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1980

CIVIL SERVICE AND TRANSITION TO
A NEW PRESIDENTIAL ADMINISTRATION

Each Administration has the opportunity to appoint a number of officials in the civil service essentially on the basis of their support for its aims and policies. These officials are generally those responsible for formulating, advocating and directing Administration policies and programs, or who serve such officials in a confidential relationship.

In the context of the total Government, only a relatively few positions are subject to change at the discretion of a Presidential Administration. Most executive branch positions are in the competitive civil service or are under a separate merit system. For these latter positions, it is a violation of civil service law and regulations to base personnel decisions on any factor not related to job performance. (See 5 U.S.C. 2301, 2302; 5 CFR Parts 4, 7, 1250.)

It is traditional, of course, that the vast majority of the incumbents of positions which are subject to change at the discretion of a Presidential Administration resign before any new Administration takes office or at the request of Administration officials. However, there is no legal requirement that they do so. It also is common for an incoming Administration to ask certain persons to remain on their jobs during the early stages of the new Administration to ensure needed continuity and to provide required personnel during the initial period of staffing.

In any event, employees in positions that are subject to change at the discretion of the Administration are not part of the competitive civil service. Rather, they are excepted from the requirements placed on the competitive service by statute, Executive order or regulation. There are a variety of such employees. They include Presidential appointees or direct appointees of the agency head; noncareer, limited term, or limited emergency appointees in the Senior Executive Service; incumbents of Non-career Executive Assignments; and incumbents of Schedule C positions.

Positions or Individuals Subject to Change

Positions or individuals subject to change at the discretion of a new Administration include:

- (1) Presidential appointments made with the advice and consent of the Senate to positions in which the incumbent serves at the pleasure of the President;
- (2) Other Presidential appointments to positions in which the incumbent serves at the pleasure of the President;

- (3) Appointments to positions in which the incumbent serves in the excepted service at the pleasure of the agency head. Excepted service positions in this category are those which are excepted from the competitive service by statute; and,
- (4) Individuals serving in the Senior Executive Service on either a noncareer or limited term basis.

Positions in these categories normally include Cabinet Officers and heads of other Executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus, Services, and Administrations; and Chairpersons and Members of Boards, Commissions, and Committees. Positions in all four categories are often authorized by specific provisions of law. Many are in the Executive Schedule, some are under the General Schedule or other position-oriented pay system.

In the past, categories (1) and (2) included most of the positions in Level I (Cabinet level) through Level V of the Executive Schedule. Now managerial Level IV and Level V positions (not requiring Senate confirmation) are in SES, although their titles may continue to be listed in sections 5315 and 5316 of title 5 pending revision of the statute. Also, now included in SES are most of the former managerial GS-16, 17, and 18 positions in the Executive branch and equivalent positions in other pay systems.

An executive's tenure in the former Level IV, Level V, supergrade, and other type positions now in SES is determined by the type of appointment held by the individual and not by the type of position. The positions identified in (1), (2), and (3) above and the various types of SES appointments are discussed below.

INDIVIDUALS APPOINTED BY THE PRESIDENT OR HEAD OF THE AGENCY

Officers and employees who serve "at the pleasure of" the President or other appointing official may be asked to resign or may be dismissed at any time. They are not covered by standard Civil Service removal procedures and have no right of appeal. However, under recent court decisions which may be applicable, such employees may not be discharged for political party affiliation, unless party affiliation is necessary for the performance of their job. It appears, however, that they may be discharged for the destruction of the policy determining or confidential relationship. Branti v. Finkel, 445 U.S. 153 (1980), decided by the U. S. Supreme Court March 31, 1980. A sample notice of removal is included in Tab A. Agencies should consult their General Counsel or OPM's General Counsel for assistance in this area.

In limited cases, the organic statute creating a position provides that an individual appointed by the President, may be removed only for cause. These provisions are most commonly found in statutes establishing quasi-judicial entities or regulatory agencies. 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., U.S. 349; and Buckley v. Valeo, 424 U.S. 1. (1977).

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OTHER APPOINTEES IN THE EXCEPTED SERVICE

Noncareer Executive Assignments

Noncareer Executive Assignments (NEA) are positions at GS-16, 17, and 18 that are administratively excepted from the competitive service through action of OPM. The exception is based on the degree of involvement of the incumbent in the policies and actions of the Administration or on a confidential relationship with a political appointee. Before the Senior Executive Service was established, NEAs were the primary Administration officials below the Executive Levels. There now are very few of these positions because most were incorporated into the SES.

Except in the rare case of an NEA with status in his or her position, an NEA has no right to appeal a removal action to the Merit Systems Protection Board. Nonetheless, the removal of such an individual must be in accordance with any procedures which have been established by the employing agency. These employees may not be dismissed because of party affiliation unless such affiliation is necessary for the performance of their job. Vitarelli v. Seaton, 359 U.S. 599 (1959); Watson v. U. S., 162 F. Supp. 755 (Ct. Cl. 1959)†. (535) ✓

A sample notice of separation for these employees is contained in Tab A. In the rare case of an individual having status in the position, the Executive Personnel and Management Development Group of OPM will provide advice.

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(a) Establishment of Positions

(b) Procedures for Removal

Incumbents of Schedule C positions who have no status in those positions regardless of veterans preference or length of service in the positions, are not covered by statutory procedures and have no rights to appeal removal actions to MSPB. (Please refer to the revised FPM Chapter 752, Adverse Actions, subchapter 3-1, d(2)(A).) ~~This chapter was published in advance of incorporation in the FPM via FPM Letter 752-II dated September 12, 1980.)~~ However, the removal of any Schedule C employees must be in accordance with any internal appeal procedures which have been established by the employing agency [Vitarelli v. Seaton, 359 U.S. 537 (1959); Watson v. U.S., 162 F. Supp. 755 (Ct. Cl. 1958.)]

~~The recent Supreme Court decision~~ ^{opinion} ~~on the subject~~ ^{does not afford}
 According to a recent S.C. dec., the CSFA ~~provides~~ ^{includes} ~~for~~ ^{for} ~~an adv. pro. actn.~~ ^{an adv. pro. actn.} under 5 USC Ch. 75 ^{however} ~~this opinion~~ ^{U.S.}
~~does not expand~~ ^{As per source} ~~the appeal rights of Sch. C employees.~~ ^{this decision would include}

An employee who was serving in a position in the competitive service when OPM authorized its conversion to Schedule C and is still serving in that position may be removed from that position "for such cause as will promote the efficiency of the service". Moreover, the action must be taken in accordance with the procedures established by 5 U.S.C. 7511 et seq. and part 752 of OPM'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 be represented; (4) to have the reply considered; and (5) to a written decision stating the reasons for the action. The employee may appeal the action to MSPB.

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-determining or confidential position, i.e., a Schedule C position.

✓ [Leonard v. Douglas, 321 F 2d 749 (D.C. Cir. June 26, 1963.)] Additionally, agencies are reminded that there are very few instances where an employee has status in his/her Schedule C position since OPM does not generally authorize conversion of encumbered competitive positions to Schedule C. Therefore, we would expect very few if any of these cases.

A sample notice of separation for all Schedule C employees except those with status in their positions is contained in Tab A. Tabs B and C contain sample letters of proposed removal for an individual with status in his/her position who is covered by part 752 of OPM's regulations.

(c) Temporary Schedule C Positions

Pursuant to OPM regulations issued by OPM,
 On April 18, 1980, OPM issued a final regulation permitting agencies, *are permitted* to establish temporary Schedule C positions at the GS-15 grade level and below following Inauguration in order to facilitate the orderly transition of duties as a consequence of a change in Presidential Administration, changes in department or agencies heads or changes resulting from the creation of a new department or agency. This authority permits the establishment of (1) positions identical to existing Schedule C positions if an intent to vacate these positions has been put in writing by management or the present incumbents, and (2) new temporary Schedule C positions when it is determined that the department or agency heads' needs cannot be met through the establishment of a position identical to an existing Schedule C position. Service under either type of position may not exceed 120 days. *Not in ltr.* [For more specific information on the use of this authority, please refer to FPM Bulletin 213-33 dated May 9, 1980.]

Other Excepted Service Positions

In addition to the policy-determining or confidential positions described in the preceding section, certain agencies and groups of positions are also excepted by statute, Executive order, or OPM action from the competitive civil service. These exceptions have been made for a variety of reasons, none of which relate to the policy-determining 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 General Accounting Office, 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. In addition to positions excepted by statute, 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 Office of Personnel Management 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, and certain positions at isolated localities. Attorney positions are also in Schedule A because the OPM 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 open competitive examinations. However, an individual must meet qualification requirements established by OPM for the occupation and grade level in order to be appointed to a Schedule B position. Examples include student trainee positions (co-op), National Bank examiners in the Treasury Department and loan specialists in the Export-Import Bank. There are about 17,000 positions in this schedule, over 14,000 of which are under cooperative education programs.

Consultant Jobs

APPOINTEES IN THE SENIOR EXECUTIVE SERVICE

SES positions, appointments, and special features of SES tenure are discussed below. Appointees in the SES who are subject to change at the discretion of a new Administration are those in Noncareer, Limited Term, and Limited Emergency appointments. The continued tenure of these SES appointees should be examined carefully and should take into account the reasons for the appointment (including expeditious processing) and the prospect for continued contribution by the executive within the scope of the established need for the appointment.

Each agency receives a number of SES position spaces in a biennial position allocation, based on the agency's demonstrated need for the positions. The agency is then free to establish within that limit Career Reserved or General positions as appropriate. Career Reserved positions must be filled by career SES appointees; General positions can be filled by either career or non-career appointees. Since, by statute, only 10 percent of the SES government-wide may be given noncareer appointments, most General positions are filled by career appointees. Each agency is allocated a maximum number of noncareer appointments which may be in effect at any one time.

Noncareer SES Appointees

Noncareer SES appointments are made by the agency. The agency has the authority to establish qualifications, approve the candidate's qualifications, make the appointment without regard to competitive process, and fix the pay of the appointee.

A noncareer appointee may be removed following written notice, or requested to resign at any time at the discretion of the appointing authority.

As discussed previously, these employees may not be dismissed because of party affiliation unless such affiliation is necessary for the performance of their job. Lack of confidence in the relationship or in the appointee's ability to carry out present programs or policy is sufficient. Noncareer SES appointees removed from the Federal service are not entitled to veterans preference and have no right of appeal to the Merit Systems Protection Board (MSPB). Further assistance should be obtained from the agency's General Counsel or the OPM General Counsel. A sample removal notification letter is shown in Tab A.

Under the Civil Service Reform Act, the removal of a noncareer SES appointee in an independent regulatory commission may not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. (5 U.S.C. 3392(d))

Limited Term and Limited Emergency SES Appointees

Limited Term SES appointments are made to General positions having duties terminating within 3 years of the date of appointment. Limited Emergency SES appointments are made to General positions when an unexpected situation develops that does not permit the more time-consuming process of advertising and competitive selection. Positions are established by the agency with prior OPM approval for position type and appointment involved. As in all SES appointments, the limited term or limited emergency appointee must meet the qualification requirements established for the position by the agency. A limited term or limited emergency SES appointee may serve no more than 36 months on any combination of such appointments in any 48 month period.

A special type of limited term SES appointment is available for use following Inauguration. In this special appointment, the executive may be appointed as a limited term Senior Executive to a position with duties that relate to the transition and which will terminate within 6 months. Tenure in such an appointment is the same as in any other limited term SES appointment. Presidential nominees subject to Senate confirmation may be placed in this short-term appointment awaiting confirmation, but may not "act" in the target position. Such individuals should function in an advisory or consultative capacity.

An executive holding either a limited term or limited emergency SES appointment may be removed or requested to resign at any time on the decision of the appointing authority.

The procedures for removal are the same as for noncareer SES executives. Limited term SES appointees being removed are not entitled to veterans preference and have no right of appeal to MSPB. Also, the removal of a limited SES appointee in an independent regulatory commission cannot be subject to review or approval in the Executive Office of the President.

Statutory Controls on Career SES Personnel Actions

With creation of the Senior Executive Service, it became possible for an agency to assign an executive to any position for which he or she qualified. This possibility is in contrast with the previous system in which some positions were identified as "noncareer" and only noncareer executives could be assigned to them. Now, an agency head has greater flexibility to assign either a career or noncareer SES member to a position within the statutory controls described below:

- (1) SES members may be assigned into or out of critical positions to meet the staffing needs of the new leadership, except that positions designated Career Reserved must be filled by a career executive.

