No. 2023-1823

In the United States Court of Appeals
for the Federal Circuit

JILLIAN LESKO,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

On Appeal from the United States Court of Federal Claims
No. 22-CV-715-CNL, Hon. Carolyn N. Lerner.

EN BANC BRIEF OF DEFENDANT-APPELLEE, UNITED STATES

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STATEMENT OF RELATED CASES

No other appeal in or from the present civil action has previously been before this or any other appellate court. Counsel is not aware of any related cases within the meaning of Federal Circuit Rule 47.5(b). *See* Practice Note to Rule 47.5 (noting that cases are not related "simply because they involve the same general legal issue[.]").

JURISDICTIONAL STATEMENT

The Court possesses jurisdiction to entertain this appeal from a final judgment entered by the Court of Federal Claims. 28 U.S.C. § 1295(a)(3).

INTRODUCTION

This appeal concerns a regulatory requirement that has been in effect for eighty years. The current version of the regulation, which is codified as 5 C.F.R. § 550.111(c), was issued by the Office of Personnel Management (OPM) pursuant to authority delegated by 5 U.S.C. § 5548. That regulation implements 5 U.S.C. § 5542(a), which governs overtime pay for Federal employees. Section 5542(a) authorizes overtime pay for "hours of work officially ordered or approved[,]" and section 5548 delegates authority to OPM to prescribe rules "necessary for the administration" of the statute's premium pay provisions. Pursuant to this statutory authority, OPM promulgated section 550.111(c), which interprets section 5542 to contain a requirement that overtime work must be "ordered" or "approved" in writing for the work to be compensable. Twenty-one years ago, this Court held that the writing requirement in Section 550.111(c) was a valid exercise of OPM's rulemaking authority. *Doe v. United States*, 372 F.3d 1347, 1362 (Fed. Cir. 2004).

The primary issue in this appeal is whether the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron v. NRDC*, 467 U.S. 837 (1984), should lead this Court to reach a different conclusion than in *Doe*. Applying *Loper Bright*'s reasoning to this case, the *en banc* Court should affirm *Doe*'s holding for two overarching reasons. First, the regulation falls squarely within the bounds of authority delegated to OPM. And second, *stare decisis* principles counsel in favor of adopting *Doe*'s analysis.

STATEMENT OF THE ISSUES

The *en banc* Court ordered the parties to file additional briefs limited to the following issues:

(1) Considering *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), how should "officially ordered or approved" in 5 U.S.C. § 5542(a) be interpreted?

(2) Is this a case in which "the agency is authorized to exercise a degree of discretion" such that OPM has authority to adopt its writing requirement? *Loper*, 603 U.S. at 394.

(3) Is there a statutory provision (e.g., 5 U.S.C. §§ 1104, 5548) that provides such authority?

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

Congress enacted the Federal Employees Pay Act of 1945 (FEPA) to address the compensation of Federal employees in the post-war environment.[1]

Precursors To FEPA. Overtime pay for Federal workers is a product of the unique demands of World War II. Prior to World War II, Congress had never

[1] As our opening brief explained, Ms. Lesko was hired and paid pursuant to Title 5, and thus Title 5 governs her pay. Her complaint alleges, incorrectly, that she was entitled to pay under Title 38, which governs pay for some VA employees, and which HHS may choose to extend to a Title 5 employee pursuant to authority delegated under 5 U.S.C. § 5371. We confine our discussion to Title 5 in light of the questions presented by the *en banc* Court.

enacted a statute "to provide overtime pay for salaried workers outside the postal service on any general basis." H.R. Rep. 79-726, at 1 (1945). Because of World War II's exigent circumstances, Congress expanded the administrative workweek for Federal workers from 40 hours to 48 hours. *Id.* at 2. In a series of temporary measures, Congress authorized overtime pay for the extra hours performed by salaried employees as part of their expanded workweek. *Id.* at 1-2; *e.g.,* 56 Stat. 1068 (1942); War Overtime Pay Act of 1943, 57 Stat. 75.

The last temporary measure enacted by Congress to address overtime pay was the War Overtime Pay Act of 1943, which Congress scheduled to expire on June 30, 1945. *See* H.R. Rep. 79-726, at 1-2. Pursuant to rulemaking authority delegated in the War Overtime Pay Act of 1943, 57 Stat. 75, 77, § 9, the Civil Service Commission promulgated regulations implementing the War Overtime Pay Act of 1943. Those regulations "limited the authority to order overtime to 'officer[s] or employee[s] to whom such authority has been specifically delegated by the head of the department or agency.'" *Doe*, 372 F.3d at 1359 (quoting 5 C.F.R. § 20.9 (1943 Supp.))

Legislative History of FEPA. World War II led to a massive expansion in the number of hours worked by the Federal workforce, and an attendant increase in Federal expenditures. As the legislative history of FEPA demonstrates, Congress was focused on controlling costs as the country approached the end of the war. In testimony before the Committee on Civil Service, Edgar Young of the Bureau of the Budget was asked whether the costs of the proposed legislation increasing Federal

employee pay would be offset by the anticipated post-war reduction in the number of workers on the Federal payroll. *Salary and Wage Administration in the Federal Service: Hearings Before the S. Comm. on Civil Service on S. 807*, 79th Cong., 1st Sess. 37 (1945) (*Senate Committee Hearings*). Mr. Young demurred, explaining that "[t]he subject of post-war size of the Government is a subject of constant and continual inquiry and concern to the Bureau." *Id.* Senator Hickenlooper responded, "You don't need to limit that to the Bureau." *Id.* Mr. Young replied, "To all of us as taxpayers, as well as to you gentleman." *Id.* Congress's concern about curtailing expenditures on Federal employees was so strong that, in explaining why it was authorizing the Bureau of Budget to establish personnel ceilings at most Federal agencies, the Committee's report opined that "it was the feeling of the committee that the interests of efficiency and economy would be best served by a policy of reduction of force in many Government agencies." S. Rep. No. 79-265, at 6 (1945).

With respect to overtime pay, the Committee's position was informed by its belief that, after World War II ended, overtime would be rare. Senator Byrd asked Commissioner Arthur Flemming of the Civil Service Commission whether "this question [of overtime] is entirely due to the emergency," adding "[i]t is not conceivable that when the war is over there is going to be any overtime." *Senate Committee Hearings* at 50. Commissioner Flemming responded that overtime would be necessary only in "a few isolated cases" and then emphasized the need to limit when overtime is used: "It seems to me, as I said yesterday, that government must set the

right kind of an example." *Id.* "If some people are going to work a lot of overtime," he said, "it means that some other people are not going to have an opportunity to work at all." *Id.* The House Report that accompanied FEPA expresses the same view: "the necessity of securing additional funds to meet the extra expense for overtime should be an occasion for the encouragement of better management to avoid overtime work schedules." H.R. Rep. No. 79-726, at 2 (1945).

