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UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

MEMORANDUM FOR: Honorable John O. Marsh, Jr.
Counsellor to the President

This is in response to your memorandum of November 16.


On Wednesday, November 17, I met with Mr. Jule Sugarman and Ms. Jeffalyn Johnson. Mr. Sugarman was identified to us in a letter from Jack Watson as a member of President-elect Carter's Transition Group who will be particularly concerned with Federal personnel management matters.

At our meeting, I provided Mr. Sugarman and Ms. Johnson with copies of my memos of November 8 and November 10, 1976, to Directors of Personnel.* I also provided them additional statistical information on equal employment opportunity and labor management relations.

Mr. Sugarman indicated at that time that he had developed a list of several issue questions that he wanted to explore through a special task force. We have agreed to participate in the work of that task force to assist in addressing the issues he identified. *(A list of these issues is attached)*

I trust that this is responsive to your needs.

** copies attached*


Raymond Jacobson
Executive Director

cc: Honorable James E. Connor
Secretary to the Cabinet





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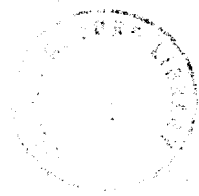
Raymond Jacobson
Raymond Jacobson
Executive Director

cc: Honorable James E. Connor
Secretary to the Cabinet



Major Issues

1. Pressures to Change the Present Executive Branch Organization for Personnel Management
2. The Role of Pay and Benefits
3. Retirement Funding Issues
4. Increasing the Confidence of the Public in Its Government by Assuring a High Quality Work Force
5. The Political Rights of Career Employees (Hatch Act)
6. The Future of Labor-Management Relations



Memorandum

Subject: Transition Information

Date: November 10, 1976

In Reply Refer To:

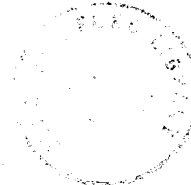
From: Raymond Jacobson
Executive Director

Your Reference:

To: Directors of Personnel

The attached material describes positions which are subject to change with a new Administration, and how individuals are appointed to and removed from these positions. This information has been prepared to ensure a common understanding of these processes by those responsible for planning the transition to the new Administration. We urge you to use this material as a basis for any discussions on these subjects that you may have with representatives of the new Administration.

Attachment



Keep Freedom in Your Future With U.S. Savings Bonds

FACT SHEET

CIVIL SERVICE AND TRANSITION TO A NEW ADMINISTRATION

To aid in carrying out the mandate of the voters, each Administration has the opportunity to appoint a number of officials in the various departments and agencies essentially on the basis of their support for its political aims and policies. These officials are generally those who are responsible within the departments and agencies for formulating, advocating and directing Administration policies and programs, or are those who serve officials with such responsibilities in a confidential relationship.

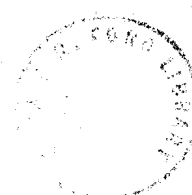
With the forthcoming change in Administration, a number of questions have been raised concerning the process by which the personnel changes contemplated in such a transition are effected. In the context of total Executive branch employment, only a few positions are subject to change in a new Administration. Most positions are in the competitive civil service or under a separate merit system. For such positions, it is a violation of civil service law, rules and regulations for political or other extraneous factors to enter into a personnel decision. (See 5 CFR Part 4, 5 U.S.C. §3301 et seq.)

Of course, it is traditional that the vast majority of the incumbents of positions which are subject to change resign before the new Administration takes office. However, there is no legal requirement that they do so. Moreover, it is also common for the incoming Administration to ask certain persons to remain on their jobs during the early stages of the new Administration to ensure needed continuity and provide required personnel during the initial period of staffing. Finally, in a few exceptional cases it is traditional that career employees occupy positions that as a legal matter could be filled on an essentially political basis. Typically, the incumbents of such positions remain in their jobs even though there has been a change of Administration. There is no list of positions of this type, which can be identified only by reviewing the history of the position in question.

In any event, positions that are subject to change with the change in Administration are excepted from the competitive civil service by statute, Executive order or Civil Service Commission regulations. There are essentially three categories of such positions -- (1) Presidential appointees or direct appointees of the agency head; (2) Noncareer Executive Assignments; and (3) Schedule C positions. In addition, certain other positions are excepted from the competitive civil service. With respect to each such category of positions, the following matters should be kept in mind.

Appointment by President or Head of Agency

The first group of positions which are subject to change are:



- Presidential appointments made with Congressional confirmation or with the advice and consent of the Senate to positions in which the incumbent serves at the pleasure of the President;
- Presidential appointments to positions in which the incumbent serves at the pleasure of the President; and
- Appointments to positions which are statutorily excepted from the competitive service in which the incumbent serves at the pleasure of the head of the agency.

(a) Positions Included

Positions in these three categories include Cabinet officers and heads of other Executive branch agencies; Under Secretaries; Assistant Secretaries; certain Directors of Bureaus, Services, or Administrations; and Chairmen and Members of Commissions and Committees. Positions in these categories are authorized by specific provisions of law. Most are in the Executive Schedule, but some are under the General Schedule or other pay system.

(b) Removal of Individuals Appointed by President or Head of Agency

Officers and employees who serve "at the pleasure of" the President or other appointing official may be asked to resign or be dismissed at any time. They are not covered by any Civil Service removal procedures and have no right of appeal. Some persons appointed by the President, such as members of quasi-judicial regulatory agencies, may only be removed for cause. The Office of Legal Counsel at the Department of Justice is the expert in this field. The issue is discussed in such cases as: Myers v. U.S., 272 U.S. 52; Humphrey's Executor v. U.S., 295 U.S. 602; Wiener v. U.S., 357 U.S. 349; and Buckley v. Valeo, 424 U.S. 1.

Noncareer Executive Assignments

Noncareer Executive Assignments (NEA) are positions at GS-16, -17, and -18 that are administratively excepted from the competitive civil service by action of the Civil Service Commission because the positions require that the incumbent:

- Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;
- Participate significantly in the determination of major political policies of the Administration; or
- Serve principally as personal assistant or advisor of a Presidential appointee or other key political figure.

In some cases, involving agencies that are statutorily excepted from the competitive service, positions equivalent to NEA's are established by statute.

(a) Establishment of Position

Under Civil Service Rule IX (Tab E) the Civil Service Commission authorizes, on a case-by-case basis, the establishment of NEA positions, classifies the position at the appropriate grade level, approves the qualification requirements and reviews the qualifications of the individual proposed by the agency for the position. The individual may not be appointed unless the Commission approves his qualifications. The Commission also revokes the authority for an NEA position, after consultation with the agency concerned, when the Commission determines that it no longer meets one or more of the criteria for an NEA position. Currently, there are approximately 550 Non-career Executive Assignments. The Civil Service Commission's Bureau of Executive Manpower has information concerning these positions.

(b) Tenure

Upon an individual's appointment to an NEA position, the appointing officer must inform the incumbent that in order to remain in the position he or she must continue to maintain the qualifications and relationships that are required for the particular NEA. The individual may be removed when the qualifications or relationships for the assignment change or cease to exist.