- (2) A career executive may not be involuntarily reassigned to another SES position in the agency or involuntarily removed from SES within 120 days after the appointment of a new agency head or the appointment of an immediate supervisor who is a noncareer appointee and who has authority to remove or reassign the career executive. This restriction does not apply to an action already underway or being taken as a result of an unsatisfactory performance appraisal, nor generally to removal from Federal service for misconduct. However, a career executive's performance appraisal and rating may not be made within 120 days after the beginning of a new Presidential Administration.

2) Although Presidential appointees are among the executives subject to change in a new Administration, it should be noted that certain former SES career executives have entitlement to reinstatement and the Senior Executive Service after leaving the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. The number of such appointees is small and the special circumstances must be addressed individually in each case. See 5 U.S.C. 3993(b).

3) A career exec. may be reass. to any SES posn only if the career exec. receives a 15-day written notice; however, the executive may not be reass. to an SES posn outside his or her comm area without rec'g 60 days notice. 5 USC 3359

- NOTES - OTHER MATTERS
1. The involuntary separation for "discontinued-service retirement" provisions apply to Presidential appointees, NEA's, Schedule C employees, and noncareer and limited term SES appointees. Material from the FPM on this subject is included in Tab D. For additional information on eligibility for retirement, contact the OPM Compensation Group, Advisory Services.
 2. In dismissal cases, Constitutional requirements oblige agencies to provide an employee with a hearing if his or her moral character is impugned by the stated reasons for dismissal. These rights arise only when the stigmatizing reasons for dismissal are recorded in any document which may be disseminated to others either inside or outside Government. For this reason, notices of separation should be mild in tone.

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Tab A

SAMPLE OF NOTICE OF REMOVAL OF AN EMPLOYEE WHO IS NOT COVERED BY TENURE
AND PROCEDURE PROVISIONS OF LAW, CIVIL SERVICE REGULATION OR
APPROPRIATE AGENCY REGULATION - E.G., NEA AND SCHEDULE C WITHOUT
STATUS IN THE POSITION, AND SES NONCAREER

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

Dear Mr. Blank:

This is to notify you that your service as _____
_____ will be terminated effective at
the close of business, _____ 1981.

This action is due to lack of confidence in your ability to carry out
the programs and policies of the current leadership of this agency, and
should not be construed in any way as a reflection on you personally.

Sincerely yours,

(Name)
(Title)

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF THE CIVIL SERVICE
REGULATIONS TO REMOVE AN EMPLOYEE IN A POLICY-DETERMINING SCHEDULE C
POSITION WHO HAS STATUS IN THAT POSITION

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

Dear Mr. Waters:

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 752.404 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 seven calendar days. Under regulation, you have right to attorney or other representation in this matter.

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

Tab C

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF THE CIVIL SERVICE
REGULATIONS TO REMOVE AN EMPLOYEE IN A CONFIDENTIAL
SCHEDULE C POSITION WHO HAS STATUS IN THAT 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 752.404 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 seven calendar days. Under regulation, you have right to an attorney or other representation in this matter.

Let me assure you that full consideration will be given to any reply and support therefore 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

Let me assure you that full consideration will be given to any reply and support therefore 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

Transition

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A NEW PRESIDENTIAL ADMINISTRATION

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It is traditional, of course, that the vast majority of the incumbents of positions which are subject to change at the discretion of a Presidential Administration resign before any new Administration takes office or at the request of Administration officials. However, there is no legal requirement that they do so. It also is common for an incoming Administration to ask certain persons to remain on their jobs during the early stages of the new Administration to ensure needed continuity and to provide required personnel during the initial period of staffing.

In any event, employees in positions that are subject to change at the discretion of the Administration are not part of the competitive civil service. Rather, they are excepted from the requirements placed on the competitive service by statute, Executive order or regulation. There are a variety of such employees.

Positions or Individuals Subject to Change

Positions or individuals subject to change at the discretion of a new Administration include:

- (1) Presidential appointments made with the advice and consent of the Senate to positions in which the incumbent serves at the pleasure of the President;
- (2) Other Presidential appointments to positions in which the incumbent serves at the pleasure of the President;

- (3) Individuals serving in the Senior Executive Service on either a noncareer or limited basis; and,
- (4) Appointments to positions in which the incumbent serves in the excepted service at the pleasure of the agency head. Excepted service positions in this category are those which are excepted from the competitive service by statute, executive order, or OPM action (e.g., Schedule C positions).

Positions in these categories normally include Cabinet Officers and heads of other Executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus, Services, and Administrations; and Chairpersons and Members of Boards, Commissions, and Committees. Positions in all four categories are often authorized by specific provisions of law. Many are in the Executive Schedule, some are under the General Schedule or other position-oriented pay system.

In the past, categories (1) and (2) included most of the positions in Level I (Cabinet level) through Level V of the Executive Schedule. Now managerial Level IV and Level V positions (not requiring Senate confirmation) are in the SES, although their titles may continue to be listed in sections 5315 and 5316 of title 5 pending revision of the statute. Also, now included in SES are most of the former managerial GS-16, 17, and 18 positions in the Executive branch and equivalent positions in other pay systems.

INDIVIDUALS APPOINTED BY THE PRESIDENT OR HEAD OF THE AGENCY

Officers and employees who serve "at the pleasure of" the President or other appointing official may be asked to resign or may be dismissed at any time. They are not covered by standard Civil Service removal procedures and have no right of appeal. However, under court decisions which may be applicable, such employees may not be discharged for political party affiliation, unless party affiliation is necessary for the performance of their job. It appears, however, that they may be discharged for the destruction of the policy determining or confidential relationship. Branti v. Finkel, 445 U.S. 507 (1980). A sample notice of removal is included in Tab A. Agencies should consult their General Counsel or OPM's General Counsel for assistance in this area.

In limited cases, the organic statute creating a position provides that an individual appointed by the President may be removed only for cause. These provisions are most commonly found in statutes establishing quasi-judicial entities or regulatory agencies. 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 (1926); Humphrey's Executor v. U.S., 295 U.S. 602 (1935); Wiener v. U.S., 357 U.S. 349 (1958); and Buckley v. Valeo, 424 U.S. 1 (1976).

Role of the Office of Government Ethics

The Ethics Act established a statutory role for the Office of Government Ethics within OPM. With respect to every Presidential nominee requiring Senate confirmation, the Director of the Office, currently Frank Q. Nebeker, must sign and deliver the nominee's public financial disclosure report to the Senate Confirmation Committee. He provides an opinion letter conforming the nominee's compliance with all applicable laws and regulations. This letter is a condition precedent to scheduling each confirmation hearing. Opinion letters culminate a review process by the agencies and the Office of Government Ethics which focuses on the formal requirements of Title II of the Ethics Act ("Executive Personnel Public Financial Disclosure Requirements") and the substantive conflict of interest laws (18 U.S.C. § 202-209). The Confirmation Committees may require other detailed information.

APPOINTEES IN THE SENIOR EXECUTIVE SERVICE

SES positions, appointments, and special features of SES tenure are discussed below. Appointees in the SES who are subject to change at the discretion of a new Administration are those in noncareer, limited term, and limited emergency appointments. The continued tenure of these SES appointees should be examined carefully and should take into account the reasons for the appointment (including expeditious processing) and the prospect for continued contribution by the executive within the scope of the established need for the appointment.

Each agency receives a number of SES position spaces in a biennial position allocation, based on the agency's demonstrated need for the positions. The agency is then free to establish within that limit Career Reserved or General positions as appropriate. Career Reserved positions must be filled by career SES appointees; General positions can be filled by career, noncareer or limited appointees. Since, by statute, only 10 percent of SES positions governmentwide may be given noncareer appointments, most General positions are filled by career appointees. Each agency is allocated a maximum number of noncareer appointments which may be in effect at any one time.

Noncareer SES Appointees

Noncareer SES appointments are made by the agency. The agency has the authority to establish qualifications, approve the candidate's qualifications, make the appointment without regard to competitive process, and fix the pay of the appointee.

A noncareer appointee may be removed following written notice, or requested to resign at any time at the discretion of the appointing authority.

As discussed previously, these employees may not be dismissed because of party affiliation unless such affiliation is necessary for the performance of their job. Lack of confidence in the relationship or in the appointee's ability to carry out present programs or policy is sufficient. Noncareer SES appointees removed from the Federal service are not entitled to veterans preference and have no right of appeal to the Merit Systems Protection Board (MSPB). Further assistance should be obtained from the agency's General Counsel or the OPM General Counsel. A sample removal notification letter is shown in Tab A.

The removal of a noncareer SES appointee in an independent regulatory commission may not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. (5 U.S.C. § 3392(d)).

Limited Term and Limited Emergency SES Appointees

Limited Term SES appointments are made to General positions having duties terminating within 3 years of the date of appointment. Limited Emergency SES appointments not to exceed 18 months are made to General positions when an unexpected situation develops that does not permit the more-consuming process of advertising and competitive selection. Prior OPM approval for the appointment is required. As in all SES appointments, the limited term or limited emergency appointee must meet the qualification requirements established for the position by the agency. A limited term or limited emergency SES appointee may serve no more than 36 months on any combination of such appointments in any 48-month period.

An executive holding either a limited term or limited emergency SES appointment may be removed or requested to resign at any time on the decision of the appointing authority. However, many limited appointees have return rights to the competitive service (5 CFR § 317.605(d)).

The procedures for removal are the same as for noncareer SES executives. Limited term SES appointees being removed are not entitled to veterans preference and have no right of appeal to MSPB upon termination of the appointment. Also, the removal of a limited SES appointee in an independent regulatory commission cannot be subject to review or approval in the Executive Office of the President.

Statutory Controls on Career SES Personnel Actions

With the creation of the Senior Executive Service, it became possible for an agency to assign an executive to any position for which he or she qualified. This possibility is in contrast to the previous system in which some positions were identified as "noncareer" and only noncareer executives could be assigned to them. Now, an agency head has greater flexibility to assign either a career or noncareer SES member to a position within the statutory controls described below:

- (1) SES members may be assigned into or out of critical positions to meet the staffing needs of the new leadership, except that positions designated Career Reserved must be filled by a career executive.
- (2) A career executive may not be involuntarily reassigned to another SES position in the agency or involuntarily removed from the SES within 120 days after the appointment of a new agency head or the appointment of an immediate supervisor who is a noncareer appointee and who has authority to remove or reassign the career executive. This restriction does not apply to an

action already underway or being taken as a result of an unsatisfactory performance appraisal, nor generally to removal from Federal service for misconduct. However, a career executive's performance appraisal and rating may not be made within 120 days after the beginning of a new Presidential Administration.

- (3) A career executive may be reassigned to any SES position only if the career executive receives a 15-day written notice, however, the executive may not be reassigned to an SES position outside his or her commuting area without receiving 60 days written notice. 5 U.S.C. § 3395.

Although Presidential appointees are among the executives subject to change in a new administration, it should be noted that certain former SES career executives have entitlement to reinstatement in the Senior Executive Service after leaving the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. The number of such appointees is small, and the special circumstances must be addressed individually in each case. See 5 U.S.C. § 3593(b).

OTHER APPOINTEES IN THE EXCEPTED SERVICE

Noncareer Executive Assignments

Noncareer Executive Assignments (NEA) are positions at GS-16, 17, and 18 that are administratively excepted from the competitive service through action of OPM. The exception is based on the degree of involvement of the incumbent in the policies and actions of the Administration or on a confidential relationship with a political appointee. Before the Senior Executive Service was established, NEAs were the primary Administration officials below the Executive Levels. There now are very few of these positions because most were incorporated into the SES.

Except in the rare case of an NEA with status in his or her position, an NEA has no right to appeal a removal action to the Merit Systems Protection Board. Nonetheless, the removal of such an individual must be in accordance with any procedures which have been established by the employing agency. These employees may not be dismissed because of party affiliation unless such affiliation is necessary for the performance of their job. Vitarelli v. Seaton, 359 U.S. 535 (1959); Watson v. U.S., 162 F. Supp. 755 (Ct. Cl. 1959).

A sample notice of separation for these employees is contained in Tab A. In the rare case of an individual having status in the position, the Executive Personnel and Management Development Group of OPM will provide advice.

Schedule C Positions

Another category of individuals who are subject to change at the discretion of a new Administration are appointees to Schedule C positions, or to equivalent positions in agencies that are statutorily excepted from the competitive service. Schedule C positions consist of jobs at GS-15 and below which the Office of Personnel Management (or the President under Civil Service Rule 6.8) 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

OPM authorizes the establishment of each Schedule C position and may revoke the authority when the position changes. Additionally, several agencies have received approval to establish and maintain their own inventory of Schedule C positions via a delegation agreement negotiated with OPM. OPM does not review the qualifications of a Schedule C appointee; final authority on this matter rests with the appointing official. As of September 1987 about 1600 employees were under

a Schedule C appointment. A list of them is published annually in the Federal Register, under Part 213 of OPM's regulations.