Even though both Congress and the Civil Service Commission expected overtime compensation to be rare after World War II ended, members of the House Committee on Civil Service expressed concern to Commissioner Flemming that the proposed legislation could allow federal agencies to incur overtime liability beyond the scope of their budgets. *Salary and Wage Administration in the Federal Service: Hearing on H.R. 2497 and H.R. 2703 Before the House Comm. on the Civil Service*, 79th Cong., 1st Sess. 50-51 (1945) (*House Committee Hearings*). Representative Miller suggested that "the final check" on overtime expenditures would be that "the money that will have to be very definitely set up in the budgets of the departments for overtime pay." *Id.* at 51. But Representative Vursell expressed uncertainty as to whether specifying overtime in agency budgets would adequately ensure congressional control over expenditures. Because Congress had "deficiency appropriations brought in rather regularly[,]" Representative Vursell said, he was "fearful that you don't have that check." *Id.*

Commissioner Flemming addressed Representative Vursell's concern: "speaking now for my own agency, I know that the regulations under which overtime

is ordered and compensated for are very strict, and in most instances requests for approval have to come all the way to the top." *Id.* He added that, "under normal conditions, when appropriations would be much tighter than they are at the present time, the head of the agency, I can assure you, would put even stricter controls on than he might at the present time." *Id.* In the absence of such "stricter controls," Commissioner Flemming testified, the agency head "couldn't meet his pay roll." *Id.*

The Statute. Congress enacted FEPA on June 30, 1945, Pub. L. No. 79-106, 59 Stat. 295 (currently codified as amended at 5 U.S.C. § 5542). In addition to extending and rationalizing overtime pay provisions that had first been enacted to meet wartime needs, the legislation also provided large numbers of Federal employees with an increase in their basic pay to account for the skyrocketing cost of living. *See* H.R. Rep. 79-726, at 1, 3 (1945).

In language that mirrored the Civil Service Commission's 1943 regulation, FEPA provided that overtime compensation would be available only when "officially ordered or approved":

> Officers and employees to whom this title applies shall . . . be compensated for all hours of employment, officially ordered or approved, in excess of forty hours in any administrative workweek, [according to the guidelines and rates set forth].

59 Stat. at 296-97, § 201.

Congress has repeatedly reenacted this provision since then. Congress revisited overtime pay for Federal workers with the Federal Employees Pay Act Amendments

of 1954 (the FEPA Amendments of 1954) which, among other things, provided for administratively uncontrollable overtime. Pub. L. No. 83-763, 68 Stat. 1105 (1954). The FEPA Amendments of 1954 reenacted section 201 of FEPA with some changes in the language, but made no changes relevant to the meaning of the "officially ordered or approved" language. 68 Stat. at 1109. Congress then recodified Title 5 in 1966. Pub. L. No. 89-554, 80 Stat. 378 (1966). Once again, Congress did not make any changes relevant to the interpretation of the phrase "officially ordered or approved" challenged in this appeal. *See* 80 Stat. at 485.

The present statutory language, now codified at 5 U.S.C. § 5542(a), has undergone additional amendments since the recodification of Title 5, but as relevant to this case, it contains the same operative language as did the Act of 1945:

> For full-time, part-time and intermittent tours of duty, hours of work *officially ordered or approved* in excess of 40 hours in an administrative workweek, or . . . in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for . . . at [the rates provided in 5 U.S.C. § 5542(a)(1)-(6)].

Id. (emphasis added).

In addition to providing for overtime pay when overtime is "officially ordered or approved," FEPA expressly delegated rulemaking authority to the Civil Service Commission. 59 Stat. at 304, § 605. The delegation provided as follows:

> The Civil Service Commission is hereby authorized to issue such regulations, subject to the approval of the President, as may be necessary for the administration of the foregoing provisions of this Act insofar as this Act affects officers

> and employees in or under the executive branch of the Government.

Id.

Although Congress has amended the subsection slightly since then—including by restructuring the sentence, with the effect of changing "may be necessary" to "necessary," and substituting "Office of Personnel Management" for "Civil Service Commission"—the current version of the statute delegates with similar language:

> The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d), insofar as this subchapter affects employees in or under an Executive agency.

5 U.S.C. § 5548.

The Regulation. Four days after FEPA was enacted, implementing regulations that had been promulgated by the Civil Service Commission and approved by President Truman in Executive Order No. 9578 were published in the Federal Register. 10 Fed. Reg. 8191, 8,194 (July 4, 1945). Section 401(c) of those regulations provided as follows:

> No overtime in excess of the administrative workweek shall be ordered or approved except in writing by an officer or employee to whom such authority has been specifically delegated by the head of the department or independent establishment or agency, or Government-owned or controlled corporation.

Id.

In 1968, the Commission revised its regulations to conform to the recodification of Title 5 but "ma[de] no substantive changes in the regulations." 33 Fed. Reg. 12,402 (1968); *see id.* at 12,460. The revised regulations were adopted verbatim by OPM after it supplanted the Civil Service Commission. The OPM regulation at issue provides:

> Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

5 C.F.R. § 550.111(c).

This Court Upholds The Regulation in Doe. This Court considered the validity of 5 C.F.R. § 550.111(c) in *Doe* and concluded that the regulation is enforceable.

In *Doe*, employees of the Department of Justice argued that they were entitled to compensation for overtime work even though that work had not been ordered or approved in accordance with the regulation. In support of their argument, they relied primarily upon *Anderson v. United States*, 136 Ct. Cl. 365 (1956). In *Anderson*, the Court of Claims held that, even though Customs Service supervisors had "with[e]ld written orders for or approval of the overtime," the agency had nonetheless "induced" overtime work because "the 40-hour week, established by the 1945 Pay Act, was never translated by the Customs Service into an effective, administrative reality for the patrol inspectors." *Anderson*, 136 Ct. Cl. at 369. "The withholding of written orders or approval," *Anderson* reasoned, "reflected observance of the letter of the regulation

but denial of the substance of the statute." *Id.* at 371. *Anderson* thus declined to enforce the writing requirement set out in 5 C.F.R. § 550.111(c).