(c) Procedures for Removal

The procedures for removing an individual from an NEA depend on:

- Whether the employee is entitled to veteran preference and has had at least one year of current continuous service in the position; or
- Whether the employee was serving in the position in the competitive service when the Commission authorized its conversion on a Noncareer Executive Assignment and is still serving in that position (i.e., has status in the position). (c.f. Roth v. Brownell, 215 F. 2d 500)

An individual who does not meet either of these criteria is not covered by statutory procedures and has no right to appeal a removal action to the Civil Service Commission. However, the removal of such an individual must be in accordance with any procedures which have been established by the employing agency. [Vitarelli v. Seaton, 359 U.S. 539 (1959); Watson v. U.S., 162 F. Supp. 755 (Ct. Cl. 1958)] A sample notice of separation for such a non-status, non-preference eligible is contained in Tab A. In addition all employees gain hearing rights if their reputations are stigmatized by the dismissal - i.e. the stated grounds damage one's reputation good name in the community (e.g. Wisconsin v. Constantineau,



400 U.S. 433 (1970); Casey v. Roudebush, 395 F. Supp. 60 (D. Md. 1975); Stretton v. VA Hospital, 537 F.2d 361(CA 9, 1976). For this reason all of the attached sample notices of separation are bland in character.

The removal of an employee who is either entitled to veteran preference or has status in the position must be "for such cause as will promote the efficiency of the service" and in accordance with the procedures established by 5 U.S.C. 7511 et seq. and Part 752 of the Commission's regulations. These procedures provide for the right: 1) to a 30-day advance written notice which states the reasons for the proposed removal specifically and in detail; 2) to reply personally and in writing; 3) to have the reply considered; and 4) to a written decision stating the reasons for the action by an official at a higher level than the official who proposed the action (unless the action was proposed by the head of the agency). The employee may appeal the action to the Civil Service Commission. On appeal the Commission reviews the action for procedural correctness, but restricts its examination of the merits to a verification of the nature of the appointment and that the reasons given for the action relate to the confidential, advocacy, or policy-determining character of the appointment. Thus, with positions of this sort, the Commission does not second-guess the substantive reasons for removal so long as the stated reasons address the confidential or policy-making imperatives of the position.

In this connection it should be noted that removal for loss of confidence comes within the concept of "for such cause as will promote the efficiency of the service" when the incumbent occupies the policy-making or confidential position, i.e., a Noncareer Executive or Schedule C. [Leonard v. Douglas, 321 F.2d 749 (D.C. Cir. June 26, 1963)] The Supreme Court's recent decision in Elrod v. Burns appears to lend additional weight to the constitutionality of permitting political affiliation to be a factor in appointments to or removals from policy-making or confidential positions, as distinguished from other positions.

Tab B contains a sample letter of proposed removal for an individual who is covered by Part 752 of the Commission's regulations. A chart outlining adverse action coverage and procedures for excepted service employees is also attached. For additional information, see Part 752 of the Commission's regulations and Federal Personnel Manual Supplement 752-1.

Schedule C Positions

The final category of positions which are subject to change in the transition to a new Administration are appointments to Schedule C positions, or their equivalents in agencies that are statutorily excepted from the competitive service. Schedule C positions consist almost exclusively of jobs at GS-15 and below which the Civil Service Commission has excepted from the competitive civil service because they:

- Include policy-determining responsibilities; or

- Require the incumbent to serve in a confidential relationship to a key official.

(a) Establishment of Positions

Except for the difference in grade level, Schedule C positions are very similar to Noncareer Executive Assignments. As with NEA's, the Commission authorizes the establishment of each Schedule C position and may revoke the authority when the position changes. However, unlike NEA's, the Commission does not review the qualifications of a Schedule C appointee; final authority on this matter rests with the appointing official. Currently, there are about 1000 Schedule C positions. The list of these positions is published annually in Part 213 of the Commission's regulations and is updated as changes occur by publication in the Federal Register.

(b) Procedures for Removal

The same basic procedures used for removals from Noncareer Executive Assignments apply to removals from Schedule C positions. Individuals who are preference eligibles or have status in the position are covered by Part 752. (See Roth v. Brownell, 215 F. 2d 500) Tabs C and D contain sample notices of proposed removal from policy-determining and confidential positions for such persons. Tab A is a sample notice of proposed removal where neither veteran preference or status in the position is involved.

Other Excepted Service Positions

In addition to the policy-making or confidential positions described in the preceding section, certain agencies and groups of positions are also excepted by statute, Executive order, or Commission action from the competitive civil service. These exceptions have been made for a variety of reasons, none of which relate to the political factors associated with the initial three categories. Examples of positions which have been excepted by statute include doctors, dentists, and nurses in the Department of Medicine and Surgery of the Veterans Administration, the Foreign Service of the Department of State, the Federal Bureau of Investigation of the Department of Justice; and all positions in the Tennessee Valley Authority, the Energy Research and Development Administration, the Nuclear Regulatory Commission, and the Postal Service. Most of these positions are under special merit systems and are not subject to change in a new Administration. There are about 100,000 positions which are excepted from the competitive service by Executive order. Most of these are jobs overseas held by foreign nationals.

Finally, there are two other categories of positions which the Civil Service Commission has administratively excepted from the competitive service. Schedule A positions are those which are not of a confidential or policy-determining character, but for which it is not practicable to hold any examination. Examples of positions in Schedule A include chaplains, teachers in military dependent school systems overseas, faculty positions of Service academies, narcotics agents for undercover work, and certain positions

at isolated localities. Attorney positions are also in Schedule A because the Commission is prohibited in its appropriations legislation from spending funds to examine for attorney positions. There are about 100,000 positions in this schedule.

Schedule B positions are those which are not of a confidential or policy-determining character, but for which it is impracticable to administer competitive examinations. However, an individual must pass a noncompetitive examination for appointment to a Schedule B position. Examples include student trainee positions, National Bank examiners in the Treasury Department, and loan specialists in the Export-Import Bank.

The above paragraphs discuss general principles and procedures only. Should additional information be required, the Commission's Office of General Counsel should be contacted - 632-4632. A short discussion of the definition of "involuntary separation" for retirement purpose is also included in Tab G. For additional information on eligibility for retirement, contact the Bureau of Retirement, Insurance, and Occupational Health.

SAMPLE OF NOTICE OF REMOVAL OF AN EMPLOYEE WHO IS NOT COVERED BY ANY
PROVISION OF LAW, CIVIL SERVICE REGULATION OR APPROPRIATE AGENCY
REGULATION

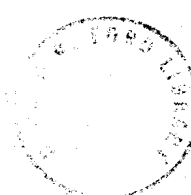
Mr. C.B. Blank
4731 99th Avenue
Washington, D.C. 23456

Dear Mr. Blank:

This is to notify you that your services as _____
_____ will be terminated effective at the close
of business, _____ 1977. This action should not be con-
strued in any way as a reflection on you personally.

Sincerely yours,

(Name)
(Title)



1a0 B

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.202 OF THE CIVIL SERVICE
REGULATIONS TO REMOVE AN EMPLOYEE SERVING IN A NONCAREER EXECUTIVE
ASSIGNMENT

Mr. C.B. Blank
8502 Hagerstown Road
Washington, D.C. 23456

Dear Mr. Blank:

As Secretary of Public Insurance I plan to make several adjustments in the immediate staff upon which I must depend to carry out my day-to-day responsibilities. The position of Chief, Policy Review Staff, that you occupy is one of those affected. It is excepted from the competitive service under Civil Service Rule 9.20 and section 305.601 of the Civil Service Regulations because the Civil Service Commission found that there was a need for filling this position by a person who would participate significantly in the determination of major policies of the Administration. The policy-determining character of your position is evidenced by the attached description of its duties which is hereby made a part of this letter.