(b) Procedures for Removal

Schedule C employees may be separated at any time if the confidential or policy-determining relationship between the incumbent and his or her superior no longer exists. They also may be removed based on political affiliation if political affiliation is required for effective job performance. Agencies should consult their General Counsel or OPM's General Counsel on this matter. The only Schedule C employees covered by statutory appeal procedures and who, therefore, may appeal removal actions to the Merit Systems Protection Board (MSPB) are those who are serving in a position in the competitive service when OPM authorized its conversion to Schedule C and who still serve in those positions (i.e., have status in the position -- c.f. Roth v. Brownell, 215 F.2d 500 (D.C. Cir. 1954)).

Incumbents of Schedule C positions who have no status in those positions regardless of veterans preference or length of service in the positions, are not covered by statutory procedures and have no rights to appeal removal actions to MSPB. 5 U.S.C. § 7511(b)(2). (Refer to FPM Chapter 752, Adverse Actions, subchapter 3-1, d(2)(A)). However, the removal of any Schedule C employees must be in accordance with any internal appeal procedures which have been established by the employing agency. Vitarelli v. Seaton, 359 U.S. 535 (1959); Watson v. U.S., 162 F. Supp. 755 (Ct. Cl. 1958).

According to a recent Supreme Court opinion, the Civil Service Reform Act does not afford judicial or administrative review of an adverse personnel action under 5 U.S.C. chapter 75 for nonpreference eligibles in the excepted service. U.S. v. Fausto, 484 U.S. ____ (1988). As members of the excepted service, Schedule C employees would clearly be included in the scope of this decision.

An employee who was serving in a position in the competitive service when OPM authorized its conversion to Schedule C and is still serving in that position may be removed from that position "for such cause as will promote the efficiency of the service". Moreover, the action must be taken in accordance with the procedures established by 5 U.S.C. § 7511 et seq. and Part 752 of OPM'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 be represented; (4) to have the reply considered; and (5) to a written decision stating the reasons for the action. The employee may appeal the action to MSPB.

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-determining or confidential position, i.e., a Schedule C position. Leonard v. Douglas, 321 F.2d 749 (D.C. Cir. 1963). Additionally, agencies are reminded that there are very few instances where an employee has status in his/her Schedule C position since OPM does not generally authorize conversion of encumbered competitive positions to Schedule C. Therefore, we would expect very few if any of these cases.

A sample notice of separation for all Schedule C employees except those with status in their positions is contained in Tab A. Tabs B and C contain sample letters of proposed removal for an individual with status in his/her position who is covered by Part 752 of OPM's regulations.

(c) Temporary Schedule C Positions

Pursuant to OPM's regulations, agencies are permitted to establish temporary Schedule C positions at the GS-15 grade level and below following Inauguration in order to facilitate the orderly transition of duties as a consequence of a change in Presidential Administration, changes in department of agencies heads or changes resulting from the creation of a new department or agency. 5 CFR § 213.3302. This authority permits the establishment of (1) positions identical to existing Schedule C positions if an intent to vacate these positions has been put in writing by management or the present incumbents, and (2) new temporary Schedule C positions when it is determined that the department or agency heads' needs cannot be met through the establishment of a position identical to an existing Schedule C position. Service under either type of position may not exceed 120 days.

Other Excepted Service Positions

In addition to the policy-determining or confidential positions described in the preceding section, certain agencies and groups of positions are also excepted by statute, Executive order, or OPM action from the competitive civil service. These exceptions have been made for a variety of reasons, none of which relate to the policy-determining 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 General Accounting Office and the Postal Service. Most of these positions are under separate merit systems and are not subject to change in a new Administration. In addition to positions excepted by statute and by OPM action, there are other 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 Office of Personnel Management 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, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions. There are about 134,000 employees 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 open competitive examinations. However, an individual must meet qualification requirements established by OPM for the occupation and grade level in order to be appointed to a Schedule B position. There are about 13,000 employees in this schedule, including those who are under cooperative education programs.

Consultant Appointments

Consultant appointments made under authority of 5 U.S.C. § 3109 may be used for individuals who have been nominated, but not confirmed or for individuals whose permanent appointments are in process. Consultants may be paid a rate not to exceed the daily equivalent of the highest payable rate in the General Schedule, unless specifically authorized by statute. They may also be reimbursed for travel but not moving expenses and may participate in orientation/training programs at government expense.

White House employees (excepted service)
are appointed under US code 5

Tab A

SAMPLE OF NOTICE OF REMOVAL OF AN EMPLOYEE WHO IS NOT
COVERED BY TENURE AND PROCEDURE PROVISIONS OF LAW,
CIVIL SERVICE REGULATION OR APPROPRIATE AGENCY
REGULATION - E.G., NEA AND SCHEDULE C WITHOUT STATUS IN
THE POSITION, AND SES NONCAREER

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

Dear Mr. Blank:

This is to notify you that your service as _____
_____ will be terminated effective at
the close of business, _____ 1989.

This action is due to lack of confidence in your ability to
carry out the programs and policies of the current leadership of
this agency, and should not be construed in any way as a
reflection on you personally.

Sincerely yours,

(Name)
(Title)

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF
THE CIVIL SERVICE REGULATIONS TO REMOVE AN EMPLOYEE
IN A POLICY-DETERMINING SCHEDULE C POSITION WHO
HAS STATUS IN THAT POSITION

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

Dear Mr. Waters:

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 752.404 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 seven calendar days. Under regulation, you have a right to an attorney or other representation in this matter.

Let me assure you that full consideration will be given to any reply and support therefore 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

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF THE
CIVIL SERVICE REGULATIONS TO REMOVE AN EMPLOYEE IN A
CONFIDENTIAL SCHEDULE C POSITION WHO HAS STATUS IN
THAT 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 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.

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 752.404 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 seven calendar days. Under regulation, you have a right to an attorney or other representation in this matter.

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

The following quotations from Federal Personnel Manual Supp. 831-1, S11-2, contain the Office of Personnel Management's interpretation of involuntary separation:

"m. Separation of Presidential appointees and their immediate staff. The separation of a Presidentially appointed policy making officer because of acceptance of his or her resignation by the President is considered involuntary. It is considered involuntary at any time the resignation is submitted and accepted, not only with the advent of a new administration. Further, the separation of a Schedule C, Excepted Service, assistant to the appointee who resigns when it is known that the Presidential appointee for whom he or she works is leaving, is involuntary for retirement purposes . . . As minimum documentation, the agency should include with the retirement application documentation that the President has accepted the resignation of his appointee, or, in the second case, that the Presidential appointee for whom a Schedule C, Excepted Service, assistant works is leaving."

"n. Resignation requested. Separation of an employee who submits his or her resignation in response to a request from a recognized representative of a new incoming administration having the authority to request such resignation, is involuntary for retirement purposes. The resignation request must be specific about the particular employee. Unsolicited resignations, those based on the belief or possibility that resignation will be requested and those prompted solely by personal conviction or choice, are voluntary rather than involuntary for retirement purposes. A copy of each resignation in this category must accompany the retirement application."

Questions in this area should be directed to the Advisory Services Division, Retirement and Insurance Group, OPM.

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

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Questions in this area should be directed to OPM's Compensation Group, Advisory Services.

OTHER MATTERS

1. The involuntary separation for "discontinued-service retirement" provisions apply to Presidential appointees, NEA's, Schedule C employees, and noncareer and limited SES appointees. Material from the FPM on this subject is included in Tab D. For additional information on eligibility for retirement, contact the Advisory Services Division, Retirement and Insurance Group.
2. In dismissal cases, Constitutional requirements oblige agencies to provide an employee with a hearing if his or her moral character is impugned by the stated reasons for dismissal. These rights arise only when the stigmatizing reasons for dismissal are recorded in any document which may be disseminated to others either inside or outside Government. For this reason, notices of separation should be mild in tone.
3. Salary levels are set in four ways. Salaries of Presidential appointees are prescribed in law. SES salaries may be set at any one of six steps by agency heads, from ES-1 (\$65,994) to ES-6 (\$77,500). For General Schedule positions there is a range of salary steps prescribed for each grade level. A new General Schedule employee can only be paid the first step unless OPM authorizes a higher step in advance. (Note: Some agencies have been delegated this authority.) There are Special Presidential authorities to set the pay of White House employees.
4. Pre-employment interview travel expenses may be paid to applicants for Presidential appointments, Schedule C positions and Senior Executive Service positions. Travel expenses to attend confirmation hearings are considered part of the pre-employment interview process.

The Federal Government may not reimburse moving expenses for Schedule C appointees. For new appointees to the Senior Executive Service and Presidential appointees only, the Federal Government may reimburse the appointee for transportation of the appointees' family, household goods and personal effects in accordance with the applicable law and regulations. See U.S.C. § 5723.

Federal Personnel Manual System

FPM Bulletin

Bulletin No. 273-22

Washington, D. C. 20415

March 10, 1988

SUBJECT: Agency Responsibility for Competitive and Noncompetitive Appointments

Heads of Departments and Independent Establishments:

1. As is OPM's practice during election years, we are issuing this bulletin to remind agencies to review all personnel actions carefully to be sure that they meet all civil service laws, rules, and regulations and are free of any impropriety.
2. Agencies have substantial discretion in filling vacancies. Under Civil Service Rules, they may fill positions in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee. But, whether positions are filled competitively or noncompetitively, agencies must exercise their discretion "solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race."
3. Changes affecting agency heads occur during the life of an Administration. Moreover, 1988 is an election year. While personnel actions always must meet legitimate management needs, we must take special care over the coming year to avoid even the appearance of political favoritism. The records in all personnel actions must show clearly that the actions are proper and legitimate. Both OPM and agencies have an obligation to ensure that all appointments conform fully to the spirit and the letter of Civil Service Rules 4.2 and 7.1 and to section 2302 of title 5, especially the prohibition against political consideration, either favorable or unfavorable.
4. Agency personnel directors should review carefully all proposed actions to place incumbents of positions excepted under Schedule A, B, or C or by statute into positions in the competitive service. Even if these actions will be made from a competitive register or will require prior OPM approval, personnel directors should determine that the selections have been made in accordance with their agencies' merit promotion requirements. Once a Schedule C position has been established, the Schedule C elements (i.e., its confidential and/or policy determining characteristics) may not be unilaterally removed from that position solely for the purpose of converting the position, along with the incumbent, into the competitive service. Reinstatements, of course, must be processed through competitive promotion procedures if they are to higher grades than the employees last held in the competitive service.
5. OPM will monitor agency requests for certificates of eligibles for positions at grades GS-9 through 15. We will be particularly watchful for any requests that might appear improper or that might reduce competition. Any procedures established by OPM examining offices to ensure the propriety of name requests involving current excepted employees will, of course, remain in effect. Agencies that have delegated examining authority covering positions in the GS-9/15 range should also set up appropriate safeguard procedures. Similar safeguards are in place for the Senior Executive Service's staffing processes, which will ensure that an agency's selection of any noncareer SES member for a career SES appointment meets these same tests of propriety and competition.

Inquiries: Staffing Policy Division, Career Entry Group, (202) 632-6817

Code: 273, Personnel Management Evaluation, Surveys and Audits

Distribution: Basic FPM

Bulletin Expires: January 20, 1989

FPM Bulletin 273-22 (2)

6. We strongly urge agency Directors of Personnel to pre-audit all noncompetitive actions involving incumbents of positions in the excepted service. If advice and assistance are needed from OPM on methods and techniques to be used in conducting the pre-audits, please contact the Compliance and Operations Division, (202) 632-5691, in the Washington, D.C., area or the compliance or oversight division of the appropriate OPM regional office.



Constance Horner
Director

Federal Personnel Manual System

FPM Bulletin

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4. Agency personnel directors should review carefully all proposed actions to place incumbents of positions excepted under Schedule A, B, or C or by statute into positions in the competitive service. Even if these actions will be made from a competitive register or will require prior OPM approval, personnel directors should determine that the selections have been made in accordance with their agencies' merit promotion requirements. Once a Schedule C position has been established, the Schedule C elements (i.e., its confidential and/or policy determining characteristics) may not be unilaterally removed from that position solely for the purpose of converting the position, along with the incumbent, into the competitive service. Reinstatements, of course, must be processed through competitive promotion procedures if they are to higher grades than the employees last held in the competitive service.
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Constance Horner
Director

THE WHITE HOUSE
WASHINGTON

November 4, 1980

MEMORANDUM FOR ALL DEPARTMENT AND AGENCY HEADS

FROM : JACK WATSON *Jack*
AL MCDONALD *AM*

This is to advise you that effective COB November 3 all Schedule C and SES non-career vacancies have been frozen. Presidential Personnel will be in touch with each agency to set up the clearance process for filling any of these positions.