In *Doe*, this Court upheld the writing requirement. 372 F.3d at 1362. The Court acknowledged that *Anderson* had held the regulation to be invalid, but concluded that the panel was not bound by *Anderson*. *Id.* at 1355-57. *Doe* explained that Supreme Court precedent subsequent to *Anderson* had established that valid regulations are binding upon courts. *Id.* In particular, "[i]n holding that the OPM regulation was invalid because it added a procedural writing requirement to the substantive requirements of FEPA or because the result was inequitable, the *Anderson* line of cases is inconsistent with" *Schweiker v. Hansen,* 450 U.S. 785 (1981). *Id.* at 1355.

The Court thus applied the two-part test set out in *Chevron,* 467 at 842-43. The Court first concluded that "officially ordered or approved" is ambiguous, which was the first prerequisite for upholding a regulation under *Chevron*. *Id.* at 1358-59. The Court then concluded that the regulation did not reflect an unreasonable interpretation of the phrase "officially ordered or approved[.]" *Id.* at 1359-61. In so concluding, the Court reasoned that "OPM regulation's written order requirement does not contradict the language of FEPA." *Id.* at 1360. The Court further explained that "[t]he writing requirement also serves an important purpose of the statute—to control the government's liability for overtime." *Id.* at 1361.

Doe thus concludes that the 5 C.F.R. § 550.111(c) reflects a valid interpretation of section 5542's "officially ordered or approved" language. *Id.* at 1362.

II. Factual Background

Ms. Lesko served as an advanced practice registered nurse (APRN) at Indian Health Service (IHS) facilities in Phoenix, Arizona, and Wadsworth, Nevada, from November 9, 2020, through July 2, 2021. Appx074, ¶ 4. Ms. Lesko was hired as, and served as, a GS-13, Step 10 employee. Appx218. Ms. Lesko resigned her position with IHS effective July 2, 2021. Appx221.

According to the complaint, while Ms. Lesko worked for IHS, its facilities were stretched thin due to the Covid-19 pandemic. Appx082, ¶ 43. She alleges that nurses were required to work beyond their regularly scheduled hours during 2020 and 2021. *Id.* The complaint asserts that "managerial pressures [led] nurse practitioners [] to work off-the-clock overtime through expectation, requirement, and/or inducement." Appx084-85, ¶ 51 (citing *Mercier v. United States*, 786 F.3d 971, 980-982 (Fed. Cir. 2015)). The complaint emphasizes IHS policies requiring that work be performed in a timely manner. *See, e.g.,* Appx083-84, ¶¶ 47-48, 50. The complaint does not allege, however, that the alleged uncompensated overtime work satisfied the requirements expressly identified in the regulation.

She also alleges that her work included work performed on Sundays, on holidays, and at night. Appx087-088, ¶¶ 58-60. The complaint acknowledges that some overtime, Sunday, holiday, and nighttime work was compensated, either with premium pay or with compensatory time off. *See* Appx078-79, ¶¶ 26-29 (alleging that IHS incorrectly calculated premium rates *when it gave* nurses Title 5 premium pay for

nighttime, holiday, Sunday, and overtime work); Appx088, ¶ 63 (alleging that IHS sometimes required nurses to accept compensatory time off in lieu of overtime). The complaint alleges that nurses were "routinely and regularly informed by supervisors that overtime pay was not approved and/or allowed in many circumstances" and were "routinely required to take compensatory time in lieu of overtime pay without their consent[.]" *Id.*

In addition to bringing the complaint on her own behalf, Ms. Lesko seeks to represent "[a]ll individuals employed by the Indian Health Service as RNs, including RNs, APRNs, nurse practitioners, clinical nurse specialists, and nurse anesthetists, who were employed within six (6) years preceding the filing of the Complaint and not paid in accordance with" the requirements of Title 38 or, alternatively, Title 5. Appx089, ¶ 65.

The operative complaint comprises five counts. Count 1 is premised upon Ms. Lesko's view that she is entitled to pay under 38 U.S.C. § 7453. Appx091-093. Count 2—which is the count relevant to the questions raised by the *en banc* Court—is premised upon the theory that IHS failed to pay overtime earned under sections 5542 and 5543, along with 5 C.F.R. §§ 550.111-14. Appx093-095. Count 3 alleges that Ms. Lesko and the class either were not correctly paid for nighttime work or were wrongly offered compensatory time off in lieu of pay for nighttime work. Appx095-096. Count 4 alleges that Ms. Lesko and the class either were not correctly paid for Sunday work or were wrongly offered compensatory time off in lieu of pay for Sunday work.

Appx096-097. Count 5 alleges that Ms. Lesko and the class were either not correctly paid for holiday work or were wrongly offered compensatory time off in lieu of pay for holiday work. Appx098-099.

As relief, Ms. Lesko seeks monetary damages, the recognition of a class pursuant to Rule 23 of the Rules of the Court of Federal Claims, and attorney fees and interest. Appx099-100.

III. Prior Proceedings

Ms. Lesko initiated this suit by filing a complaint in the Court of Federal Claims on June 27, 2022, seeking compensation for overtime, nighttime, weekend, and holiday work pursuant to Title 38. Appx015-29. After the Government moved to dismiss, Ms. Lesko then filed an amended complaint that continued to include a Title 38 claim but also included claims for overtime, nighttime, Sunday, and holiday premium pay pursuant to Title 5. Appx073-100.

The Government renewed its motion to dismiss, and the trial court granted the renewed motion. The court dismissed Count I because, as "a Title 5 employee benefiting from certain Title 38 provisions," Ms. Lesko could not bring a claim based on the premium pay provisions of Title 38, which IHS did not choose to extend to her. Appx004-5. With respect to Count 2, the trial court reasoned that Ms. Lesko was not a Title 38 employee and thus was not entitled to premium pay under 38 U.S.C. § 7453. Appx005. Further, in the absence of a written approval or authorization, Ms.

Lesko could not state a claim for Title 5 overtime under *Doe*. Appx005-007. With respect to Counts 3, 4, and 5, the trial court concluded that Ms. Lesko had not alleged that she completed nightwork, Sunday work, or holiday work within the definitions provided by 5 C.F.R. § 550.121, because she acknowledged that the alleged work was unscheduled. Appx007-009. Accordingly, the trial court dismissed all counts of the amended complaint.

This appeal followed. After the parties filed briefs on the merits, the Supreme Court decided *Loper Bright* on June 28, 2024. A panel of the Court held oral argument on October 10, 2024. On March 18, 2025, before the panel issued a decision, the Court *sua sponte* ordered rehearing *en banc*.

SUMMARY OF ARGUMENT

The *en banc* Court should hold, as *Doe* did, that the writing requirement contained in 5 C.F.R. § 550.111(c) is a valid construction of the "officially ordered or approved" language in 5 U.S.C. § 5542(a).