Because your position requires participation in the determination of major policies of the Administration, it is an inherent qualification requirement that the incumbent be an individual who has the full confidence of and can work closely with the Secretary of Public Insurance in determining the policies of the department or agency. With the departure of the previous Secretary, and as a result of my accession to the position, this relationship has ceased to exist and does not now exist between you and me. As you were informed at the time of your appointment, the maintenance of this relationship constitutes a qualification required for continuance of your Noncareer Executive Assignment, and in accordance with Civil Service Rule 9.23, I propose to remove you from your position of Chief, Policy Review Staff, no earlier than 30 days from the date of your receipt of this notice.

I wish to assure you that these are the only reasons for this action and that this notice is provided to meet the requirements of section 752.202 of the Civil Service Regulations. Your written answer to this proposal, with any supporting documents or affidavits, and any request to answer personally, should be directed to my personal attention within the next ten calendar days.

Let me assure you that full consideration will be given to any reply and support therefor that you care to submit. As promptly as possible after such consideration, or after the time for reply has passed, a final



notice of decision will be issued to you. Meanwhile, you may continue in your position in either an active duty or leave status, as you prefer.

Sincerely yours,

T.B. Bernard*
Secretary of Public Insurance

*The proposed action should be made by the agency official with delegated authority to do so. The decision must be made by an official at a higher level than the official who proposed the action, unless the action is proposed by the head of the agency.

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.202 OF THE CIVIL SERVICE
REGULATIONS TO REMOVE AN EMPLOYEE IN A POLICY-DETERMINING SCHEDULE C
POSITION

Mr. A.C. Sloe
7809 Mayday Avenue
Washington, D.C. 23456

Dear Mr. Sloe:

As Secretary of Public Insurance I plan to make several adjustments in the immediate staff upon which I must depend to carry out my day-to-day responsibilities. The position of Special Assistant that you occupy is one of those affected. It is excepted from the competitive service under Schedule C of Part 213 of the Civil Service Regulations because of its policy-determining character, as is evidenced by the attached description of its duties which is hereby made a part of this letter.

Because your position requires that you participate in determining agency policies, it is an inherent qualification that the incumbent be an individual who has the full confidence of and can work closely with the Secretary of Public Insurance in determining the policies of the agency. With the departure of the previous Secretary, and as a result of my accession to the position, this relationship has ceased to exist and does not now exist between you and me. For this reason I propose to remove you from your position as Special Assistant no earlier than 30 days from the date of your receipt of this notice.

I wish to assure you that these are the only reasons for this action and that this notice is provided to meet the requirements of section 752.202 of the Civil Service Regulations. Your written answer to this proposal with any supporting documents or affidavits, and any request to answer personally, should be directed to my personal attention within the next ten calendar days.

Let me assure you that full consideration will be given to any reply and support therefor that you care to submit. As promptly as possible after such consideration, or after the time for reply has passed, a



final notice of decision will be issued to you. Meanwhile, you may continue in your position in either an active duty or leave status, as you prefer.

Sincerely yours,

T.B. Bernard*
Secretary of Public Insurance

*The proposed action should be made by the agency official with delegated authority to do so. The decision must be made by an official at a higher level than the official who proposed the action, unless the action is proposed by the head of the agency.

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.202 OF THE CIVIL SERVICE
REGULATIONS TO REMOVE AN EMPLOYEE IN A CONFIDENTIAL SCHEDULE C POSITION

Mr. D.O. Davis
1234 Ace Place
Washington, D.C. 24680

Dear Mr. Davis:

As Secretary of Public Insurance I plan to make several adjustments in the immediate staff upon which I must depend to carry out my day-to-day responsibilities. The position of Confidential Assistant that you occupy is one of those affected. It is excepted from the competitive service under Schedule C of Part 213 of the Civil Service Regulations because of its confidential character, as is evidenced by the attached description of its duties which is hereby made a part of this letter.

It is inherent in the character of a confidential position that the incumbent thereof shall be an individual suitable to his superior and a person in whom he has complete personal confidence and trust. With the departure of Mr. Brown from the position of Secretary of Public Insurance, this relationship ceased to exist and does not now exist between you and me. For this reason, I propose to remove you from your position of Confidential Assistant no earlier than 30 days from the date of your receipt of this notice.

I wish to assure you that these are the only reasons for this action and that this notice is provided to meet the requirements of section 752.202 of the Civil Service Regulations. Your written answer to this proposal, with any supporting documents or affidavits, and any request to answer personally, should be directed to my personal attention within the next ten calendar days.

Let me assure you that full consideration will be given to any reply and support therefor that you care to submit. As promptly as possible after such consideration, or after the time for reply has passed, a final notice of decision will be issued to you. Meanwhile, you may continue in your position in either an active duty or leave status, as you prefer.

Sincerely yours,

T.B. Bernard*
Secretary of Public Insurance

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RULE VIII APPOINTMENTS TO OVERSEAS POSITIONS

Sec. 8.1 Additional authority of the Commission. In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding rules, the Commission may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in section 2 of this rule. As used in this rule, *overseas positions* means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in section 8.4 hereof.

Sec. 8.2 Appointment of United States citizens. United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of the Commission for overseas positions may be given appointments to be known as *overseas limited appointments*. Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. The Commission may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended, unless eligible for retirement benefits by continuity of service or otherwise.

Sec. 8.3 Appointment of persons not citizens of the United States. Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

Sec. 8.4 Positions excepted from the application of this rule. This rule shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

RULE IX EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS-16, -17, AND -18 OF THE GENERAL SCHEDULE¹***In General***

Sec. 9.1 Coverage. Except as otherwise provided by law, this rule applies to:

(a) Positions in grades 16, 17, and 18 of the General Schedule that are in the executive branch, except positions excluded from the coverage of 5 U.S.C. 3324(a) by paragraphs (1), (2), and (4) thereof and any position now or hereafter excepted under Civil Service Rule VI so long as that exception remains in effect; and

(b) Persons who are given executive assignments to these positions.

Sec. 9.2 Filling positions covered by this rule. An appointing officer shall fill a position covered by this rule by career executive assignment, unless the Commission authorizes a limited executive assignment under section 9.6 of this rule or a noncareer executive assignment under section 9.20 of this rule.

Career Executive Assignments

Sec. 9.3 Qualifications required for a career executive assignment. After appropriate consultation with the agency concerned the Commission shall establish specific qualification standards for assignment to a career executive assignment.

Sec. 9.4 Recruitment for career executive assignments. (a) Before selecting any person for a career executive assignment the appointing officer shall first consider fully employees under his agency's merit promotion program and available employees of other Federal agencies qualified pursuant to paragraph (b) of this section. Only after this consideration may the appointing officer elect to recruit applicants from outside the Federal service pursuant to paragraph (b) of this section.

¹ Added Nov. 17, 1966, to become effective as specified in section 3 of E.O. 11315.

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¹ Added Nov. 17, 1966, to become effective as specified in section 3 of E.O. 11315.

(b) The Commission shall be responsible for the establishment of special facilities, including special boards and panels, to recruit well-qualified persons for career executive assignments in the Federal service from among employees holding career executive assignments, other eligible employees, and persons outside the Federal service. The appointing officer shall use these special facilities, including special boards and panels, to recruit applicants from outside the Federal service.

(c) The procedures in this section do not apply when the Commission authorizes the movement of an incumbent career executive to a career executive assignment at the same or lower grade.