THE WHITE HOUSE

WASHINGTON

November 5, 1980

MEMORANDUM FOR: WHITE HOUSE STAFF

FROM : JACK WATSON *Jack*
AL MCDONALD *Al*

SUBJECT : Instructions on Transition

The President has instructed that we provide the finest transition in history for the President-elect and his team. He directed further that we carry out this important task in as gracious, constructive and helpful way as possible.

The President, his Cabinet and his staff continue to bear the full authority and the responsibility for determination of policy and the conduct of the government until the end of the term. Therefore, the transition should in no way diffuse this authority or responsibility. Its aim is to provide for appropriate orientation, informational exchanges and planning for a smooth transition of the Presidency on Inauguration Day.

Our office will be overseeing the transition efforts and making sure these activities are conducted in a planned, disciplined and orderly way. Until appropriate contact points are named and links established between unit transition leaders and the President-elect's designees, you should refer all requests for information, orientation sessions or other actions to this office for coordination and clearance.

We welcome ideas and suggestions you may have to make this transition the finest ever. Many of you shared the experience of an earlier transition, and your advice and counsel would be much appreciated. Please send your suggestions directly to us marked "Administratively Confidential."

THE WHITE HOUSE

WASHINGTON

November 12, 1980

MEMORANDUM FOR CABINET AND AGENCY HEADS

FROM: JACK WATSON *Jack*

The purpose of this memorandum is to inform you of persons designated by the President and Governor Reagan as members of their respective transition teams. A description of the transition teams is attached.

This memorandum also establishes guidelines for the filling of SES positions during the transition period and the detailing of agency employees to the Reagan transition team.

Filling SES Vacancies

As part of the President's commitment to an effective transition, it is important that the new Administration be given appropriate latitude in filling key career Senior Executive Service (SES) positions when it assumes office. This is particularly true since involuntary reassignments of career SES employees may not be made within 120 days after the appointment of a new agency head.

Accordingly, the President expects all department and agency heads personally and carefully to review all recommendations for new SES appointments and transfers of career SES employees between now and January 20, 1981.

Use of Detailees

The Presidential Transition Act of 1963 (Sec. 2) provides that any employee of any agency of any branch of the government may be detailed to a Presidential transition team on a reimbursable basis with the consent of the head of the agency. An employee so detailed shall continue to receive compensation for regular employment and retain the rights and privileges of such employment without interruption. The detailee will be responsible only to the President-elect or Vice President-elect for the performance of such duties.

As stated in previous memoranda, it is the President's desire that all departments and agencies should cooperate fully with the transition team. This general policy extends to any requests for detailees. Requests should generally be granted, unless the person requested is necessary for the continued effective performance of agency functions and operations.

The agency head should personally approve the use of any detailees. In order for us to maintain a complete record of transition services, you are requested to include in your transition progress reports, a list of the detailees whom you have approved. Please report any decision to deny a request for detailees to Harrison Wellford, Executive Associate Director of OMB.

Request for detailees should be discussed by the respective transition officers for the agency. Formally, the request must be transmitted to the agency head in writing, and signed by Mr. Peter McPherson or Vernon Orr (or their designee) with a copy to the Comptroller of GSA (Mr. Raymond Fontaine).

William E. Timmons, Deputy Director of the Transition, is responsible for the Office of Executive Branch Management.

Frank A. Whetstone is the senior advisor to this office and Stanley Ebner is Coordinator.

The following is a listing of Executive Branch agencies and the Director responsible for teams to be assigned to them. The groupings are for the administrative convenience of the transition staff only and have no policy implications.

NATIONAL SECURITY GROUP

Dr. David M. Abshire

- Department of State
- Department of Defense
- Central Intelligence Agency
- International Development Cooperation Agency
- Arms Control Disarmament Agency
- International Communication Agency
- Veterans Administration
- International Bank for Reconstruction and Development
- Overseas Private Investment Corporation
- Foreign Claims Settlement Commission
- Board for International Broadcasting

RESOURCES AND DEVELOPMENT GROUP

Richard Fairbanks

- Department of Agriculture
- Department of Energy
- Federal Energy Regulatory Commission
- Department of the Interior
- Environmental Protection Agency
- Nuclear Regulatory Commission
- Alaska Natural Gas Transportation System
- Commodity Futures Trading Commission
- Farm Credit Administration
- Tennessee Valley Authority
- Syn-Fuels Corporation
- Office for Micronesian Status Negotiations
- National Aeronautics and Space Administration

HUMAN SERVICES GROUP

Elizabeth Dole

- Department of Education
- Department of Health and Human Services
- Department of Housing and Urban Development
- ACTION
- Community Services Administration
- Federal Council on Aging
- National Credit Union Administration

ECONOMIC AFFAIRS GROUP

Stanton D. Anderson

Council on Wage and Price Stability
Office of Special Trade Representative
Department of Commerce
Department of Treasury
Department of Transportation
Comptroller of the Currency
Export-Import Bank
Federal Home Loan Bank Board
Small Business Administration
International Trade Commission
Federal Deposit Insurance Corporation
Federal Reserve System
National Transportation Safety Board
Regional Development Commissions
National Labor Relations Board
Department of Labor
Federal Labor Relations Authority
Federal Mediation and Conciliation Service
National Mediation Board
Occupational Safety and Health Review Commission
Federal Savings and Loan Insurance Corporation

LEGAL AND ADMINISTRATIVE AGENCIES GROUP

Loren A. Smith

Department of Justice
General Services Administration
Office of Personnel Management
United States Railway Association
Civil Aeronautics Board
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities Exchange Commission
Federal Maritime Commission
Consumer Product Safety Commission
Federal Emergency Management Agency
National Science Foundation
Advisory Commission on Intergovernmental Relations
United States Postal Service
Federal Election Commission
Merit System Protection Board
Smithsonian Institution
National Endowment for the Arts
National Endowment for the Humanities
Advisory Council on Historic Preservation
Postal Rate Commission
Civil Rights Commission
Equal Employment Opportunity Commission
Miscellaneous Boards and Commissions

Team leaders report to one of five Group Directors who manage issues clusters.

Department team leaders are:

Department of State: Robert E. Neumann
Department of Defense: William Van Cleave
Department of Treasury: Gerald L. Parsky
Department of Justice: Richard Wiley
Department of Interior: Richard Richards
Department of Agriculture: Richard Lyng
Department of Commerce: Calvin J. Collier
Department of Labor: Richard Shubert
Department of Health and Human Services: Robert Carleson
Department of Housing and Urban Development: Gerald Carmen
Department of Transportation: Arthur E. Teele
Department of Energy: Michael Halbouty
Department of Education: Loreli Kinder

Team leaders for agencies and independent commissions, as well as members of the departmental teams, will be announced later.

TRANSITION OFFICERS
WHITE HOUSE

Jack Watson 456-6797
White House Chief of Staff

Al McDonald 456-7873
White House Staff Director

Harrison Wellford 395-3864
OMB Executive Director

Michael Rowny 456-7873
Deputy to the Staff Director

White House Administrative Contact:

Hugh Carter 456-2702
Special Assistant to the President
for Administration

White House Press Contacts:

Ray Jenkins 456-2100
Rex Granum 456-2100
Deputy Press Secretaries

Vice President's Office:

Dick Moe 456-6606
Vice President's Chief of Staff

THE WHITE HOUSE

WASHINGTON

November 12, 1980

LIST OF TRANSITION OFFICERS
DEPARTMENTS AND AGENCIES

DEPARTMENT OF AGRICULTURE

Jim Williams 447-6158
(Howard Hjort - budget)
(Joan Wallace - space, tech., pers.)

DEPARTMENT OF COMMERCE

Ms. Elsa Porter 377-4951

DEPARTMENT OF DEFENSE

Peter Hamilton 697-8388

DEPARTMENT OF EDUCATION

Under Secretary Steven A. Minter 755-1100

DEPARTMENT OF ENERGY

Douglas G. Robinson 252-6476

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Randy Kinder 245-7163
Alair Townsend 245-6396

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Terrence Duvernay 755-6810

DEPARTMENT OF INTERIOR

William Kendig 343-4701

DEPARTMENT OF JUSTICE

Kevin D. Rooney 633-3101

DEPARTMENT OF LABOR

Paul Jensen 523-8231

DEPARTMENT OF STATE

Peter Tarnoff 632-2540

DEPARTMENT OF TRANSPORTATION

Deputy Secretary Bill Beckham 426-2222

DEPARTMENT OF THE TREASURY

Curtis Hessler 566-2551

ACTION Robert Currie	254-7264
COMMUNITY SERVICES ADMINISTRATION Mr. Lee Foley	254-5590
COUNCIL OF ECONOMIC ADVISERS Susan Irving	395-5084
COUNCIL ON ENVIRONMENTAL QUALITY Malcolm Baldwin	395-4522
COUNCIL ON WAGE AND PRICE STABILITY Bob Russell	456-6466
ENVIRONMENTAL PROTECTION AGENCY Jack Ford	755-2705
FEDERAL EMERGENCY MANAGEMENT AGENCY William S.W. Jones	653-7776
GENERAL SERVICES ADMINISTRATION Mr. E. Perley Eaton, Jr.	566-1212
NATIONAL SECURITY COUNCIL Les Denend (For National Security Affairs)	456-2235
Ms. Christine Dodson (For the NSC staff)	395-3440
OFFICE OF ADMINISTRATION Ms. Sarah T. Kadec	456-2804
OFFICE OF MANAGEMENT AND BUDGET Ms. Alice Rogoff	456-6992
OFFICE OF PERSONNEL MANAGEMENT Alan Campbell, Director	632-4724
SELECTIVE SERVICE SYSTEM Dr. Bernard Rotsker	724-0817
SMALL BUSINESS ADMINISTRATION Bill Mauk	653-6678
SPECIAL REPRESENTATIVE TO THE PRESIDENT (AMBASSADOR SOL LINOWITZ) Andy Marks	456-7620
U.S. TRADE REPRESENTATIVE Ambassador Robert Hormats Robert Cassidy	395-5114 395-3150
VETERANS ADMINISTRATION Rufus H. Wilson	389-2817

CIA

Richard Lehman

351-6724

INTERNATIONAL COMMUNICATIONS AGENCY

Richard Cohen

724-9185

OFFICE OF SCIENCE & TECHNOLOGY POLICY

Frank Press

456-7116

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Jerry Griffin

755-3972

PEACE CORPS

Dick Celeste

254-7970

OFFICE OF 'CONSUMER AFFAIRS

Esther Peterson

456-6970

THE WHITE HOUSE
WASHINGTON
November 13, 1980

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF MEMBERS AND HEADS
OF ALL EXECUTIVE OFFICE OF THE PRESIDENT
ELEMENTS

FROM: LLOYD N. CUTLER

Inc

SUBJECT: Private Job offers and Post-Employment
Conflicts of Interest

As this Administration comes to an end, some staff members may be contemplating private employment or may receive offers or expressions of interest concerning private employment. If so, you should familiarize yourself with restrictions imposed by Federal criminal statutes and standard of conduct regulations that may apply to 1) your discussions about employment with prospective private employers and 2) your subsequent business dealings with the government after you have departed.

This memorandum contains a general outline of pertinent post-employment restrictions. You should consult with counsel if you have questions about their applicability to your specific situation.

The post-employment restrictions contained in the Letter of Commitment you may have signed upon your appointment have been superseded by the post-employment conflict of interest provisions of the Ethics in Government Act of 1978, as amended, which are incorporated in the following summary.

Negotiation for Future Employment

A government* employee ("employee") is generally not barred from seeking other employment while in government, even if the prospective employer has dealings with his agency. However, an employee should disqualify himself from acting on any matter that would directly affect a prospective employer.

Federal law (18 USC 208) specifically prohibits an employee from personally and substantially participating in any particular matter involving a financial interest of any person or organization with whom the employee is negotiating or has an arrangement concerning prospective employment. Executive Order 11222 and regulations carrying out that

*The term "government," as used in this memorandum, refers to the Executive Branch of the U.S. Government, its independent agencies, and the Government of the District of Columbia.

Order impose a more stringent standard of disqualification. They require a Government employee to avoid any action which might result in, or create the appearance of, using public office for private gain, giving preferential treatment to any organization or person, losing independence or impartiality of action, or weakening the confidence of the public and the integrity of the government. The following guidelines are based on the Executive Order as well as the governing statutes.

1. Disqualification Because of Contacts and Arrangements Concerning Prospective Employment

An employee shall avoid acting on matters which directly affect a person or organization if:

- ° The employee has made contact with the person or organization, either directly or through an intermediary, inquiring about future employment.
- ° The person or organization has unilaterally expressed an interest to the employee, either directly or through an intermediary, in employing him in the future. Depending on the particular circumstances involved, the employee may avoid having to disqualify himself on matters directly affecting the person or organization by indicating unequivocally that he is not interested in future employment with such employer; disqualification will be required, however, if the employee leaves open any opportunity to pursue further discussions.
- ° There is an informal or tacit understanding that the employee will join (or return to) the person or organization upon leaving government.