Section 550.111(c)'s requirement that federal personnel must memorialize any overtime authorizations in writing derives from FEPA's requirement that overtime be "officially ordered or approved[.]" 5 U.S.C. § 5542(a). By declining to specify how overtime must be ordered or approved in section 5542(a), Congress left it to OPM to "fill up the details of a statutory scheme," *Loper Bright*, 603 U.S. at 395 (cleaned up), which OPM did by promulgating section 550.111(c). But the Court need not, and should not, construe section 5542 in isolation, because Congress did not leave section

5542(a) to stand alone. In section 5548, Congress expressly delegated to OPM authority to implement section 5542's open-ended statutory requirement by authorizing OPM to prescribe regulations "necessary for the administration" of FEPA. In a contemporaneous exercise of that authority, OPM's predecessor, the Civil Service Commission, promulgated a regulation, approved by President Truman and maintained through the present day, requiring that orders or approvals of overtime be in writing. The authority provided to OPM under 5 U.S.C. § 5548 to prescribe regulations "necessary for the administration" of the Act encompasses making rules about how officials can permissibly "order[]" or "approve[]" overtime under 5 U.S.C. § 5542(a). Through the use of discretion-conferring phrases—"officially ordered and approved" in section 5542 and "necessary for the administration" in section 5548—Congress instructed the agency to "fill up the details of a statutory scheme" and granted the agency flexibility in doing so. *Loper Bright*, 603 U.S. at 395 (cleaned up). The discretion granted to OPM is further evident in Congress's delegation to OPM to "prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations" contained in section 1104(b)(3). In other words, "the best reading of" the statutory provisions governing overtime pay "is that [they] delegate[] discretionary authority to" OPM. *Id.*

Because Congress has authorized the agency "to exercise a degree of discretion[,]" the question in this appeal is whether the agency has exceeded "the boundaries of the delegated authority" as interpreted by this Court. *Id.* (cleaned up).

OPM's interpretation is fully consistent with the statute and reflects a judgment about what is "necessary for the administration" of Federal overtime pay. As their definitions denote, the words "officially," "ordered", and "approved" all require the observance of appropriate formalities. Congress's use of this language, when combined with the delegation to issue rules "necessary for the administration" of the provision, authorizes OPM to identify those formal requirements. And it is commonplace to require written authorization before money can be drawn from the public fisc. The regulation's writing requirement thus falls within the statute's plain language.

The interpretive principles long applied by courts to assess executive statutory constructions provide further support for OPM's construction. The regulation reflects a longstanding, contemporaneous construction of the statute. Further, the statute has been reenacted by Congress after the promulgation of the regulation without any material change to either the "officially ordered or approved" language or to the scope of the delegation to OPM. Precedent also supports OPM's regulation. Not only did this Court uphold the regulation at issue more than twenty years ago in *Doe*, but courts have upheld other regulations that imposed a writing requirement pursuant to delegated authority. Finally, the regulation furthers Congress's goal of controlling costs attributable to overtime; tends to make less likely the types of disputes that often result from inherently ambiguous oral communications; and

creates a documentary record that facilitates oversight of agencies' premium pay practices.

By contrast, the standard articulated by Ms. Lesko invites problems of administration. By allowing employees to seek overtime pay in court based upon vague or informal conduct without ever seeking written approval from a supervisor with delegated authority, Ms. Lesko's proposed standard will tend to result in less productive engagement between employees and supervisors and in more contentious litigation. By contrast, the clear rule affirmed in *Doe*, which lets both supervisors and employees know exactly when overtime work will be compensated, has important benefits to the Federal employment system. The shortcomings in Ms. Lesko's theory buttress the rationale behind OPM's straightforward regulation.

Principles of *stare decisis* further buttress the conclusion that the regulation should be validated. Ms. Lesko cannot carry her burden of demonstrating a "special justification" for departing from *Doe*, which has garnered significant reliance interests during the 21 years since it was decided. *See Halliburton Co. v. Erica P. John Fund*, 573 U.S. 258, 266 (2014) (cleaned up). Indeed, much of *Doe*'s reasoning—including its analysis of the statutory language, its acknowledgment of the contemporaneous construction canon, and its discussion of precedent—is just as relevant under *Loper Bright*'s framework as it was under *Chevron*'s framework. Ms. Lesko's arguments for abandoning *Doe* ultimately boil down to disagreeing with its reasoning, which is not enough to warrant departing from *stare decisis* principles.

The Court should thus reaffirm the validity of 5 C.F.R. § 550.111(c) and affirm the trial court's dismissal of Ms. Lesko's complaint.

ARGUMENT

I. Standard of Review

"This court reviews Court of Federal Claims' decisions *de novo* for errors of law, and for clear error on findings of fact." *Anaheim Gardens v. United States*, 444 F.3d 1309, 1314 (Fed. Cir. 2006). The granting of a motion to dismiss is reviewed *de novo*. *Harmonia Holdings Grp., LLC v. United States*, 999 F.3d 1397, 1401 (Fed. Cir. 2021). And the Court can "affirm the … dismissal on any ground supported by the record." *Wyandot Nation v. United States*, 858 F.3d 1392, 1397 (Fed. Cir. 2017).

II. OPM's Regulation Reflects A Valid Exercise Of Delegated Rulemaking Authority

This case requires the Court to evaluate an agency's exercise of rulemaking authority delegated by Congress.

The framework for this analysis is set out in *Loper Bright*. Overruling *Chevron*, *Loper Bright* rejects the presumption "that statutory ambiguities are implicit delegations to agencies." 603 U.S. at 399. *Loper Bright* recognized, however, that Congress "often" has "confer[red] discretionary authority on agencies." *Id.* at 404; *see also id.* at 394-95. The Court explained that "Congress may do so, subject to constitutional limits[.]" *Id.* at 404. And the Court stressed that to "stay out of discretionary policymaking left to the political branches," judges should "independently identify and

respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA." *Id.*

Loper Bright further explains that, "[w]here the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." *Id.* at 395-96. "The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in reasoned decision-making within those boundaries." *Id.* (cleaned up); *see also Seven Cnty. Infrastructure Coalition v. Eagle Cnty., CO*, 145 S.Ct. 1497, 1512 (2025).

Applying the *Loper Bright* test, the *en banc* Court should uphold the validity of OPM's regulation.