Sec. 9.5 Career executive assignments; selection and assignment. (a) An appointing officer shall select a person for a career executive assignment solely on the basis of merit and fitness. He shall not permit or consider any political test, qualification, clearance, or recommendation, and shall not discriminate on the basis of race, religion, national origin, sex, age, or physical disability.

(b) The appointing officer may make a career executive assignment only after the Commission has finally approved the qualifications and suitability of the person selected.

Sec. 9.6 Authorization of limited executive assignments. (a) The Commission may authorize agencies to fill a position covered by this rule by a limited executive assignment when:

(1) The position is expected to be of limited duration; or

(2) The agency concerned establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for career executive assignments.

(b) The Commission shall specify a time limit within which an agency may use this authority and may revoke this authority at any time.

Sec. 9.7 Qualifications required for a limited executive assignment. After appropriate consultation with the agency concerned the Commission shall establish specific qualification

standards for assignment to a limited executive assignment.

Sec. 9.8 Limited executive assignment; selection and assignment. An appointing officer may make a limited executive assignment only after the Commission has finally approved the qualifications of the person selected.

Sec. 9.9 Removal from a limited executive assignment. An appointing officer may remove a person from a limited executive assignment when, in his judgment, the purpose of the assignment has been served or conditions warrant discontinuance of the assignment.

Sec. 9.10 Limited executive assignment; change to other type of appointment. If a person completes five years of continuous service in an agency in a limited executive assignment the appointing officer shall:

(a) Convert his assignment to a career executive assignment, or to a noncareer executive assignment;

(b) Give him a career appointment to a continuing position in the competitive service in grade GS-15, or below; or

(c) Separate him from the service.

Sec. 9.11. Specified noncareer executive assignments. The regional director, regional administrator, or the Secretary's principal regional representative positions in the Departments of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency and the Small Business Administration shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this section.←

Noncareer Executive Assignments

Sec. 9.20 Exception of positions to be filled by noncareer executive assignments. (a) After

consulting the agency concerned, the Commission may except a position from the procedures required for making career executive assignments and authorize an agency to fill the position by a noncareer executive assignment when it determines that there is a need for filling the position by a person who will:

(1) Be deeply involved in the advocacy of administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(b) In determining the positions to be excepted under paragraph (a) of this section the Commission shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in grades 16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which noncareer executive assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which noncareer executive assignments would be inappropriate.

(c) The Commission shall not except a position which has as its principal responsibility the internal management of an agency, or a position involving long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature. However, a position concerned with the direction of a scientific program could be appropriately excepted when it meets

the criteria set forth in paragraph (a) (1), (2), or (3) of this section.

(d) The Commission shall review periodically the exceptions made under this section and after consulting the agency concerned, shall revoke an exception when the position no longer meets the criteria for exception. Civil Service Rule III, providing for the noncompetitive acquisition of competitive status, shall not apply in such a case.

(e) Notice of the Commission's decision to grant or revoke authority to make noncareer executive assignments shall be published in the Federal Register.

SEC. 9.21 Qualifications required for a noncareer executive assignment. After appropriate consultation with the agency concerned the Commission shall establish specific qualification standards for assignment to a noncareer executive assignment. In addition as a qualification for continuance in a noncareer executive assignment, the incumbent must continue to maintain the qualifications and relationships that are required for the particular noncareer executive assignment.

SEC. 9.22 Noncareer executive assignment; selection and assignment. An appointing officer may make a noncareer executive assignment only after the Commission has finally approved the qualifications of the person selected. He shall inform each person selected of the qualifications required under section 9.21 of this rule for assignment to and continuance in a noncareer executive assignment.

SEC. 9.23 Removal from a noncareer executive assignment. An appointing officer shall remove a person from a noncareer executive assignment when the person's qualifications or relationships required for the assignment change or cease to exist.



PROCEDURES FOR REMOVALS FROM EXCEPTED POSITIONS

Status of employee	Procedure required	Appeal privileges
1. All employees with less than one year of current employment under temporary appointment.	Notification only	none
2. All employees serving under Presidential appointments with confirmation by the Senate.	Notification only	none
3. Nonveterans without personal status ¹ or status in their positions. ²	Notification only	none
4. Veterans:	Notification only	none
a. With less than one year of current continuous employment serving in positions excepted by statute; or in Schedule A or C; or filled by non-career executive assignment.		
b. With less than one year of current continuous employment and without personal status serving under Schedule B.	Notification only	none
5. All employees:	The removal must be for such cause as will promote the efficiency of the service.	Appeal to Civil Service Commission covers sufficiency of reasons for removal as well as compliance with prescribed procedures.
a. With personal status serving in Schedule B.		

Status of employee	Procedure required	Appeal privileges
b. With status in their positions serving in Schedule A, B, or C.	The employee is entitled to: <ul style="list-style-type: none">- a notice in writing at least 30 days in advance of the proposed removal and the specific reasons for it;- a reasonable time to answer and the reply must be considered in reaching a decision;- a written decision by a higher level official than the official who proposed the action (unless it was proposed by the head of the agency) containing the reasons for the action	
6. Veterans with one year or more of current continuous employment serving in positions excepted by statute; or in Schedule A, B, or C; or filled by Noncareer Executive Assignment.	<ul style="list-style-type: none">- the right of appeal to the Commission.	

NOTE: Bracketed "Procedure required" and "Appeal privileges" apply to 5a, 5b, and 6.

1. Personal status is civil service status acquired during a period of competitive service.
2. An employee has status in his position if (a) he was serving, with civil service status, in a position in the competitive service when the Civil Service Commission listed the position in Schedule A, B, or C, and (b) he is still serving in that position. This covers employees in attorney positions on January 23, 1955, who were serving with civil service status in attorney positions on May 1, 1947, and who have served continuously in attorney positions between those dates, even though movement to a different agency or activity between those dates may have been effected as an "excepted appointment."

**MEANING OF "INVOLUNTARY SEPARATION"
FOR PURPOSES OF "DISCONTINUED-SERVICE RETIREMENT"**

The following quotation from Federal Personnel Manual Supp. 831-1, S11-2, gives a concise statement of the Commission's interpretation of involuntary separation:

"The term involuntary separation means any separation against the will and without the consent of the employee, other than separation for cause on charges of misconduct or delinquency. * * * [W]hether a separation is involuntary depends upon all the facts in a particular case; it is the true substance of the action which governs rather than the methods followed or the terminology used. * * *."

The examples given in the Federal Personnel Manual Supplement are guides for particular types of situations and illustrations from which parallels may be drawn in similar cases. They are not intended to give final answers in all conceivable circumstances. Further illustrations, particularly adapted to situations which may be encountered in a change of Administration, are furnished below.

I. Presidential Appointees

Officers who serve at the pleasure of the President, whose replacement is customary with change of Administration--resignation at any time after election day is considered an involuntary separation.

Officers with fixed terms--resignation at the request of the incoming Administration or courtesy resignation that is offered to and accepted by the incoming Administration is considered an involuntary separation.

II. Non-Presidential Appointees

Any officer or employee who submits his resignation in response to a specific request from a recognized representative of the incoming Administration, or from an appropriate individual who holds office now or after January 20, will be considered as involuntarily separated unless the circumstances in the case include charges of misconduct or delinquency. An application for immediate annuity based on separation resulting from such a resignation should be accompanied by an agency letter setting forth the facts in the case.