As used in these guidelines, "organization" includes a non-profit entity or state or local public body that deals with or has matters pending before the government.

2. Particular Matters as to Which Disqualification May be Required.

It is up to the employee to determine whether he is, or may be, involved in a particular matter that directly affects the prospective employer. If he determines that he is so involved, he should refrain from participating in any aspect of the matter and take appropriate steps to insulate himself from

influencing its outcome in any way. Examples of particular matters requiring disqualification are listed below:

- ° Those which specifically focus on the prospective employer, e.g., a recommendation on a CAB ruling concerning an airline represented by a recruiting law firm.
- ° Those of more general applicability which nevertheless have a direct and predictable effect on the prospective employer, e.g., review of an agency decision to adopt environmental regulations that will impose restrictions on a particular industry of which the prospective employer is a part;
- ° Although the statute is violated only when a prospective employer has a "financial interest" in a particular matter, the Executive Order aims at avoiding even the appearance of conflict. Accordingly, the employee should disqualify himself whenever a prospective employer has a significant personal or professional interest in the matter. In a matter involving environmental regulations, disqualification would be required if the prospective employer is a public interest organization which has taken part in the regulatory proceeding.

In most instances, the employee will know whether a matter within his official responsibility will directly affect the prospective employer. If he lacks adequate knowledge but suspects a nexus because of the subject matter involved, he should make a good faith effort to obtain additional information by consulting appropriate government officials. If on the basis of this information he is uncertain about whether the nexus is sufficient to require disqualification, he should seek counsel's advice.

3. Making a Record if any Issue of Disqualification Arises.

Written records should be made of how each issue of disqualification is addressed and resolved. Records should be made of the following events:

- ° Employment-related contacts by or with a prospective employer if there is a potential issue of disqualification.
- ° Responses made by the employee to a prospective employer's unsolicited expression of interest. If the response is flatly negative, this may be relied upon to permit the employee to continue to participate in a matter as to which disqualification would otherwise be required.

- ° Conclusions concerning the need for disqualification and consultations with government officials involved in providing information or giving advice.
- ° Steps taken to insulate himself from a matter for which disqualification is required, for example notifying a superior or an aide of the disqualification and delegating responsibility for the matter to another official.

Post-Employment Activities

A former government employee ("former employee") is generally barred from representing a nongovernment party in matters in which the government has an interest and in which the former employee had been involved while in government. The scope of the prohibition will depend on 1) whether the former employee was a high level "Senior Employee" and/or 2) the former employee's degree of prior involvement in the matter.

1. Restrictions Applicable to All Former Employees.

- ° Permanent Bar from Representation in matters in Which Former Employee Had Personal and Substantial Involvement (18 USC 207(a)). A former employee is permanently barred from representing anyone before the government, or in proceedings involving the government, in any particular matter involving specific parties and in which he had participated personally and substantially while in government. This prohibition against "switching sides" not only encompasses acting as another's agent or attorney, but any other kind of representation or communication made on behalf of another with the intent to influence the government, e.g., a telephone call to a government official for lobbying purposes. It would not apply to a former employee's involvement in most matters of general applicability and interest, e.g., legislation, rulemaking, formulation of general policies, standards or objectives. Some such matters, of course, have a direct financial effect on particular prospective employers. In such cases, the former employee should review the issue with counsel to determine whether the proposed representation involves a risk of prosecution or criticism.

- ° Two Year Bar from Representation in Matters Within Former Employee's Official Responsibility (18 USC 207(b)(i)). For two years after government service, a former employee is barred from representing anyone before the government, or in proceedings involving the government, in any particular matter involving specific parties and which was actually pending under the former employee's "official responsibility" in his last year of government service.

2. Restrictions Applicable Only to Former "Senior Employees"

Staff members who receive compensation at a rate comparable to or greater than that fixed for Executive level appointees (\$50,112.50) are "Senior Employees" to whom the following restrictions will apply upon leaving the government.

- ° Two Year Bar on Assisting in Representing (18 USC 207(b)(ii)). For two years after government service, a former Senior Employee may not assist in the representation of anyone by personal presence at a formal or informal appearance before the government, or in proceedings involving the government, in any particular matter in which he could not act as another's actual representative because of his personal and substantial participation in the matter. This restriction is not an absolute bar from assisting in a matter in which a former Senior Employee participated while in government. It only prevents rendering assistance "in representing" while personally present at an appearance before a government official. For example, a former Senior Employee could work on a contract with which he was involved while in government and could manage a company, institution, or university where such former employee's decisions determine the manner in which his or her organization will perform under a government contract or grant, so long as he does not accompany others who may represent the institution to meetings with government officials in order to assist them.
- ° One Year Bar on Contact With Former Agency (18 USC 207(c)). For one year after leaving a government department or agency, a former Senior Employee is barred from representing anyone before his former department or agency in a particular matter which is either pending before or of direct

and substantial interest to the department or agency. The prohibition will apply regardless of whether 1) the former Senior Employee had any prior involvement in the matter while in government and 2) the matter involves specific parties. As in the case of the permanent bar, any kind of representation or communication made on behalf of another with the intent to influence the government is covered. The restriction, however, would not apply to purely social or informational communications, the transmission of filings which do not require government action, personal matters, any expression of personal views where the former employee has no pecuniary interest, and responses to the former agency's request for information.

Former Senior Employees elected to state or local government office or employed full-time by a state or local government agency, an institution of higher education, or a non-profit hospital or medical research organization, are not subject to the above restriction to the extent that the former Senior Employee is acting as the representative of such an entity.

You will be further advised as to which components of the Executive Office of the President are considered separate agencies for purposes of applying the "no contact" ban.

Prohibition Against Receipt of Compensation For Certain Representational Services

A former employee is barred from receiving or participating in the receipt of compensation (fee sharing) for representational services performed by anyone in regard to a particular matter, where such representation occurred before any part of the Executive or Legislative Branches while he or she was in government service. Representational services rendered before the courts are not within the scope of this ban. The prohibition might apply, for example, to a former employee who becomes a partner in a law firm. It would be unlawful for the former employee to share in fees received by the firm for representational services rendered before any government department or agency while he was in government service, regardless of his lack of knowledge or prior involvement in the matter. (18 USC 203).

Financial Disclosure Report

All employees who are required to file a Financial Disclosure Report (Standard Form 278) annually, must file a Financial

Disclosure Report within 30 days of termination of employment. Generally, the report must cover the period from January 1, 1980 to date of termination. Schedule D of the report requires the filing official to provide information "regarding any agreements or arrangements concerning (i) future employment".

Special Rules Applicable to Lawyers

Lawyers returning to the private practice of law should consider whether applicable rules of professional conduct impose restrictions above and beyond those contained in Federal statutes and regulations. These rules contain additional limits on a lawyer's activities in dealing with the government, as well as on the activities of his partners and associates.

The A.B.A. Code of Professional Responsibility contains two Disciplinary Rules that are of special significance to former government officials in private practice. DR 9-101(B) bars a lawyer from accepting private employment in a matter in which he had substantial responsibility while serving as a public employee.

DR 5-105(D) provides that if a lawyer is required to decline employment or withdraw from employment under a Disciplinary Rule, no partner, associate, or any other lawyer affiliated with the lawyer's firm may accept or continue such employment. This rule seems to require the disqualification of an entire law firm if one of its lawyers is disqualified by virtue of former government service under Rule 9-101(B). A.B.A. Formal Opinion No. 342 recognizes that absent an appearance of significant impropriety, a government agency may waive Rule 5-105(D) if adequate screening procedures are established which effectively isolate the former government official from lawyers of his firm involved in the matter in question. 62 A.B.A. Journal 517,521 (1976). However, the question whether an absolute rule of disqualification should apply, even where a screening mechanism exists, continues to stir considerable debate. See, e.g., Armstrong v. McAlpin, 606 F.2d 28 (1979) where a panel of Second Circuit judges, reversing a District Court, concluded that an entire law firm was disqualified. The panel's opinion was subsequently vacated upon reconsideration en banc, _____ F.2d _____ 2nd Cir. No. 1010745 (June 20, 1980). See also A.B.A. Model Rules of Professional Conduct 1.11(a), (e) and (f) (January 30, 1980, Kutak Commission discussion draft) which would adopt an absolute rule of imputed disqualification.

In April, 1980, the District of Columbia Court of Appeals issued a Notice of Proposed Order to Amend the Disciplinary Rules relating to lawyers moving in and out of government (the "Revolving Door" proposals).* The amendments would permit

*The District of Columbia Court of Appeals has adopted the A.B.A. Code of Professional Responsibility.

the employing government agency or department to waive the imputed disqualification of lawyers affiliated with the former government official, if the government body determines that the waiver is not inconsistent with the public interest and if specified screening procedures are followed. In lieu of the screening procedures set forth in the amendments, a government body could adopt its own for waivers relating to matters within its jurisdiction. The Court of Appeals has not yet adopted these proposals.

THE WHITE HOUSE

WASHINGTON

November 14, 1980

NOTICE TO WHITE HOUSE AND EOP STAFF

FROM : AL MCDONALD *AM*

SUBJECT : Voluntary Program on Career Assessment

We are fortunate to be able to provide some professional career guidance and counselling to those staff members who will be relocating with the change of Administration. This is a strictly volunteer program, and those professionals providing the briefings and individual guidance are volunteering their services to us.

A series of evening seminars are being scheduled in room 450 of the OEOB for interested persons beginning on November 17 at 5:15 p.m. Attached is a calendar outlining the subjects to be covered in the sessions. These seminars are designed to assist staff in thinking through their career options in ways to pursue their preferred choices.

Any staff member wishing to participate in this voluntary program should contact the White House personnel office on extension 2260 or visit room 6 of the OEOB to sign up for the sessions.

Professionals will be available as indicated for individual one-on-one counselling sessions if desired. As the program progresses additional assistance will be provided by Presidential personnel in arranging contacts with prospective employers. Details on the arrangements will be provided during the course of the program.

Attachment

SESSIONS CAREER ASSESSMENT

NOVEMBER

17/EVE MONDAY	18/EVE TUESDAY	19/ WEDNESDAY	20/EVE THURSDAY	21/DAY FRIDAY	22/DAY SATURDAY
<u>INTRODUCTORY SEMINAR</u> Individual Profile/ Job Search Orientation	<u>SEMINAR #1</u> Skills/Personal Assessment	(Optional extra Seminar if needed)	<u>SEMINAR #2</u> Communications: Resume/Letter Development	One-On-One Discussion Sessions Resume Critiquing Career Counselling By Appointment	One-On-One Discussion Sessions By Appointment

NOVEMBER

24/MONDAY	25/EVE TUESDAY	26/DAY WEDNESDAY	27/ THURSDAY	28/ FRIDAY	29/ SATURDAY
(Optional extra Seminar if needed)	<u>SEMINAR #3</u> Interviewing Techniques	One-On-One Discussion Sessions By Appointment	(Thanksgiving)		

DECEMBER

1/MONDAY	2/EVE TUESDAY	3/ WEDNESDAY	4/ THURSDAY	5/ FRIDAY	6/ SATURDAY
(Optional extra Seminar if needed)	<u>SEMINAR #3</u> The Job Search: Resourcing Jobs How to Make Con- tacts Using Exec. Search Firms	One-On-One Discussion Sessions By Appointment Additional Seminar(s) If Needed	Individual Profiling Career Direction		

*Seminar Times: 5:15 - 7:00 p.m.

THE WHITE HOUSE

WASHINGTON

November 17, 1980

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF MEMBERS AND
HEADS OF ALL EXECUTIVE OFFICE OF THE
PRESIDENT ELEMENTS

FROM: LLOYD N. CUTLER *LNC*
SUBJECT: DISPOSITION OF PRESIDENTIAL PAPERS
BY DEPARTING STAFF MEMBERS

Within the next few days, the President will review and approve procedures to be followed for the disposition of "Presidential papers" originated or received during his Administration. A memorandum defining "Presidential" and "Personal" papers and their proper disposition will be promulgated at that time. Until that memorandum is circulated, no papers or documents should be removed from the White House or destroyed.

If you have any questions in the interim, please direct them to Michael Cardozo or Philip Bobbitt in the office of the Counsel to the President.

THE WHITE HOUSE

WASHINGTON

November 18, 1980

NOTE FOR WHITE HOUSE AND EOP STAFF

FROM: ARNIE MILLER 

SUBJECT: Career Assistance

As Al McDonald indicated yesterday, the Presidential Personnel Office will try to help identify job opportunities. We intend to contact potential employers and executive recruitment firms to build a list of available positions.