A. By Enacting Sections 5542, 5548, and 1104, Congress Authorized OPM To Exercise Discretion Capturing The Challenged Regulation

In the second question posed by the *en banc* Court, the Court asks whether this is a case when Congress delegated discretionary rulemaking authority to OPM; and in the third question posed by the *en banc* Court, the Court asks which statutory provisions confer that delegation. The answer to the second question is yes. The answer to the third question is that the delegation relevant to this appeal is reflected in

sections 5 U.S.C. § 5548 and 5 U.S.C. § 1104, both of which the Court identifies in its order granting *en banc* hearing, along with 5 U.S.C. § 5542.

We begin with section 5542, which authorizes overtime pay when overtime work is "officially ordered or approved[.]" As we explain below in section II(B)(2)(a), section 5542(a) uses open-ended language that does not explain "the form in which overtime must be 'ordered or approved.'" *Doe*, 372 F.3d at 1358. Because section 5542(a) does not address the question of *how* overtime must be "officially ordered or approved[,]" the Civil Service Commission was left to "'fill up the details' of the statutory scheme." *Loper Bright*, 603 U.S. at 395 (quoting *Wayman v. Southard*, 10 Wheat. 1, 43 (1825)).

Section 5548, which provides OPM with authority to "prescribe regulations . . . necessary for the administration" of FEPA, makes express the delegation of authority to OPM to make rules governing overtime pay. The language of section 5548 authorizes the imposition of a writing requirement.

To begin, "necessary" is a word that "has not a fixed character, peculiar to itself"; instead, it "admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports." *M'Culloch v. Maryland*, 17 U.S. 316, 414 (1819). In the context of section 5548, the word "necessary" in the phrase "necessary for the administration of" is best understood as that which is "appropriate and helpful" to the administration of the statute. *See C. I. R. v. Tellier*, 383 U.S. 687, 689 (1966) (discussing the Internal

Revenue Code); *see also Michigan v. EPA*, 576 U.S. 743, 752 (2015) ("One does not need to open up a dictionary in order to realize the capaciousness of" the statutory phrase "appropriate and necessary[.]"); *FCC* v. *Prometheus Radio Project*, 592 U. S. 414, 423 (2021) (considering statute requiring Federal Communications Commission to determine whether its ownership rules are "necessary in the public interest as the result of competition."). Buttressing this reading, the statute as initially enacted used the permissive phrase "*may be necessary* for the administration" of FEPA instead of the current phrase "*necessary* for the administration[.]" *Compare* 59 Stat. 304 (emphasis added) *with* 5 U.S.C. § 5548; *see Thorpe v. Hous. Auth. of City of Durham*, 393 U.S. 268, 277 & n.29 (1969) (construing "broad rule-making powers" reflected in delegation to HUD to "make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act"). Although the current version of section 5548 moves "may" earlier in the sentence, there is no indication that Congress intended to limit the scope of the delegation by amending the statute in this way. Like the delegation in the statute as originally enacted in 1945, the current delegation confers discretionary authority to OPM.

"Administration," a similarly broad word, is best understood as referring to "management" in this context. *See Webster's New International Dictionary*, Second Edition 34 (1942) (defining "administration" as "the managing or conduct of an office or employment"). The connection between effective "management" and "writing" is well established. *See, e.g.,* Max Weber, *Economy and Society: An Outline of Interpretive*

Sociology 956 (Guenther Roth & Clause Wittich, eds., 1978) ("the management of the modern office is based upon written documents ('the files'), which are preserved in their original or draft form . . . ."). This is as true in the public sector as it is in the private sector. *See* U.S. Government Accountability Office, *Standards for Internal Control In The Government*, Principle 10 (2025), *available at* https://www.gao.gov/assets/gao-25-107721.pdf (last accessed July 2, 2025) (identifying "[a]ppropriate documentation of transactions and control activities" as one of the guiding principles of internal control systems in the Federal Government). The delegation to make rules "necessary for the administration" of section 5542 thus encompasses the imposition of a writing requirement. *See Nat'l Welfare Rights Org. v. Mathews,* 533 F.2d 637, 640 (D.C. Cir. 1976) (interpreting delegation to agencies to make rules regarding Medicare and Medicaid that "may be necessary to the efficient administration of the functions with which each is charged under this chapter" as a "broad grant of power" and "far-ranging authority").

Ms. Lesko nevertheless contends that the statutory language does not fall into any of the categories of delegations recognized in *Loper Bright*. Pl.-App. *En Banc* Br. 31. She is incorrect. First, as we explain above, section 5548 delegates through the broad phrase "necessary for the administration[,]" while section 5542 uses the word "officially[.]" These phrases, like the words "appropriate" or "reasonable," "leave[] agencies with flexibility[.]" *Loper Bright*, 603 U.S. at 395 (quoting *Michigan*, 576 U.S. at 752). Second, because section 5542 does not explain how overtime must be

"officially ordered or approved," and because section 5548 makes OPM responsible for the "administration" of the statutory framework, the statutory framework makes clear that Congress expected that OPM would "'fill up the details' of the statutory scheme." *Loper Bright*, 603 U.S. at 395 (quoting *Wayman*, 10 Wheat. at 43). Under either of these formulations, the question addressed by the regulation—that is, *how* overtime must be "officially ordered or approved"—is a prototypical question of what is "necessary for the administration" of the statute's provisions addressing overtime pay.

As question 3 suggests, Congress's delegations to OPM are not evident only in sections 5542 and 5548. Among other delegations to OPM, Congress has delegated general authority to the director of OPM "to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations." 5 U.S.C. § 1104(b)(3). The writing requirement, which "ensures compliance" with section 5542's requirement that overtime compensation be provided only when it is "officially ordered or approved," falls within the scope of this delegation (which Ms. Lesko does not address in her brief) as well. Indeed, the determination of what actions by Federal personnel are sufficiently official to authorize compensation for overtime work naturally rests with OPM, which is charged with "executing, administering, and enforcing . . . civil service rules and regulations"; advising the President on actions that may "promote an efficient civil service"; and "recommending policies relating to the . . . pay . . . of employees[.]" 5 U.S.C. § 1103(a)(5)(A), (7). From the early days of

the statute, OPM's predecessor, the Civil Service Commission, made clear that overtime must be authorized in writing. Like its predecessor, OPM has consistently maintained that requirement, which is currently codified at 5 C.F.R. § 550.111(c). OPM's promulgation of the regulatory requirement in section 550.111(c) is thus encompassed by both the specific delegation in section 5548 and the more general delegation in section 1104.