Separations resulting from unsolicited resignations and based only on a belief or on the possibility that the new Administration may request a resignation

will be considered voluntary. In this same category are resignations of incumbents who resign because of personal conviction or by their own choice. Acceptance of the types of resignations described in this paragraph as involuntary would go beyond the intent of the retirement law and, in effect, would create opportunities for purely optional retirement.

The above examples are not all-inclusive. Individual cases will be considered on their merits, and separations determined involuntary whenever the facts support such a conclusion.

INTERAGENCY ADVISORY GROUP

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November 8, 1976

TO: DIRECTORS OF PERSONNEL

FROM: Raymond Jacobson
Executive Director

for 11/8

SUBJECT: Briefing Guidelines on Personal and Personnel Management

Enclosed are briefing guidelines on personal and personnel management topics that you may find useful. They were developed as part of our efforts in the Policy Executive Briefing Program (see "Public Service Briefing Program for Policy Executives" pp. 21-25, Civil Service Journal, April/June 1976).

These guidelines are just that--guidelines. They are intended only to suggest what areas you would probably want to cover when briefing new policy executives. They are not intended to provide all the details or information you will need; however, they may prove useful in providing a framework upon which you can build a presentation.

Whether you use these guidelines or not, I would very much appreciate any suggestions or comments you may have on them since they will probably become part of a larger briefing package.

Joseph Cerio (632-7630) Office of Agency Assistance and Resource Coordination, Bureau of Training is coordinating our efforts on this project.

Enclosure



POLICY EXECUTIVES BRIEFING MATERIALS

- PERSONNEL MANAGEMENT
- PERSONAL CONCERNS



PREFACE

This document describes a set of guidelines designed to help Directors of Personnel develop and establish an in-house orientation for policy executives. We believe such an effort will be useful in assisting individuals in their transition to major public office by informing them on some personal information they should have as well as on necessary personnel management matters.

It should be made clear at the outset that these guidelines are intended only to suggest the areas that Directors of Personnel would probably want to cover when briefing policy executives. As such, they are not meant to provide all the details or information that will be needed, but rather to provide a framework within which an orientation can be developed. This, we believe, allows the maximum amount of flexibility in design and implementation of such a program. Accordingly, it is not intended that this document be used as a reference by the executives themselves.

Section I which follows, describes Personnel Management while Section II addresses Personal Concerns of the policy executive. In addition, there are two appendixes, the first citing "agency authority," the second portraying the Federal Personnel System as it impacts on and is affected by the larger system of government.



I. PERSONNEL MANAGEMENT

FEDERAL EXECUTIVE DEPARTMENTS — AGENCIES

Federal executive departments are legislated into existence by Congress. They are mandated by law to achieve a specific mission or provide a specific service.

AGENCY AUTHORITY TO ACHIEVE THEIR MISSION

In order to achieve their missions, statutory authority is vested in a department or agency to implement and carry out the legislative policy. This authority to carry out its mandate is subject to any limitations imposed by statute or applicable Executive Order (see Appendix No. I, "Agency Authority").

PERSONNEL MANAGEMENT

The successful accomplishment of an organization's mission can only be achieved through the effective management of people. The mandate to achieve the mission and the need to employ people to succeed does not endorse the philosophy that "the end justifies the means." Agency authority to employ and manage people to achieve the mission is subject to limitations imposed by statute and Executive orders. While these statutes and Executive orders are referred to as "limitations", they are not only indicative of the growth of the Federal Personnel Management System, but are every bit as binding as statutes governing contracting, budgeting, accounting or other such activities associated with agency operations.

The earliest method of obtaining and managing Federal employees was a continuation of practices common in that time, such as the spoils system. The modern era of Federal personnel management is founded in merit principles and a bilateral approach to management.

There are a great number of personnel systems within the Legislative, Executive and Judicial Branches of the Federal Government. The larger number of Federal employees are in the Executive Branch. The majority of these employees come under the personnel system regulated by the U.S. Civil Service Commission. The U.S. Civil Service Commission was legislated into existence by the Civil Service Act of 1883 which ushered in the beginning of the Federal Personnel Management System by establishing open competition for Federal positions and merit principles in the selection process. Over the years, more and more positions were added to the competitive career service. For many reasons, it is not feasible to fill all needed positions in this fashion; this allows employment through excepted service and as consultants.



The Civil Service Commission receives its authority by Statute and Executive Orders and promulgates regulations to implement these policies (see Appendix No. II, "Federal Personnel System"):

- (1) Title 5, U.S. Code
- (2) Executive Orders
- (3) Regulations published in Federal Register
- (4) Title 5, Code of Federal Regulations
- (5) Policy, Guidelines, and Regulations contained in the Federal Personnel Manual (FPM)

A. PERSONNEL MANAGEMENT FUNCTIONS

All types of organizations or groups have similar challenges - to achieve a mission with the cooperation of people. The functions which all organizations share are:

1. MISSION/PURPOSE - Every organization or group of people have a mission to accomplish or purpose for existence.
2. TASK IDENTIFICATION - There must be an identification of the tasks that must be performed to achieve the mission.
3. CLASSIFICATION OF TASKS - These tasks must be assembled or collected in a fashion such that they can be assigned or delegated to specific individuals.
4. PAY SYSTEM - The organization must provide some reward to the individual for their time and contribution to achieving organizational goals.
5. MANPOWER PLANNING - In establishing or perpetuating an organization, plans must be made to determine how many - and when - people are needed.
6. RECRUITMENT - The organization may need to encourage or convince people to join it; other groups may have little problem in this area.
7. QUALIFICATIONS - the organization needs to determine if the people who wish to join will meet the needs of the group.
8. SELECTION - This requires a method of screening and selecting people who wish to join.

9. **PLACEMENT** - An organization needs a method of effectively placing and utilizing the people who have agreed to join the group.
 10. **TRAINING** - New people need to become familiar with the organization, the job they are to perform, or be prepared for future assignments.
 11. **EVALUATION** - Performance of individuals need to be monitored as well as the effectiveness of groups of people in an organization.
 12. **DISCIPLINE** - An organization needs a system for correcting or improving work performance as well as standards for performance and conduct that will build trust in the organization.
 13. **INCENTIVE AWARDS** - Organization may find it helpful to increase motivation of members of the group through recognition of their performance or of their ideas to help achieve the mission.
 14. **BENEFITS/SERVICES/RETIREMENT** - No organization could hope to retain people within the group unless related basic needs of individuals are met. These are fundamental needs a "self employed" individual would be concerned with. When an organization encourages an individual to forego one way of living for another it may be necessary to offer certain "advantages" to encourage them to remain. Meeting the needs of individuals encourages them to remain through many productive years.
- B. In the Federal government, these components of a personnel management system have evolved into formal program areas:
- Position Management and Classification
 - Staffing
 - Employee Development
 - Employee Relations
 - Labor - Management Relations
 - Equal Employment Opportunity

PRIMARY REFERENCES

FEDERAL PERSONNEL MANAGEMENT PROGRAMS

1. Position management and classification

Achieving the mission in the most effective and cost efficient manner.