If you are interested in any such assistance, please send your resume and a completed copy of the attached form to my office. Someone will then contact you and discuss possible jobs that match your experience and interest.

Attachment

EMPLOYMENT ASSESSMENT

Name _____

Current Position _____

Are you willing to relocate? yes no

If yes, where? (Be specific if you have preferences)

Size of organization large medium small

Type of organization ___ State Government ___ local government
 ___ private sector

Salary range _____

State specifically, if possible, what you want to do. (E.g., manage a specific agency, Assistant to a Chief Executive Officer, public affairs, etc.)

[illegible]

Attach your resume and forward to: Presidential Personnel Office,
145 Old Executive Office Building, Attn: Vella Traynham.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 18, 1980

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: LARRY E. BYRNE

SUBJECT: Secretary Announcement for Potential Civil Service Jobs

The Office of Personnel Management is accepting applications for secretary positions, GS-3 through GS-7, until December 12. The necessary forms to file can be obtained from the White House Personnel Office, Room 6, extension--2260.

Applicants' qualifications will be reviewed and evaluated by OPM on the quality of their experience, education, training, and other achievements described on their application and supplemental forms. They will be given a numerical rating from 70 to 100 for each grade level.

Eligibles for grades GS-3 and GS-4 may apply directly to Federal agencies within the Washington, D.C. metropolitan area for employment consideration by submitting copies of their Notice of Rating and Personal Qualifications Statement (SF-171).

Eligibles for grades GS-5 through GS-7 will be referred to agencies for employment consideration based upon their numerical score and any selective criteria applicable to the specific vacancy to be filled.

If you have any questions, please call Barbara Walter on extension 2260.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 20, 1980

NOTICE TO WHITE HOUSE AND EOP STAFF

FROM: LARRY E. BYRNE *LEB*

SUBJECT: Career Counselling Seminars

Based on our planned reevaluation of those interested after the first introductory seminar, we have made a number of changes in the schedule for this week and next. We have specifically expanded the opportunity for one-on-one counselling sessions, which were requested by a large number of the participants. We have also consolidated the seminars to provide more substance at each individual session. The attached calendar contains the latest revisions.

REVISED SCHEDULECAREER COUNSELLING SEMINAR, NOVEMBER 1980MONDAY
17

Introduction:

JOB SEARCH
ORIENTATION(OEOB 450
5:15-6:30)Arthur J. Letcher
Graduate Placement
Director
(Wharton)TUESDAY
18SEMINAR ISKILLS/
PERSONAL
ASSESSMENT(OEOB 450
5:15-7:00)Dr. Roderic
Hodgins, Ed.D.
(Private
Practice)WEDNESDAY
19ONE-ON-ONE
SESSION(By appointment,
3745, 3581)Mark O'Brien
Placement
Associate,
(Wharton)THURSDAY
20ONE-ON-ONE
SESSION(By appointment)
-----SEMINAR IIRESUME DEV./
INTERVIEWING
TECHNIQUES(OEOB 450
5:15-7:15)David Wolford
(Director Oral
Communication
Program)Richard Sherman,
Ph.D. (Consultant)Larry M. Robbins,
Ph.D.
(Wharton Communica-
tions Program)FRIDAY
21ONE-ON-ONE
SESSION

(By Appointment)

Arthur Letcher
Mark O'Brien
Richard ShermanMonday
24SEMINAR IIITHE JOB CAMPAIGN:
RESOURCING JOBS

HOW TO MAKE CONTACTS

US EXECUTIVE SEARCH FIRMS

(OEOB 450:15-7:00)

James Newpher, President
Newpher-Haas Inc.John Steele, Director
Career Planning and Placement
(Boston College)TUESDAY
25ONE-ON-ONE
SESSIONS(To be scheduled
if necessary)

THE WHITE HOUSE

WASHINGTON

November 19, 1980

MEMORANDUM FOR: WHITE HOUSE STAFF
FROM: HUGH CARTER *HC*
SUBJECT: Employment Survey

We have been requested by the Reagan transition group to determine if any White House secretarial/administrative assistant staff members are interested in working at the White House in the new administration. Secretarial/administrative assistant staff members who would like to be considered for continuing employment should contact the White House Personnel Office on Ext. 2260 or 6470. Those employees who work within the White House Operating Units are historically part of the career service, and we have no reason to believe they will not be retained.

The White House Personnel Office will prepare a listing of those who are interested in remaining, and will provide that to the Reagan transition group for their review. Decisions on continuing employment will be determined solely by the incoming administration.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

November 25, 1980

MEMORANDUM FOR

ALL WHITE HOUSE STAFF

FROM:

LARRY E. BYRNE *for By*

SUBJECT:

Secretaries, GS-8/9/10

The Office of Personnel Management is accepting applications for secretary positions, GS-8/9/10, until December 31. OPM considers opportunities good for these positions.

Attached is OPM's explanation of duties, experience requirements and basis of rating.

If you are interested, call Barbara Walter in the White House Personnel Office, extension-2260 for more information.

Attachment

OCCUPATIONAL DUTY SHEETJob Title: SecretarySeries: GS-318-7,8,9,10,11Duties of the Position

A secretary is the personal office assistant to a designated supervisor, and generally handles a variety of administrative and clerical details of office management in close support of that supervisor. Some positions may or may not require stenographic, typing, or dictating machine transcribing skills.

Experience Requirements

You must meet the following experience requirements:

<u>Grade</u>	<u>General Experience</u>	<u>Specialized Experience</u>	<u>Total</u>
GS-7	2½ years	1½ years	4 years
GS-8	2½ years	2 years	4½ years
GS-9	2½ years	2½ years	5 years
GS-10	2½ years	3 years	5½ years
GS-11	2½ years	3½ years	6 years

General Experience is experience obtained in the performance of clerical duties in any area of work.

Specialized Experience is experience in secretarial work which has involved responsibility for serving as the principal personal office assistant to a designated supervisor in a close and direct working relationship.

Additionally, the experience must provide evidence of progressively broader knowledges, greater judgment, and higher skills commensurate with the level of the positions for which you are applying.

Credit for Education

Education above the high school level is creditable for up to 2½ years of general and ½ year of specialized experience.

Basis of Rating

No written, typing or stenographic tests are required for GS-8 positions and above. You will be rated on the nature and scope of secretarial and other experience, relative proficiency as a secretary, and personal qualities necessary for successful performance of secretarial work. The rating will be based on your own statement of your background and on any additional information obtained by the Civil Service Commission.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 25, 1980

MEMORANDUM FOR

ALL WHITE HOUSE ADMINISTRATIVE CONTACTS

FROM:

Larry E. Byrne
LARRY E. BYRNE

SUBJECT:

Printing of Personnel Resumes

For the convenience of staff members, we have found a number of commercial printing shops within walking distance of the Old Executive Office Building who can and will do resume layouts and printing. The listing below should be of assistance to you in having your resume printed.

Lexicon Graphics
1850 K Street, N.W.
lower level
typesetting services
293-1362

Campbell Printing
1328 I Street, N.W.
typesetting and layout
available
347-9804
John Robertson

Insta-Print
1850 K Street, N.W.
no typesetting or
layout service
223-3901
Lorenz Wheatley

THE WHITE HOUSE

WASHINGTON
December 3, 1980

MEMORANDUM FOR EOP STAFF

FROM: Harley Frankel *HF*
Deputy Director, Presidential Personnel Office

SUBJECT: Interviews with Executive Recruiting Firms and
PPO Job File

We have been in touch with many potential employers and executive recruitment firms to identify available jobs.

Executive Recruitment Firms

We have made arrangements with two major national firms to interview EOP staff here during the next two weeks.

1. Boyden Associates, a New York based firm, is recruiting for 400 senior managers and staff positions located throughout the country. They will interview interested senior EOP staff on Wednesday, December 10.

If you would like to interview with Boyden's representative, please sign up with Janie Leighton-Miller in Room 148 by Monday, December 8. Please bring a resume with you that you can leave with Janie.

2. Billington, Fox & Ellis, an Atlanta based company, will be here on December 17. They will send us information soon about the positions for which they are recruiting. In the meantime, please sign up with Janie by December 8 if you think you would like to see their representative. Once we have more information we will be in touch with those who express an interest.

We are completing arrangements with several other major executive recruiting firms. When the details for their visits have been developed, we will send you a notice.

PPO Job File

We have identified approximately 50 positions for which employers would like to consider EOP staff. A card file has been established in Room 148 that describes each position and lists its salary range and geographic location. A majority of the employers have asked that we refer resumes to them, so some of the cards will not list the employer by name. Announcement numbers have been placed on each card for your use in telling us what particular job interests you. We will log that number and refer your resume to the employer. In instances where the card lists the employer, you should apply directly.

We expect to receive more jobs. Our file will be updated daily to include new jobs. If you have questions, call Vella Traynham (Room 148 - ext. 2995).

THE WHITE HOUSE

WASHINGTON

December 15, 1980

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF MEMBERS AND
HEADS OF ALL EXECUTIVE OFFICE OF THE
PRESIDENT ELEMENTS

FROM:

JACK WATSON *Jack*

SUBJECT:

Meeting on the Disposition of
Presidential Papers

At 4:00 p.m., Tuesday, December 16, 1980, a meeting will be held in Room 450 OEOB to discuss the attached memorandum on the handling of Presidential Papers and the Departure Agreement.

I request that a representative of each White House staff office and each office within EOP attend. In addition, any staff member interested in the removal of Presidential Papers from the White House or the EOP is encouraged to attend.

This is the only scheduled meeting on this important subject and I stress the importance of a full understanding of procedures to be followed for the handling of Presidential Papers.

THE WHITE HOUSE

WASHINGTON

December 15, 1980

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF MEMBERS AND
HEADS OF ALL EXECUTIVE OFFICE OF THE
PRESIDENT ELEMENTS

FROM:

JACK WATSON
LLOYD CUTLER

SUBJECT:

PROCEDURES FOR THE DISPOSITION AND REMOVAL
OF PRESIDENTIAL PAPERS AND COPIES

1. Introduction.

1.1 Until 1974, Presidential Papers were treated as the personal property of the outgoing President, to be disposed of as he saw fit. While no statute specifically legalized this custom, the Presidential Libraries Act of 1955 tacitly recognized it by authorizing government-operated Presidential libraries in which outgoing Presidents could deposit any papers they wished, and could specify the terms under which Government or public access would be permitted.

1.2 In 1974, because of the legal controversies over former President Nixon's right to dispose of his tape recordings, Congress enacted a special law dealing solely with the Nixon records. And in 1978, Congress enacted the Presidential Records Act of 1978 setting forth procedures for the retention and disposition of all Presidential Papers beginning with the next term starting January 20, 1981.

1.3 Accordingly, President Carter's Papers are his own personal property, as in the case of all of his predecessors except President Nixon. In making his own decisions, President Carter has considered the practices of his predecessors, as well as the principles and policies of the Presidential Records Act of 1978.

1.4 President Carter intends to donate most of his Presidential Papers to the United States Government, subject to certain restrictions on access described below.

1.5 President Carter's three predecessors who completed their terms in office, Presidents Eisenhower, Johnson and Ford, each established procedures which prohibited members of their respective staffs from removing Presidential Papers or copies of such papers.* President Carter recognizes that staff members may have a legitimate interest in retaining copies of some papers recording actions in which they participated. He has, therefore, decided to allow members of the White House Staff and members of the staffs of elements of the Executive Office of the President to remove copies of certain Presidential Papers with his prior permission under the restrictions set forth below.

1.6 The President respects the right of every staff member to speak and write freely about his experiences as a member of the White House Staff or the EOP. But he also expects those who

*Presidents Kennedy and Nixon, of course, did not complete their terms.

have had the privilege of serving on the White House Staff or in the EOP to respect the President's rights of ownership and control over the Presidential Papers generated during his term, and the principle that White House advisers do not disclose their own non-public advice or that of other advisers, or the President's non-public response, without the President's consent.

2. Distinction Between Presidential Papers and Personal Papers.

2.1 "Papers" include, but are not limited to, all correspondence, memoranda, documents, photographs, maps, recordings, logs, appointment books, journals, pamphlets, documentary material and copies of the above.

(a) "Personal Papers". Personal Papers are all materials, including personal correspondence, journals, diaries, and their functional equivalents, which are neither developed in connection with nor utilized during the transaction of official government business. The important criterion is not whether the papers merely refer to or are derived from public business, but whether they are actually used, or were created in the transaction of governmental operations. For example, an evening diary which refers to government business but is not used in transacting such business is a Personal Paper. On the other hand, office diaries, appointment books, telephone logs and personal notes taken during a government meeting or used in transacting subsequent government business are Presidential Papers.