The purported distinction between grants of general rulemaking authority and more specific delegations, *see* Chamber of Commerce of the United States of America *En Banc* Am. Br. 10-12, 28-32 (ECF 70), does not alter this conclusion. So long as the delegation is constitutionally permissible (which this delegation is, as we explain below), *Loper Bright*'s framework does not foster such distinctions. *Loper Bright* focuses not on whether the delegation is general or specific but on whether the agency acted within the boundaries of Congress's delegation. 603 U.S. at 395. And the Supreme Court has previously rejected efforts to distinguish between regulations enacted pursuant to general rulemaking authority and regulations enacted pursuant to more specific delegations. *See Mayo Found. for Med. Educ. and Research v. United States,* 562 U.S. 44, 57 (2011); *but see United States v. Vogel Fertilizer Co.,* 455 U.S. 16, 24 (1982).

Even if regulations issued pursuant to general rulemaking authority would be interpreted differently, such a principle does not affect the analysis of section 5548. Unlike, for instance, the broad freestanding delegation of rulemaking authority to the Treasury Department, *see Mayo*, 562 U.S. at 57, the rulemaking provision in section

5548 was enacted at the same time as section 5542; is contained in the same subchapter as section 5542; and, because section 5548's rulemaking authority extends to the administration of only the subchapter in which section 5548 is included, is tethered to the specific subject matter (premium pay) addressed by section 5542. These are all indicia that "the will of Congress[,]" *Loper Bright*, 603 U.S. at 395-96, was for the delegation set forth in section 5548 to encompass the discretionary authority to make rules that govern the administration of section 5542.

There also is no basis to confine the principles articulated in *Loper Bright* to statutes when Congress specifies the precise term that the agency must define. *Contra* Pl.-App. *En Banc* Br. at 30-31. Rather than adopting such a restrictive approach, the Supreme Court looks at the entire statutory scheme to assess whether Congress delegated rulemaking authority to the agency. *See Seven Cnty. Infrastructure*, 145 S.Ct. at 1515 (upholding agency's approval of railroad project by explaining that "[t]he bedrock principle of judicial review in [National Environmental Policy Act] cases can be stated in a word: Deference."). Indeed, the Supreme Court in *Loper Bright* listed statutes that "expressly delegate to an agency the authority to give meaning to a particular statutory term[]" as only one of multiple examples when Congress "delegates discretionary authority to an agency[.]" 603 U.S. at 394-95 (cleaned up).

Given the connection between "administration" and "officially ordered or approved[,]" Congress did not need to specifically instruct the Civil Service Commission to define "officially ordered or approved" to make it clear that Congress

was authorizing the agency to issue rules governing the provision's administration. This conclusion is reinforced by the history of the regulation. By "incorporat[ing] the substance of the Civil Service Commission's standard in FEPA," Congress "suggest[ed] approval of the Civil Service Commission's broad exercise of its rulemaking power." *Doe*, 372 F.3d at 1358.

Finally, Ms. Lesko makes a cursory argument that the interpretation reflected in OPM's regulation amounts to an unconstitutional delegation of legislative power. Pl.-App. *En Banc* Br. 35-37. She is incorrect. The phrases "officially ordered or approved" and "necessary for the administration" supply a standard that is meaningfully more "definite" than others that have been upheld by the Supreme Court. *See Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) (considering statute that required Commission "to ensure that the corporate structure or continued existence of any company in a particular holding company system does not 'unduly or unnecessarily complicate the structure' or 'unfairly or inequitably distribute voting power among security holders.'"); *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 216 (1943) ("public interest, convenience, or necessity"); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) ("requisite to protect the public health"). Because Congress supplied an "intelligible principle" to guide the agency, the delegation is constitutional. *See Gundy v. United States*, 588 U.S. 128, 135 (2019) (cleaned up).

For all these reasons, the writing requirement falls squarely within Congress's delegation.

B. Considering *Loper Bright*, The Court Should Conclude That OPM's Regulation Reflects A Valid Interpretation Of "Officially Ordered Or Approved"

Given the delegation described above, the Court's role is to apply the standard set out in *Loper Bright* for reviewing exercises of delegated authority. Under that standard, the regulation should be upheld.

1. The Scope Of The Court's Review Is Narrow In Light Of Congress's Delegation

As *Loper Bright* explains, and as the Court has subsequently confirmed in *Seven County Infrastructure*, courts' review is narrow if they conclude that a regulation was enacted pursuant to delegated authority.

When "there is an uncontroverted, explicit delegation of authority, the question is whether the [regulation] is within the outer boundaries of that delegation." *Mayfield v. Dep't of Labor*, 117 F.4th 611, 617 (5th Cir. 2024). In such cases, a regulation can be set aside only if the agency "exceeded [its] statutory authority or if the regulation is 'arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.'" *Batterton v. Francis*, 432 U.S. 416, 425 (1977) (citing 5 U.S.C. § 706). The cases explaining this are legion and longstanding. *See, e.g., FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 39 (1981); *Am. Tel. & Tel. Co. v. United States*, 299 U.S. 232, 236-37 (1936); *Brewster v. Gage*, 280 U.S. 327, 336 (1930); *Bates & Guild Co. v. Payne*, 194 U.S. 106, 109-10 (1904). Courts have followed the principles reflected in these cases because they recognize that the only way to effectuate

Congress's intent is to respect Congress's delegations to agencies. *See* Henry Paul Monaghan, *Marbury and the Administrative State*, 83 Colum. L. Rev. 1, 27-28 (1983) ("the court is not abdicating its constitutional duty to 'say what the law is' by deferring to agency interpretations of law: it is simply applying the law as 'made' by the authorized law-making entity") (cited by *City of Arlington, Tex. v. FCC.*, 569 U.S. 290, 317 (2013) (Roberts, C.J., dissenting)).

That the rulemaking at issue in this case involves a matter of administration within the realm of agency expertise provides yet another reason to respect Congress's delegation. Given its extensive experience managing personnel for Federal Government agencies, OPM brings unique expertise to the enactment of administrative rules governing when overtime is "officially ordered or approved." *See* S. Rep. 95-969, at 5 (1978) ("The Director of OPM will be the President's chief lieutenant in matters of personnel administration."). Such a determination is "not based so much on evidence as on judgment." *See Ramspeck v. Fed. Trial Exam'rs Conference*, 345 U.S. 128, 137 (1953). This "is a discriminating judgment and one Congress committed to the experience and expertise of the Civil Service Commission, not the courts." *Id.* (upholding Civil Service Commission regulation implementing provision of the APA). And "when an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its most deferential." *Seven Cnty. Infrastructure,* 145 S.Ct. at 1512 (cleaned up).

This narrow scope of review set out in the precedent considering regulations promulgated pursuant to delegated authority governs this case.