- a. Manpower planning
- b. Classification and pay
 - General Schedule
 - Federal Wage System
 - Executive Schedule Pay Rates

FPM Chapter 250

FPM Chapter 312

FPM Chapter 250, 571

FPM Chapter 511, 530, 550

FPM Chapter 531

FPM Chapter 532

FPM Chapter 530

2. Staffing

Planning, obtaining, placing and retaining best qualified people in jobs using merit principles.

a. Recruitment

FPM Chapter 332

- (1) Co-operative education
- (2) EEO special emphasis programs

FPM Chapter 308

FPM Chapter 713

- (a) Minorities
- (b) Women
- (c) Worker - trainee opportunities

- (3) Selective placement of the handicapped
- (4) Veterans readjustment program

FPM Chapter 306

FPM Chapter 307

b. Selection

- (1) Qualification standards
- (2) Appointments

Handbook X-118, XI18C

- (a) Career - career conditional
- (b) Executive assignment (career)
- (c) Excepted Service

FPM Chapter 315

FPM Chapter 305

FPM Chapter 300, 302

c. Placement - within agency

- (1) Details
- (2) Reassignment
- (3) Promotion, merit promotion procedures

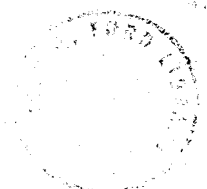
FPM Chapter 300

FPM Chapter 210

FPM Chapter 335

d. Reduction in Force

FPM Chapter 351



3. Employee development and evaluation

Developing employees through training, details, and assignment for present or future duties. The purpose is to provide an up-to-date efficient workforce contributing to effective and cost efficient operations.

- a. Performance evaluations FPM Chapter 430
- b. Training FPM Chapter 410
- c. Staff development programs

- (1) Technical, skills trades
- (2) Career intern program FPM Chapter 361
- (3) Supervisory, middle management FPM Chapter 412
- (4) Executive development

- (a) Federal Executive Institute
- (b) Federal Executive Development Program

- d. Incentives FPM Chapter 451

- Awards
- Employee suggestions

4. Employee relations

Literally, this program can deal with every aspect of managing personnel. Depending on individual agency delegations of responsibilities, Employee relations involves the following areas: FPM Chapter 250

- a. Management responsibilities and employee rights

- (1) Employee conduct
- (2) Ethics/conflict of interest FPM Chapter 735
- (3) Discipline FPM Chapter 715, 752

- (a) Cause
- (b) Efficiency of the service
- (c) Penalties

- (4) Grievances

- (a) Agency grievance procedures FPM Chapter 771
- (b) Negotiated grievance FPM Chapter 711 and
- (c) Procedures for affected employees labor-management agreement

(5) Adverse Actions

- (a) Disciplinary-nondisciplinary
- (b) Actions covered
- (c) Employees covered

FPM Chapter 752
FPM Chapter 754

- (6) Appeals, major categories
- (7) Freedom of Information
- (8) Privacy Act

FPM Chapter 772
FOI Act
Privacy Act
12/31/74

b. Employee Benefits

(1) Insurance programs

- (a) Health
- (b) Group life

FPM Chapter 890
FPM Chapter 870

(2) Retirement Programs, Civil Service

FPM Chapter 831

- (a) Annuities
- (b) Types, including disability

c. Employee Services

- (1) Occupational health
- (2) Occupational safety

FPM Chapter 792

- Injury compensation

FPM Chapter 810,
Federal Employees'
Compensation act,
Title 5, v.s. Code,
Chapter 81

d. Counseling

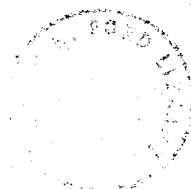
- (1) Employees with problems
- (2) Employees/supervisors performance, conduct, discipline, etc.
- (3) Pre-Retirement
- (4) Alcohol and Drug Abuse programs

5. Labor management relations

FPM Chapter 711

The program reflecting the change in management philosophy designed to promote employee well-being by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting them.

E.O. 10987, 10988,
11491, 11838



- a. Historical background
- b. Executive policy
- c. Key Federal union organizations and key officials
- d. Employee right to join and form unions
- e. Collective bargaining
- f. Negotiable issues
- g. Union/management rights and responsibilities
- h. Negotiated agreement (if any) highlights and requirements

6. Equal employment opportunity

This program is in response to the recognition that merit principles and opportunities for employment have deliberately or inadvertently been applied adversely to segments of our population.

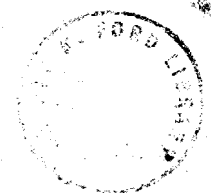
- a. Federal Women's Program
- b. Spanish Speaking Program (not adequately represented in minority emphasis)
- c. Upward Mobility
- d. Affirmative Action Planning

FPM Chapter 713

E.O. 11478
Title VII Civil Rights
Act of 1964 as amended
by PL 92-261, May 1972
(EEO Act of 1972)

Article: "Third
Generation EEO"
Irv Kator, Civil
Service Commission
Journal, July-
September 1972

FPM Chapter 410



II. PERSONAL CONCERNS

A. Legal Basis and Tenure of Appointment

B. Relevant Legislation

1. Conflict of interest provisions

a. a basic guideline

"Apart from statute, there are certain principles of fair dealing which have the force of laws and which are applicable to all officers of the Government. A public office is a public trust. No public officer can lawfully engage in business activities which are incompatible with the duties of his office. He cannot, in his private or official character, enter into engagements in which he has, or can have, a conflicting personal interest. He cannot allow his public duties to be neglected by reason of attention to his private affairs. Such conflicts of interest are not tolerated in the case or any private fiduciary, and they are doubly proscribed for a public trustee." (40 Ops. Atty. Gen. 187, 190.)

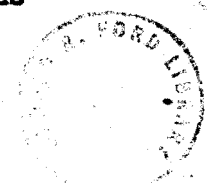
Each Presidential appointee may reasonably expect to be questioned, in connection with consideration by the Senate of his nomination for appointment, concerning his personal interests, activities, and affairs in relation to the above-quoted principle. Assurances may be required. It is recommended, therefore, that each prospective Presidential appointee consult with legal counsel of his choice and with the Department of Justice concerning any question which could reasonably be raised as to the propriety of his personal interests, activities, and affairs in relation to the duties and responsibilities of the office to which he is nominated.

b. statutory provisions

Title 18, United States Code, (revised in 1962), sets forth current provisions of criminal law relating to bribery, graft, and conflicts of interest. Broadly, these provisions apply to --

(1) soliciting, accepting, or agreeing to accept a bribe (18 U.S.C. 201);

(2) acting for private parties before a Government agency in connection with any matter in which the Government has an interest (18 U.S.C. 203 and 205);



- (3) acting for the Government in a matter in which one has a personal financial interest (18 U.S.C. 208);
- (4) receiving pay for Government services from any source other than the Government (19 U.S.C. 209); and
- (5) post-employment activities. (18 U.S.C. 207)

A brief summary of the requirements which will be applicable to regular officers and employees (other than those relating to bribery, which are obvious) is set forth below. If an appointee has any question concerning the application of these requirements to him, he should seek advice from the legal staff of the agency or from the Department of Justice.

- (a) acting for private parties. (18 U.S.C. 203 & 205)

A regular employee may not carry on before any court or Government agency activities for private parties in connection with any matter in which the Government has an interest, whether or not he receives pay for such activity. This includes not only matters involving claims against the Government, but all other proceedings.

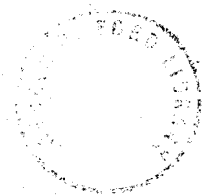
specific statutory exceptions -

i. The employee may, if not inconsistent with the faithful performance of his duties, act without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with these proceedings.

ii. The employee may, if the agency consents, act for his family or act as a trustee in matters with which he does not deal as a Government employee and which are not within his area of responsibility.