(b) "Presidential Papers". Presidential Papers are all records which are not Personal Papers and were either originated or received by the following officials and elements of the Executive Office of the President:

White House Office
Intelligence Oversight Board
Domestic Policy Staff (except for the Drug Abuse Policy Section)
Council of Economic Advisers
National Security Adviser and Deputy National Security Adviser, and deposited in the White House Situation Room
Chairman of the Council on Wage and Price Stability
Director of the Office of Administration
Those files of the Office of Science and Technology Policy reflecting its advisory role to the President.

(c) "Campaign Papers". Campaign Papers are all papers which were developed in connection with or utilized during the 1980 Presidential campaign and which originated in or were received by the above enumerated officials or elements of the Executive Office of the President. President Carter has decided to treat Campaign Papers as Presidential Papers. President Carter may segregate these papers from other Presidential Papers in order to provide special protection for their confidentiality.

2.2 A staff member owns his personal papers. Originals and all copies of Presidential Papers are owned by the President. The President intends to grant staff members access to Presidential Papers relating to actions in which they participated when such papers have been deposited in the Presidential Library. Consistent

with the practice of previous Presidents and President Carter's deed of gift, members of the general public will not be granted access to the Presidential Papers placed in the Carter Library until President Carter authorizes such access.

3. Copying or Removal of Papers from White House Files.

3.1 Staff members may remove their own Personal Papers from White House or EOP files.

3.2 Staff members may remove the following types of Presidential Papers: photographs and copies of published documents. The original of a staff member's personnel records, appointment books and telephone logs may not be removed. Copies of personnel records, appointment books and telephone logs may be removed.

3.3 Original drafts of documents which were circulated to any other office for comment are Presidential Papers which should remain in files for transfer to the Presidential Library. (Copies of such drafts may be removed as provided in subparagraph 3.4(b) below.) Subject to the restrictions of paragraph 4 below, original drafts which were not circulated by the author for any purpose, including comment by other staff or any other office, may be treated as Personal Papers and removed by the staff member who prepared them. The staff member may of course make originals or copies of drafts available for deposit in the Presidential Library. The President encourages doing so for drafts of historical interest.

3.4 Subject to the restrictions of paragraphs 4 and 6 below, staff members may also make and remove copies of a limited number of other selected Presidential Papers, but only after the following procedures are observed:

(a) The staff member shall execute a "Departure Agreement Relating to Presidential Papers" (hereinafter "Departure Agreement"), a copy of which is attached.

(b) Attachment A of the Departure Agreement shall list all Presidential Papers (other than those covered by paragraph 3.2), of which the staff member requests permission to remove copies. The list shall have appended to it a copy of each such Presidential Paper and a brief description of its contents -- e.g., staff member's weekly reports to the staff head or to the President. In the absence of special justification, the President expects every staff member to hold to an absolute minimum the number of Papers for which permission to remove copies is requested.

(c) Presidential Papers listed on Attachment A of the Departure Agreement shall be removed from the White House or EOP element only after Jack Watson or his designee has authorized their removal on behalf of the President.

(d) Copies of Presidential Papers removed by staff members under the procedures of this paragraph 3.4 may not be further

published or disclosed by the staff member except in compliance with the executed Departure Agreement and paragraph 6 below.

4. Classified Materials and Other Sensitive Files.

4.1 Staff members may not destroy or retain the original or a copy of any document which is:

(a) Classified for reasons of national security pursuant to Executive Order 12065, or any predecessor order;

(b) Restricted Data or Formerly Restricted Data pursuant to the Atomic Energy Act of 1954, as amended;

(c) Submitted to the government pursuant to statutes which make disclosure of such information a crime;

(d) Submitted to the Office of the Counsel to the President and related to the personal or financial affairs of any Administration nominee, proposed nominee or federal employee, unless submitted by the staff member.

4.2 (a) Permission may be obtained to remove copies of selected documents, classified pursuant to subparagraphs 4.1(a) and (b) above, if the departing staff member makes confirmed arrangements to store the documents in secure storage containers in an approved facility, and establishes a chain of secure custody over the documents. This permission must first be

obtained from the National Security Adviser after consultation with the Counsel to the President, and then from Jack Watson or his designee in accordance with the procedures described in paragraph 3 above.

(b) A staff member may have in his or her files originals or copies of sensitive Presidential Papers which do not bear security classification markings. If a staff member requests permission to remove a copy of any such Presidential Paper, its sensitivity should be specifically called to the attention of the Counsel to the President at the time Attachment A of the Departure Agreement is submitted.

4.3 The President intends to donate most of the classified materials in the Presidential Papers to the United States. In the President's deed of gift of his Papers to the United States, he will establish restrictions on access to all Presidential Papers. However, he intends to allow former staff members to have access under the terms of the Departure Agreement to any such materials they originated or received while working in the White House.

4.4 The use and transfer of classified materials are governed by criminal statutes. Strict adherence to the above rules is essential.

5. Disposition Recommendations to the President.

5.1 The President intends to donate the bulk of his Presidential Papers to the United States for deposit in the President's library. The President will, however, retain certain selected papers in his personal files. If the head of a White House Office staff or EOP element believes that the President should consider retaining an individual document or category of papers as part of his personal files rather than in the Presidential Library, he should bring this recommendation to the attention of the President or his Counsel.

5.2 If the head of a White House Office staff or EOP element concludes that the ongoing nature and importance of a particular matter makes it essential that copies of selected Presidential Papers be provided to the succeeding Administration, he should recommend this to the President. Such recommendations should be the exception rather than the rule.

6. Duty of Non-disclosure, Liability to Subpoena, and Executive Privilege.

6.1 Duty of non-disclosure. Permission for staff members to remove copies of or obtain access to Presidential Papers is subject to the staff member's signed agreement and continuing duty to preserve the President's legal right as the owner of such papers to decide whether the papers should be published or disclosed to third parties. Publication or disclosure to third parties of

the complete or partial text of a Presidential Paper by a staff member shall be made only after approval from the President or his designee, pursuant to the procedures established in the attached Departure Agreement. The President's approval will be confined to the publication or disclosure of the Presidential Paper and will not be conditioned on prior review or approval of any comment the staff member desires to make in connection with such publication or disclosure.

6.2 Subpoena and Executive Privilege. Any papers retained by the departing President or a departing staff member, whether Presidential or Personal, remain subject to a valid judicial, Congressional or agency subpoena. If such a subpoena is served, its validity may be judicially challenged on various grounds (e.g., relevancy, specificity, or if President Carter or the incumbent President so elects in the case of Presidential Papers, Executive Privilege). The power to assert Executive Privilege resides both in the former President and in the incumbent President at the time the issue of disclosure arises. If a departing staff member is asked to produce his copy of a Presidential Paper by a court, Congressional committee or agency (whether by informal request or enforceable subpoena), the staff member should consult with President Carter and the Counsel to the incumbent President to determine whether President Carter or the incumbent President desires to assert Executive Privilege. As the attached Departure Agreement provides, if Executive Privilege is asserted by President Carter or the incumbent President, the departing staff member

should defer disclosing the information subject to the objection until such objection has been withdrawn or judicially resolved.

7. Departure Procedure.

7.1 Plans have been developed for the storage of Presidential Papers both before and after January 20, 1981. Procedures for packing files of Presidential Papers in cartons and identifying the cartons have been developed by the National Archives Office of Presidential Libraries, which has been responsible for the packing, shipment and storage of Presidential Papers of previous Presidents. Archives personnel will be assisted by the Office of Records Management. Presidential Papers are to be collected, packed, carefully identified and then stored in the Executive Office Building until January 19 or 20. Thereafter, they will be shipped under armed guard to a storage facility in Georgia. Presidential Library archivists will be in Georgia to receive the Presidential Papers when they arrive, to supervise their unloading and to maintain inventory control over them. If necessary, specific files and folders will be retrievable almost immediately.

7.2 The President, of course, retains control of these papers throughout the inventory and cataloguing process. Access to the papers will be controlled by the terms and conditions of the deed of gift which will convey the President's papers to the United States. The President intends to permit staff members who

comply with the terms of the Departure Agreement to have access to papers they originated or received after they go into the Presidential Library.

7.3 Representatives of the Office of Presidential Libraries will shortly be in touch with you to initiate the inventory and packing of the files in your office or in storage. You may reach these archivists by calling Extention 2545 (Room 415 OEOB). You are requested to follow their instructions for packing and storing of records.

7.4 The volume of Presidential Papers is great and it is important that we begin immediately to prepare the papers for storage and ultimate transfer to the Carter Presidential Library. We will need the cooperation of the entire staff to carry out this procedure efficiently.

7.5 Staff members departing before being contacted by archivists should make direct arrangements with the Office of Records Management to pack Presidential Papers in their respective offices for temporary storage.

8. Exit Interviews.

8.1 We are continuing the process of exit interviews of selected staff members by representatives of the Office of

Presidential Libraries of the National Archives and Records Service. The information obtained from these interviews will be of considerable value in establishing the Carter Library. The President urges your cooperation with Archives personnel in this process.

9. Consulting Counsel.

9.1 As each staff member reviews his or her files, a number of questions of interpretation will arise. All such questions should be raised with the office of the Counsel to the President.

THE WHITE HOUSE

WASHINGTON

SUMMARY OF AGREEMENT

The attached agreement provides two benefits to staff members: (1) it permits you to take certain Presidential Papers with you when you leave the government, and (2) it grants you access after January 20, 1981 to all Presidential Papers which you originated or received at the EOP. In return for these benefits, you accept two obligations: (1) you must obtain approval before you take copies of these Presidential Papers with you, and (2) you must obtain approval before publishing or disclosing to third parties the complete or partial text of any unpublished paper of which you have a copy or to which you have access.

These obligations are not intended to inhibit in any way your freedom to write or talk about this Administration's policies and practices. Indeed, in paragraph 3 the President specifically commits that his future approval to publish selected Presidential Papers "shall not be conditioned on reviewing or approving any comment" which a staff member plans to make. In short, you may write whatever you please; clearance procedures apply only to actual quotations from Presidential Papers.

The President's goal is to assure reasonable protection for the integrity of the Presidential decision-making process. The frankness of such interchanges can be irreparably impaired if any participant is free to publish what any other participant has said or written. All of us, from the day we began working here, have understood our obligation to protect the confidentiality of unpublished advice given to the President and exchanged among his advisers, and of his unpublished responses. As the Agreement records, this obligation continues beyond January 20, 1981.

THE WHITE HOUSE

WASHINGTON

DEPARTURE AGREEMENT RELATING TO PRESIDENTIAL PAPERS

Agreement between President Jimmy Carter and _____
_____ (hereinafter "Staff Member") dated _____.

1. Staff Member has read and understands the attached memorandum from Jack Watson and Lloyd Cutler dated December 15, 1980, relating to Presidential Papers. Staff Member acknowledges that all Presidential Papers are owned by President Carter; that "Presidential Papers" are all records which are not "Personal Papers" and were either originated or were received by the following officials and elements of the Executive Office of the President:

White House Office
Intelligence Oversight Board
Domestic Policy Staff (except for the Drug Abuse Policy
Section
Council of Economic Advisers
National Security Adviser and Deputy National Security
Adviser, and deposited in the White House Situation Room
Chairman of the Council on Wage and Price Stability
Director of the Office of Administration
Those files of the Office of Science and Technology Policy
reflecting its advisory role to the President

2. Staff Member further acknowledges that all campaign-related papers either originated or received by the above enumerated officials or elements of the EOP are "Presidential Papers"; that "Personal Papers" are all materials, including personal correspondence, journals, diaries and their functional equivalents, which were neither developed in connection with nor utilized during the transaction of official government business; that "Papers" include but are not limited to, all correspondence, memoranda, documents,

photographs, maps, recordings, logs, appointment books, journals, pamphlets, documentary material and the copies of the above.

3. Staff Member hereby requests permission to make or remove from files copies of the selected Presidential Papers described in Attachment A. (If Staff Member does not desire to remove copies of any such papers, Attachment A need not be filled out.)

4. Staff Member hereby requests access to Presidential Papers to be placed in the President's Library which Staff Member originated or received while a Staff Member, subject to the terms of the President's deed of gift of such Papers to the United States.

5. In consideration of the President's approval to remove copies as set forth in paragraph 3 and/or in consideration of the President's approval of access as requested in paragraph 4, Staff Member accepts the obligations set forth in paragraphs 6 and 7.