2. The Regulation Should Be Upheld Because It Falls Within The Bounds Of The Statute

Loper Bright requires the Court to consider, under the standard applied to exercises of delegated authority, whether the agency engaged in "reasoned decisionmaking" within the bounds of the authority delegated by Congress. 603 U.S. at 395-96. As we explain below, the regulation falls within the boundaries of the authority delegated by Congress, and should be upheld.

a. The Regulation Is Fully Consistent With The Statute's Plain Language

As we explain above, Congress delegated to OPM authority to issue rules regarding the statute's premium pay provisions, including the "officially ordered or approved" language for overtime in section 5542. Contrary to Ms. Lesko's suggestion, the phrase "officially ordered or approved" does not require OPM to permit oral orders or approvals of overtime work. Because OPM's promulgation of the writing requirement does not contradict section 5542's plain language, the Court should uphold the regulation.

We begin, as the Court must, with the plain language of section 5542(a). With respect to "ordered," Ms. Lesko herself cites Black's Law Dictionary for the following definition of "order": "A *written* direction or command delivered by a government official, esp. a court or judge." Pl.-App. *En Banc* Br. at 19 n.6 (emphasis added); *cf.*

Bates v. Johnson, 901 F.2d 1424, 1427 (7th Cir. 1990) ("Oral statements are not injunctions.") (interpreting Federal Rule of Civil Procedure 65). Although Ms. Lesko asserts that this definition is limited to judicial rulings, the definition applies to commands given by "government official[s]," not only judges. *See* Pl.-App. *En Banc* Br. at 19 n.6. To similar effect, *Doe* quotes the *Webster's Third New International Dictionary* 1587-88 (2002) for the following definition of "order": "a formal written authorization to deliver materials, to perform work, or to do both." 372 F.3d at 1358. These definitions demonstrate that OPM's construction is consistent with section 5542's "ordered" language.

Even putting aside the definitions of "order" that explicitly require that orders be in writing, OPM's construction flows from the element of formality reflected in the definitions of "ordered" and "approved[.]" As the definitions of "order" show, not all "directions" are "orders"; in particular, "directions" are not "orders" when they are not "authoritative," *Doe*, 372 F.3d at 1358 (citing *A New English Dictionary on Historical Principles* 183 (1st ed.1909) [the second edition of which is known as the Oxford English Dictionary]), or not "formal," *id.* (citing *Webster's Third New International Dictionary* 1587-88 (2002)). Especially in the context of a large organization like the Federal Government, the establishment of "formal" requirements that distinguish an ordinary communication from an "authoritative direction" is critical. *See id.* This function is particularly important in this statutory

framework because, under section 5542, a valid "order" or "approval" binds the Government, which then owes Treasury funds to the employee for the hours worked. The word "order" in section 5542(a), when combined with section 5548's delegation to make rules "necessary for the administration" of the statutory scheme, carves out discretion for OPM to establish "formal" rules, *see Doe*, 372 F.3d at 1358, that explain when an official's communication is "authoritative," *see id.*, and thus binding on the Federal Government.

The analysis for "approve" is similar. Ms. Lesko cites a definition of "approve" from Black's Law Dictionary: "to give formal sanction to; to confirm authoritatively." Pl.-App. *En Banc* Br. at 19 & n.7. In this definition, which is very similar to that contained in the historical dictionaries relied upon by *Doe*, 372 F.3d at 1359, the requirement that an approval "give *formal* sanction to" and "confirm *authoritatively*," *see id.* (emphasis added), leaves open the question of whether a particular communication or course of conduct is sufficiently "formal" and "authoritative" to constitute "approval." Requiring an approval in writing provides the requisite formality and authoritativeness.

Further support for OPM's regulation comes from the statute's use of the word "officially." The word "officially" makes clear that, regardless of how the terms "ordered or approved" are defined, it is not enough that overtime be "ordered" or "approved." The word "officially" conveys that an act must be taken "with official authority, sanction, or formality." *See Oxford English Dictionary*, "officially

(*adv.*)," September 2024, *available at* https://doi.org/10.1093/OED/5440204330 (last accessed July 2, 2025). When combined with the delegation of rulemaking authority to OPM and the connotations of "ordered" and "approved," the word "officially" underscores that Congress contemplated the imposition of formal requirements to exercise managerial control over the hours of overtime that employees work for which they would be compensated as required by the statute. Through the word "officially," Congress thus granted discretion to OPM in deciding how overtime would be "ordered or approved."

Moreover, seven years prior to the enactment of FEPA, Congress had addressed this same subject using different language in the Fair Labor Standards Act of 1938 (FLSA), Pub. L. No. 75-718, 52 Stat. 1060, codified as amended at 29 U.S.C. §§ 201-219. Instead of conditioning entitlement to overtime pay on overtime work being "officially ordered or approved," Congress provided that employees are entitled to overtime pay under the FLSA when the employer "suffer[s] or permit[s]" the employee to work overtime. *Doe*, 372 F.3d 1360-61 (discussing 29 U.S.C. § 203(g)). That Congress could have, but did not, adopt the broad FLSA standard in this context supports OPM's reading.

OPM's regulation also reflects a meaning of "officially ordered or approved" that is consistent with the level of formality frequently imposed upon those claiming entitlement to Treasury funds. For instance, the Federal Acquisition Regulation Council promulgated a variety of writing requirements, including in defining what

kinds of "orders" can give rise to additional compensation under a contract. *See* FAR 52.243-4 (change orders and constructive change orders must be in writing); *see also* FAR 2.101 (contracts must be in writing "except as otherwise authorized"); FAR 52.249-10(b)(2) (causes of excusable delay must be identified in writing). The writing requirement is also consistent with requirements imposed elsewhere in the Federal employment context, including in deciding whether a Federal employee has been appointed, *see Horner v. Acosta*, 803 F.2d 687, 692-93 (Fed. Cir. 1986), and in prescribing how employees must request leave, Indian Health Service, Leave Guide, *available at* https://www.ihs.gov/OHR/pay-and-benefits/leave/leave-guide/#collapse-21 ("Employee responsibilities: Request all leave through a leave-requesting vehicle (in writing, ITAS, etc.) approved by" the appropriate official) (last accessed July 2, 2025). Writing requirements are also imposed upon those seeking Federal benefits. *See, e.g., Rodriguez v. West*, 189 F.3d 1351, 1354 (Fed. Cir. 1999) (veterans benefits); *Hansen*, 450 U.S. at 788 (Social Security benefits). And the regulation is consistent with an even longer standing principle in the law: the statute of frauds, which specifies categories of contracts when a writing is required for a contract to be enforceable. *See* Restatement Second of Contracts §§ 110, 138 (1981). That OPM's construction of the statute is consistent with writing requirements imposed in analogous situations provides another reason to uphold the regulation. *See Batterton*, 432 U.S. at 427 (upholding Secretary's construction of term "unemployment" pursuant to delegated authority considering that "[t]he term

'unemployment' is often used in a specialized context where its meaning is other than simply not having a job.").