- (b) acting on matters involving a personal interest. (18 U.S.C. 208)

A regular employee is prohibited from acting for the Government in any matter in which he has a personal financial interest (e.g., stock holdings, partnership interest, share in profits, etc.). The employee is considered to have a personal financial interest if his wife, minor child, business associate, or person with whom he is discussing or has arranged future employment, has such an interest.



(c) pay for Government services. (18 U.S.C. 209)

A regular employee is prohibited from receiving compensation from outside sources for his Government work. (Investment income ordinarily will not be regarded as pay for Government service, but it is subject to the requirement of 18 U.S.C. 208, summarized above.)

specific statutory exceptions

i. The employee may continue to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

ii. The employee may receive scholarships, etc., under the law authorizing training for Government employees. (5 U.S.C. 4101-4118)

iii. Section 209 of title 18, U.S.C., does not apply to special Government employees or employees of the Government serving without compensation or to any person paying, contributing to, or supplementing their salary (although these payments might constitute violations of the conflict of interest provisions of Executive Order 11222 or the Civil Service Commission's regulations promulgated thereunder in Part 735 of title 5, Code of Federal Regulations).

(d) post-employment activities. (18 U.S.C. 207)

i. A regular employee who leaves Government service can never represent a private interest in any matter in which the Government has an interest and in which he was directly engaged while working for the Government.

ii. A regular employee who leaves Government service is forbidden to appear personally for one year in any other matter which was within the general area of his responsibility while in the Government, even though he was not directly engaged in the particular matter while working for the Government.

c. regulatory requirements

Aside from the above-outlined legal requirements, additional requirements have been established by Executive



Order 11222 and by Part 735 of the Civil Service Regulations to guard against the appearance of a conflict of interest and to provide standards of conduct for Federal officers and employees.

In accordance with section 401 of Executive Order 11222, certain Presidential appointees are required to submit a statement concerning certain financial interests and obligations to the Chairman of the Civil Service Commission not later than 30 days after entering on duty, and to file amended statements on a quarterly basis of any changes therein.

In accordance with section 402 of Executive Order 11222 and Part 735 of the Civil Service Regulations, all other Executives Schedule Officers must submit similar statements to the agency head or his designee. Subordinate officers in independent agencies will submit similar statements to the heads of such agencies.

employee conduct

ethical standards prescribed by the President.

Executive Order No. 11222 of May 8, 1965, prescribes standards of ethical conduct for Government officers and employees and delegates authority to the Civil Service Commission to prescribe regulations governing employee responsibilities and conduct. These regulations are found in Part 735 of Title 5, Code of Federal Regulations.

d. miscellaneous requirements relating to conduct.

(1) political activity (Hatch Act).

(a) Federal employees in general are prohibited by law (5 U.S.C. 7321-7327) from taking any active part in political management or in political campaigns. (For details, see Civil Service Commission Pamphlet No. 20, a copy of which is distributed separately.)

(b) The following officers, however, are excepted from the coverage of the law: heads and assistant heads of departments (i.e., Under Secretaries and Assistant Secretaries), and officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws.



(c) Notwithstanding the foregoing exemption from the law, however, the officers concerned are subject to various criminal laws which prohibit specified officer or employee from --

i. Soliciting or receiving or being in any manner concerned with soliciting or receiving any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States. (18 U.S.C. 602)

ii. Soliciting or receiving anything of value for any political purpose whatever on any Government premises. (18 U.S.C. 603)

iii. Paying a political contribution to another officer or employee. (18 U.S.C. 607)

iv. Soliciting or receiving either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States. (18 U.S.C. 211)

v. Using official authority to interfere with a Federal election. (18 U.S.C. 595)

vi. Promising Federal employment, compensation, or any benefit from Federal funds in return for political activity or support. (18 U.S.C. 600)

vii. Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief. (18 U.S.C. 604)

(2) Holding state or local office (Partisan activity).

An officer or employee of the Department may hold a State or local office or employment concurrently only if the State or local employment is not incompatible with (a) the full and proper discharge of the duties and responsibilities of his Government employment, (b) the policies and interests of the Department, and (c) the maintenance of the highest standards of ethical and moral conduct.



(3) foreign gifts.

No officer or employee may, without the consent of Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state (Constitution, Art. 1, sec 9.).

The Congress has granted consent to acceptance of certain gifts of minimal value (having an estimated retail value in the United States of not more than \$50) and to acceptance of foreign decorations, subject to regulations issued by the Department of State. Any gift worth more than \$50 must be declined, if possible, or if that is not possible, must be accepted on behalf of the United States and turned over to the Department of State for disposition.

(4) gifts to official superiors.

An employee may not --

- (a) solicit a contribution from another employee for a gift to an official superior;
- (b) make a donation as a gift to an official superior; or
- (c) accept a gift from an employee receiving less pay than himself. Penalty: mandatory removal. (5 U.S.C. 7351)

(The foregoing limitations do not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.)

(5) Use of Government vehicles.

Using or authorizing the use of Government vehicles or aircraft for other than official business is punishable by suspension without compensation for not less than one month. (31 U.S.C. 638a (c))

(6) assistance from private sources in connection with travel on official business.

(a) The general rule in the Executive Branch, established by decisions of the Comptroller General, is that, in the absence of special authority, where an officer or employee is engaged in official business, he --

- i. must be in a duty status;
- ii. may not accept any compensation or honorarium for the activity except from the Government; and



iii. may not accept assistance, cash or otherwise, from non-Governmental sources for travel, hotel subsistence, clerical, or other expenses relating to the activity. (Exception: acceptance of minor courtesies not inconsistent with the spirit of the restriction, such as an occasional meal at a luncheon or dinner at which the employee is a guest speaker.)

(b) Where a department has statutory authority to accept donations and to utilize the donations rather than deposit them in the Treasury, such donations may be utilized for payment of travel expenses of employees on official business if there is not otherwise any conflict of interest.

(c) Where the officer or employee is not engaged in official business, (and subject to the ethical standards prescribed by the President and his agency; see above) he --

i. must be in a non-duty status;

ii. may accept an honorarium or other reasonable compensation from Non-Government sources;

iii. may accept reasonable assistance, financial and otherwise, for normal travel, hotel, subsistence, clerical, and other expenses incidental to the private activity;

iv. may not accept or utilize Government funds or resources for travel, hotel subsistence, clerical, or any other purpose in support of the activity; and

v. may use his official title only for identification purposes, but must make clear that his statements and actions are not of an official nature.

(d) Whether an officer or employee is engaged in official business is not determined on the basis of whether he can and does arrange to be in a non-duty status at a given time. The question is, is the proposed activity within the scope of his official duties and responsibilities?

Ordinarily, an activity will be deemed to be official business if the subject-matter (1) is devoted substantially to the responsibilities, programs, or operations of his agency, or (2) if the officer or employee appears to have received the invitation or opportunity to participate in the activity by reason of his official position. An activity which meets either of these two tests will not

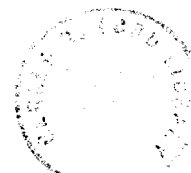
lightly be deemed to be non-official merely because of limited funds available for travel expenses, the personal interests of the individual, or other extraneous considerations.

(7) reporting possible violations of Title 18, United States Code (criminal laws).

(a) All officers and employees who believe they have information relating to a possible violation of Title 18, United States Code (the criminal laws) are responsible for bringing such information immediately to the attention of the appropriate security officer of the bureau or office.

