can a balanced judgment be made on the effectiveness of

an agency's performance. Subsequent correspondence and reports on a single agency will contain reflections of the shortcomings stated in earlier reports, and assessments of whether the former ills have been cured.

What has been happening with the recent disclosures is that the Congressman has released only reports containing seriously deficient conditions, and those which reflect inadequate agency action toward curing the ills complained of in an earlier report. Information on agency improvement which occurred subsequent to completion of any single report has not been taken into account. This kind of ad hoc and selective release of information from our reports is (1) unfair to agencies, (2) perhaps unfair to individuals whose functions make them readily identifiable, (3) damaging to the evaluation program, for example, by inhibiting the kind of candor and free exchange of ideas that must be present for any inspection/evaluation program to be effective, and (4) misleading to the public, and therefore unwarrantedly impairing the citizen's confidence in Government. The general impression created by these disclosures and by the attendant public statements about them reflect badly, and erroneously, on executive branch agencies.

These recent actions confirm our long-standing view that public disclosure of our inspection reports -- reports which, again, are typically tentative in the conclusions they reach -- would disserve our personnel management evaluation program. To be sure, we do not have a fixed view that the current evaluation program is the best that can be devised. We are certain, however, that the current spate of disclosures will in time cause major changes in its effectiveness for any purpose. Because we feel keenly our responsibility as the Federal Government's principal personnel agency, we must, of course, act to protect against deterioration of the system's salutary processes. Therefore, in making these same materials available to you, we do expressly ask that you make no further intrusions into the confidentiality of the documents. That is, we request that you treat the reports as "For U.S. Government Use Only." If you have any questions about our policy and practice in this regard, please let us know and we shall be happy to discuss the matter further with you.

Sincerely yours,

Robert E. Hampton
Chairman

Identical ltrs. sent:
~~Hon. Burt Talcott~~
Hon. Patricia Schroeder
Hon. Marjorie S. Holt
Hon. Henry A. Waxman