6. Staff Member acknowledges President Carter's sole right to decide whether the complete or partial text of any Presidential Paper, of which Staff Member has made or removed a copy, or to which Staff Member has been granted access, should be disclosed to third parties. Staff Member hereby agrees to submit for approval on behalf of President Carter or his designee any materials which contain the complete or partial text of any Presidential Paper that Staff Member contemplates publishing or disclosing to

any person. Staff Member agrees not to disclose the complete or partial text of any such paper (other than papers exempted from the prior approval requirement under paragraph 2 of the attached memorandum) to any person until Staff Member has received written authorization to do so on behalf of President Carter. The President agrees that his approval shall not be conditioned on reviewing or approving any comment the Staff Member plans to make about such paper and shall be limited solely to the publication or disclosure of the complete or partial text of such paper.

7. Nothing contained herein limits a Staff Member's right to disclose the complete or partial text of a Presidential Paper in response to a valid and enforceable subpoena, provided that before disclosure Staff Member gives reasonable prior notice of the issuance of such a subpoena to President Carter and Counsel for the incumbent President and, if either decides to object on grounds of Executive Privilege, Staff Member agrees to defer disclosing the material subject to the objection until such objection has been withdrawn or judicially resolved.

8. This agreement may be enforced by proceedings for injunction or damages or both.

Date

Name of Departing Staff Member

Date

Jimmy Carter

THE WHITE HOUSE

WASHINGTON

ATTACHMENT A

DEPARTURE AGREEMENT RELATING TO
PRESIDENTIAL PAPERS

I hereby request permission to remove from the White House
or Executive Office of the President copies of the attached
Presidential Papers. [Insert brief description and attach copies.]

Date

Name

Date

Approved on behalf of the President

THE WHITE HOUSE

WASHINGTON

December 17, 1980

MEMORANDUM FOR: WHITE HOUSE STAFF

FROM: AL MCDONALD *AM*
HUGH CARTER *HC*

SUBJECT: Resignations

As part of a smooth and orderly transition, White House staff members should be making their personal plans for the transition.

White House staff members, not part of the permanent staff, should submit their resignations by January 6, 1981, with an effective date of January 20, 1981, or earlier. Senior staff members and deputies should submit their resignations directly to the President through the Staff Secretary. All other staff members should submit their resignations to their department head.

Those staff members who are part of what has historically been the career White House Operating Units should assume they will remain beyond January 20, 1981. After a reasonable amount of time, the new administration will then make whatever decisions they feel are appropriate on the continuation of individual staff members.

Secretarial staff and other support personnel in the White House Policy Offices who have expressed interest in staying should anticipate remaining with the White House after January 20. The new administration will then have an opportunity to select those staff members whom they wish to retain.

Since our task forces and special project efforts will be phased out, most detailees will be returning to their agencies between January 10 and January 19, 1981.

Some staff members will be leaving prior to January 20. It is important those leaving complete the formal check out procedures. To do so, please contact the White House Personnel Office on Ext. 2260. There will be further guidance provided on check out procedures for the remainder of the staff who will be leaving on or close to January 20.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 7, 1981

MEMORANDUM FOR

WHITE HOUSE STAFF

FROM:

HUGH A. CARTER, JR. *HAC*

SUBJECT:

Check-out Procedures

White House staff members who will be leaving need to go through the check-out process before departing. For the convenience of departing staff members a central check-out station will be set up in the Treaty Room (474), OEOB, on Wednesday, January 14 and Thursday, January 15 from 10:00 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m. Check-out forms will be available in the Treaty Room on the days and times specified above or in the White House Personnel Office. If the form is not completed properly and on time, staff members final pay check may be delayed.

Most of the check-out processes can be completed at the one stop, but those with unfinished business with the Credit Union will need to stop there separately and passes will not be turned in to the Secret Service in Room 23 until the employees last day.

Staff members who have equipment issued by the White House Communications Agency; i.e., TV receiver, AM/FM radio, dictation equipment, tape recorder, pageboy and FPN's (handi talkie), may schedule prior pickup by calling x4040 or SIG-442. WHCA will be grateful for any assistance you extend in scheduling pickup as early as possible. You should also be prepared to settle any outstanding bills with the White House Mess at check-out time.

Final pay checks will be mailed on January 30 for the pay period ending January 24. Those staying until the 20th will be paid for the full day. Payments for any unused annual leave will be included in the final check. Those requesting refunds of their retirement payment should expect to receive the checks in four to six weeks. Staff members who will want to continue their health benefits will have their notification to provide to their carrier mailed to them the week after they leave. Their coverage will continue 31 days from the date of the form.

Staff members with any specific questions, please call the Personnel Office, x2260.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 7, 1981

MEMORANDUM FOR

ADMINISTRATIVE OFFICE CONTACTS

FROM:

LARRY E. BYRNE *LB*

SUBJECT:

Personnel Information

We have been receiving a number of inquiries on the benefits available to departing White House staff members. It is apparent a number of staff members have not reviewed the attached memo from Hugh Carter and I am sending you these copies for you to use informing them of their benefits.

THE WHITE HOUSE

WASHINGTON

November 10, 1980

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: HUGH A. CARTER *HAC*

SUBJECT: PERSONNEL INFORMATION

(1) Federal Benefits Available to White House Staff Members Who Leave Federal Government Employment

I thought it would be helpful to review for you the benefits that White House Staff members are entitled to when leaving employment in the Federal Government. This section is directed specifically to White House staff members who are political appointees and not those on the career staff. However, much of the information contained herein applies equally to civil servants who plan to leave the Government.

I. Civil Service Retirement Fund

Contributions to the civil service retirement fund through payroll deductions result in a guaranteed return from the retirement fund of an amount which is at least equal to your contribution. The return may be in the form of annuity payments or in the form of a lump sum refunded to you or your survivors. In order to have a vested annuity right, you must have an aggregate of five years of civilian Government service.

A. Less Than Five Years of Civilian Government Service

If you leave Government before completing five years of civilian service, your annuity will not have vested. At any time that an employee leaves Federal employment, he or she may receive a refund of retirement deductions. Though an interest rate of 3 percent is paid on retirement deductions during the time of Government service, that interest is not paid after the employee leaves Government. If an individual re-enters Government service, he or she may place the prior deductions back in the retirement fund upon payment of interest for the period of the deductions and for the period of separation at a probable interest rate of 3 percent. Re-payment of prior deductions is not necessary for vesting, does not have to take place when an individual starts his or her new period of Federal employment, but must take place prior to eligibility for annuity payments and during a period of Government service after vesting. Thus, you should carefully consider taking a refund of your retirement deductions when leaving the Government.

B. Vested Annuity Right: Five Years of Civilian Government Service

If you have completed five years of civilian government service, you have a vested annuity right. Most military service counts toward retirement, but in all cases an employee must have had at least five years of civilian service in order to be vested.

A vested annuity right means that you may retire at the following ages, and receive an immediate annuity, if you have at least the amount of Federal service shown:

<u>Earliest Age</u>	<u>Years of Service</u>	<u>Remarks</u>
62	5	None
60	20	None
55	30	None
Any*	25	May retire voluntarily in major reduction in force situations as determined by the Office of Personnel Management
50*	20	Separation must be involuntary without cause
Any*	25	Must be totally disabled
50*	20	
Any	5	

*Annuity is reduced if under age 55.

In order to be eligible for an immediate annuity at any age with 25 years of Federal service or at age 50 with 20 years of Federal service, your separation from the Federal Government "must be involuntary without cause". In the case of White House staff, a change of Administrations is considered involuntary separation. In the category of 25 years of service and any age, an immediate annuity will be reduced by 2 percent a year for every year under the age of 55. For the category of 20 years of service and age 50, an immediate annuity will be reduced by 2 percent a year for every year under the age of 55. However, if you are involuntarily separated at age 55 or older with 20 years of Federal service, there will be no percentage reduction in an immediate annuity.

If you leave after completing at least five years of service, but before you are eligible for an "immediate" annuity, you will be entitled to a "deferred" annuity at age 62. A survivor annuity can be provided under either an "immediate" or a "deferred" annuity. However, if you die before age 62 under a "deferred" annuity, no survivor annuity can be paid. Instead, your deductions will be paid in a lump sum to your designated beneficiary or to your heirs.

Your basic annuity is computed on the basis of your length of service (which includes unused sick leave if you are retiring on an immediate annuity) and "high-three" average pay. Your "high-three" average pay is the highest average basic pay you earned during any three consecutive years of service.

The general annuity formula is as follows: (a) 1-1/2 percent of your "high-three" average pay times five years of service, plus (b) 1-3/4 percent of your "high-three" pay times years of service over five and up to ten, plus (c) 2 percent of your "high-three" pay times years of service over ten. Annuities may also be adjusted on the basis of future cost-of-living increases.

If you take your deductions out of the retirement fund when you leave the Government, you may put the deductions back into the fund with interest at any time that you re-enter Government service but before you are actually eligible for annuity payments. If you leave your deductions in the retirement fund when you leave the Government and later decide that you want a refund, a refund will be made, provided you are not already eligible (or within 31 days of being eligible) for an annuity at the time you apply for the refund.

II. Payment for Unused Annual Leave

A. Executive Level Appointees

Executive Level Appointees do not accrue annual leave. However, if an executive level appointee was in Government service, either appointive or civil service, before receiving his or her appointment the leave time that

individual accrued during that period is credited to the individual. Further, unused leave time is credited to the salary rate that the individual was earning immediately before he or she received the executive level appointment.

B. Other White House Staff Members

Any other White House staff member who is leaving Government employment is paid a lump sum for unused accrued annual leave. Unused leave generally may be accumulated up to a maximum of 240 hours.

C. Sick Leave

Staff members are not entitled to payment for unused sick leave. However, unused sick leave will be re-credited to you if you return to Government within a three-year period. Further, for those who are retiring on an immediate annuity, unused sick leave may be credited to your years of service, but cannot be utilized to reach the 20 or 25 year retirement requirements.

III. Life Insurance

Federal life insurance is straight term insurance and your coverage will terminate upon your leaving the Federal Government unless you meet certain special requirements for carrying it into retirement. However, your life insurance protection will continue for an additional 31 days beyond the final date of your employment. During this 31-day period, you may convert all or any part of your life insurance to a policy issued on a participating or non-participating basis, without having to

take a medical examination. This individual policy may be purchased from any eligible insurance company you select and will be a private transaction between you and the company. The premium will be that applicable to your age and class of risk and will be payable by you without contribution from the Government.

You may continue your regular life insurance into retirement, free, provided you retire: (1) on an immediate annuity; (2) after at least 12 years of Federal service or for disability; and (3) do not convert to an individual policy. Any option life insurance (for which you pay the full cost until you are age 65) can also be carried into retirement provided your regular insurance continues and you have had the optional insurance since your first opportunity to get it.

IV. Health Benefits

The Federal Employees Health Benefits Program provides various types of hospital, surgical and medical benefits for Federal employees. Your health insurance will continue in effect for 31 days from the end of the pay period in which you leave Government. During that 31-day period, you are entitled to convert to a private individual plan with the company that provided you with Federal coverage. The company must provide you with a rate and coverage as equivalent as possible to that which you had while in the Federal Government, though you will now pay the full cost. You will not be required to take a medical examination.

If you are eligible for retirement and do retire, you may continue your enrollment in one of the Federal plans and the Government will continue to pay the same contribution it pays for active employees, provided: (1) you retire on an immediate annuity after at least 12 years of Federal service, or for disability; and (2) you have been continuously enrolled or covered as a family member during all of your service (a) for the five years immediately preceding your retirement, or (b) since your first opportunity to enroll, or (c) from on or before December 31, 1964.

V. Unemployment Compensation

Federal workers are eligible for unemployment compensation rights similar to those of workers in private industry. In order to be eligible for unemployment compensation, a Federal

employee must have been involuntarily separated from his or her job. As noted earlier in this memorandum, the change in Administration constitutes involuntary separation for staff members. Staff members who intend to submit resignation letters to the President may do so and still be considered involuntarily separated for purposes of unemployment compensation.

The law of the District of Columbia will govern benefits available to White House staff members, though you may apply, if you wish, in your state of residence.

(2) Civil Service Eligibility for White House Staff Members

Pursuant to 5 C.F.R. 315.602, White House staff members, who are paid from White House Office appropriations may be eligible for appointment to the Federal competitive service on a non-competitive basis under the following conditions:

- A. The staff member must have served at least two aggregate years on the White House and/or VP staff;
- B. The White House staff member must be fully qualified for the agency position;
- C. The White House staff member must begin the job in the Federal Agency without a single day's break in Federal service.

White House staff members who have acquired civil service status during some period of their past Federal employment may be eligible for non-competitive reinstatement to any position in the competitive civil service for which they meet the experience and other requirements.

Assistance will be provided to departing staff members in seeking other employment. Further information on the scope of this effort will be provided later.

Staff members who are interested in further information about the above procedures should contact the White House Personnel Office, on extension 2260.