(b) Some of the provisions of Title 18, United States Code, have been summarized above. Others include the following:

- i. falsification of official records -- An officer or employee who in connection with an official matter knowingly and willfully conceals or covers up a material fact or falsifies official papers or documents is subject to criminal prosecution. (18 U.S.C. 1001)
- ii. concealing, mutilating, or removing Government records -- No officer or employee may conceal, remove, mutilate, or destroy Government documents or records except for the disposition of records in accordance with law or regulation. (18 U.S.C. 2071)
- iii. forgery or misuse of Government transportation requests -- Falsely making, altering or forging, in whole or in part, any form of transportation request is prohibited. (18 U.S.C. 508)
- iv. fiscal irregularities --
 - aa. No officer or employee may convert to his own use, loan or deposit in any bank, or exchange for other funds, any public money entrusted to him, except as specifically allowed by law. (18 U.S.C. 653)
 - bb. No officer or employee may make false entries in official records with intent to defraud or make false reports concerning money or securities. (18 U.S.C. 2073)



v. appropriation of Government property for personal use -- No officer or employee may appropriate any article of Government property for his own use. (18 U.S.C. 641)

vi. improper use of franking privileges -- The use of the franking privilege to avoid payment of postage in private mail is prohibited. (18 U.S.C. 1719)

vii. embezzlement -- Any officer or employee who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law is guilty of embezzlement. (18 U.S.C. 643)

viii. converting property of another -- An officer or employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment. (18 U.S.C. 654)

2. Freedom of Information Act and Admendments (P.L. 93-502, 5 U.S.C. 552)

Information outlining and defining this legislation as it applies Government-wide will be provided in the pre-entrance documents which policy executives will receive. This section should present the aspects of this legislation and of decisions in the Courts which impact on the agency and the means used internally to comply with the legislation and the guidelines of the Department of Justice.

3. The Privacy Act (P.O. 93-579, 5 U.S.C. 552a)

Here too, the policy executive will have received a general review. This section should focus on internal aspects of implementing the legislation, and the agency system for complying with the guidelines of the Office of Management and Budget and the application of Civil Service Commission requirements.



C. Compensation and Related Benefits -- including salary data, withholding, retirement, health and life insurance, injury compensation, and leave.

1. Health benefits.

Executive Schedule officers are eligible to enroll in the Federal Employees Health Benefits Program within 31 days after their appointment. This program is a joint contributory system, providing a choice among various types and levels of hospital, surgical, and medical benefits to employees and their families - either through indemnity insurance, reimbursed services, or comprehensive group practice. Brochures with detailed information will be distributed separately.

2. Group life insurance.

All employees automatically acquire regular life insurance unless coverage is voluntarily waived upon entrance on duty. This insurance is low cost term insurance (27-1/2 cents per \$1,000 of insurance per bi-weekly pay period); it does not have cash, paid-up, or extended insurance equities.

The basic insurance program provides life insurance equal to the Executive Schedule officer's annual pay rounded to the next higher \$1,000, plus \$2,000, with a maximum of \$45,000. An option, at extra cost, makes available an additional \$10,000 of group life insurance. Premiums are based on age: up to age 35, \$1.30 per bi-weekly pay period; age 35-39, \$1.70 per bi-weekly pay period; age 40-44, \$2.40 per bi-weekly pay period; age 45-49, \$3.60 per bi-weekly pay period; age 50-54, \$5.50 per bi-weekly pay period; age 55-59, \$17.00 per bi-weekly pay period; age 60 and over, \$19.00 per bi-weekly pay period.

3. Injury compensation.

All officers are compensated for injuries sustained in the performance of duty through disability payments, indemnities, medical services, and death benefits.

4. Retirement.

Officers who serve under an appointment by the President without a time limitation of any kind are required by statute to be subject to the Civil Service Retirement System. (5 U.S.C. 8331-8348)

The Civil Service Retirement System is a joint contributory system providing annuities, survivorship annuities, and death benefits based on age, service, or disability. Employees contribute 7 percent of their salary; for refunds, see below. A minimum of five years of civilian service is required to qualify for an annuity. Brochures with detailed information will be distributed separately.



Social Security, as an alternative to Civil Service Retirement, is available only to an officer appointed by a secretary.

5. Income Tax - District of Columbia.

A Presidential appointee who serves at the pleasure of the President and who does not have his domicile in the District of Columbia is exempt from the D.C. income tax. "Domicile" means the place where an individual has his permanent home and to which he has, whenever he is absent therefrom, a fixed and definite intention of returning. The exemption does not apply to the spouse of a Presidential appointee.

A similar exemption is not provided under the law of Maryland and Virginia.

6. Jury service.

Public officers in the executive branch, including Secretarial Officers, who are actively engaged in the performance of official duties are exempt from jury service in Federal courts. (28 U.S.C. 1863) This exemption does not apply to jury service in State courts; exemption from jury service in State courts must be requested from the court concerned.

7. Separation benefits.

Upon separation from Government Service and application at least 31 days before any annuity is scheduled to begin, an officer may receive a refund of money to his credit in the retirement fund.

If the refund covers service for one year or less, no interest is payable. If the refund covers service of more than one year but the employee has completed less than five years of civilian service, interest at the rate of 3 percent per annum, compounded annually, is paid. If the employee has completed more than five years of civilian service, interest is payable for contributions up to December 31, 1956; no interest is payable for contributions any time after December 31, 1956.

A Presidential appointee officer who resigns, and who has attained age 50 and completed 20 years of creditable service, including five years of civilian service, or who regardless of age has completed 25 years of creditable service, including five years of civilian service, will be entitled to an immediate annuity ("discontinued service retirement"). An officer who completes five years of civilian service, resigns, and leaves his retirement deposits in the retirement fund, will be eligible for an annuity when he is 62 years of age.



- D. Supporting and Special Services -- cover travel and transportation facilities and procedures, per diem and allowances, library, research resources, communications services, etc.



AGENCY AUTHORITY

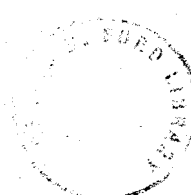
Management officials of an agency have the following authority, in accordance with applicable laws and regulations, including policies set forth in the Federal Personnel Manual:

- to direct employees of the agency
- to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees
- to relieve employees from duties because of lack of work or for other legitimate reasons
- to maintain the efficiency of the Government operations entrusted to them
- to determine the methods, means, and personnel by which such operations are to be conducted, and
- to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency

(Reference: E.O. 11491, Sec. 12)

"The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public."

(Reference: P.L. 89-554, 1966
and Title V, U.S. Code, Chapter 3)



FEDERAL PERSONNEL SYSTEM

PRESIDENT

CONGRESS

issues

legislates

Executive Orders

Statutes/Laws

Instructs

Title 5
U.S. Code

CIVIL SERVICE COMMISSION
Personnel Management Responsibilities

issues regulations to
implement applicable laws
and executive orders

Published in
FEDERAL REGISTER

codified

Published in CFR's, Title V
CODE OF FEDERAL REGULATIONS

Incorporated into

FEDERAL PERSONNEL MANUAL
FPM
Includes General Policies
and Program Guidelines

affected agencies
incorporate for
internal use

Legislative
Judicial/D.C. Govt.

Executive Branch

Affects positions
made subject to
civil service law
by Statute

Department/Agency
Regulations

Installation
Regulations