Ms. Lesko's primary argument on appeal is that, because "order" and "approval" can encompass both written and oral approvals, OPM's promulgation of the writing requirement is contrary to section 5542. As we explain above, her reading fails to adequately contend with the plain language of section 5542, which does not answer the question of when a direction is sufficiently formal to constitute an "order" or "approval" of overtime that was conveyed "officially." Ms. Lesko's reading also gives insufficient weight to the delegation in section 5548. Through that delegation, Congress made the rights created in section 5542 subject to OPM's judgment about what additional rules were necessary to make the statute administrable. *See Doe*, 372 F.3d at 1357 ("OPM was not limited by the statute to promulgating merely administrative directives, but was empowered to issue regulations setting forth substantive requirements."); Louis Jaffe, *Judicial Control of Administrative Action* 573 (1965) (explaining that when Congress "has chosen to work through an administrative agency[,]" it has presumptively chosen "to confer on [OPM] some policy-making function.").

Ms. Lesko also argues that "[c]ases concerning approval in other contexts" provides support for her argument. Pl.-App. *En Banc* Br. at 21. The first two cases she cites contain no relevant definition or discussion of "approval," so they shed no

light whatsoever on the issue before the Court. *See Allison v. Ticor Ins. Co.*, 979 F.2d 1187, 1197 (7th Cir. 1992); *Hoefling v. City of Miami*, 811 F.3d 1271, 1279 (11th Cir. 2016). Although the third case relied upon by Ms. Lesko does use the term "approval," it does so in the context of defining "ratification" and does not say anything about what constitutes "approval." *Salvato v. Miley*, 790 F.3d 1286, 1296 (11th Cir. 2015). The analysis in *Salvato*—which, in turn, relies on the Supreme Court's discussion of when a municipality's policy has been ratified such that it can give rise to section 1983 liability—is based upon the text of section 1983 and the history of the Civil Rights Act of 1871. *See Monell v. Dep't of Social Servs. of City of New York,* 436 U.S. 658, 690 (1978). The *sui generis* framework governing section 1983 liability should not control the interpretation of a statute addressing an area of law, pay for Federal employees, that has its own very distinctive history. In any event, the question before this Court is not whether OPM's construction of the statute is the only conceivable construction; the question is whether the construction is contrary to law. For the reasons explained above, the regulation does not contradict the statute.

Alternatively, even if the Court agreed with Ms. Lesko that the phrase "officially ordered or approved" must be read as broadly as she urges, she cannot overcome precedent that establishes that a delegation of authority to promulgate legislative rules authorizes the agency to impose requirements that effectively narrow statutory rights. In affirming *Doe*'s holding, this Court has recognized that a "procedural regulation is not invalid simply because it narrows the breadth of a

statutory right." *Mercier*, 786 F.3d at 981-82; *cf. INS v. Jong Ha Wang*, 450 U.S. 139, 145 (1981) (explaining that agencies are permitted to exercise their authority to construe statutory phrases "narrowly should they deem it wise to do so."). The Supreme Court applied this principle in *United States v. Storer Broadcasting Company,* 351 U.S. 192 (1956). In that case, the governing statute required that applicants for radio and television stations receive a hearing on their applications. *Id.* at 195 (citing 47 U.S.C. § 309). Even so, the Court "agree[d] with the contention of the Commission that a full hearing, such as is required by section 309(b), would not be necessary on all such applications[.]" *Id.* (cleaned up). Following *Storer Broadcasting*, the Supreme Court has upheld other procedural regulations that limit statutory rights.[2] Thus, even if her reading of section 5542 were correct, her challenge to the regulation still fails.

Finally, although Ms. Lesko's opening brief focuses at length upon exchanges between the Court and Government counsel during the oral argument in this case, Pl.-App. *En Banc* Br. 22-23, 24- 25, 39, 43, none of the quoted passages add anything to her argument. The assertions of counsel that Ms. Lesko quotes are all consistent

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[2] *See Heckler v. Campbell*, 461 U.S. 458, 467 (1983) (upholding regulations that created medical-vocational guidelines that "relieve[d] the Secretary of the need to rely on vocational experts by establishing through rulemaking the types and numbers of jobs that exist in the national economy[,]" even though "the statutory scheme contemplates that disability hearings will be individualized determinations based on evidence adduced at a hearing."); *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609, 620-21 (1973) (upholding regulation that allowed the Food and Drug Administration to deny a hearing notwithstanding statutory requirement to give "due notice and opportunity for hearing to the applicant").

with what we explain in this brief. Ms. Lesko also relies upon how the members of the panel framed their questions as support for her arguments. *Id.* at 24, 43. But questions asked by the panel during oral argument do not establish principles of law.

For all these reasons, OPM's promulgation of 5 C.F.R. § 550.111(c) does not contravene the plain language of section 5542.

b. The Regulation Is Buttressed By Principles Long Relied Upon By Courts When Evaluating Regulations

In *Loper Bright*, the Supreme Court explains that "respect [for Executive Branch interpretations] was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with the statute and remained consistent over time." 603 U.S. at 386; *see also Bondi v. VanDerStok*, 145 S. Ct. 857, 874 (2025) ("[T]he contemporary and consistent views of a coordinate branch of government can provide evidence of the law's meaning."). This principle weighs in favor of upholding the regulation's validity.

First, the regulation reflects a contemporaneous construction of the statute. The Civil Service Commission's regulation was published in the Federal Register four days after the statute was issued. *Compare* 59 Stat. at 295 (June 30, 1945 enactment date) *with* 10 Fed. Reg. 8191, 8,194 (July 4, 1945 publication date). As the Supreme Court has often explained, "[administrative] practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently

and smoothly while they are yet untried and new." *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294, 315 (1933); *see also White v. Winchester Country Club,* 315 U.S. 32, 41 (1942); *Edwards' Lessee v. Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827). As *Doe* correctly recognizes, the regulatory history counsels in favor of upholding the regulation. 372 F.3d at 1362 (citing *Nat'l Muffler Dealers Ass'n, Inc. v. United States,* 440 U.S. 472, 477 (1979); *Baird v. Sonnek,* 944 F.2d 890, 894 (Fed. Cir. 1991)). This regulation's history demonstrates the soundness of the presumption that contemporaneous constructions often reflect unique insight into legislation's meaning. In a June 28, 1945 letter to President Truman expressing "enthusiastic[]" support for FEPA, the president of the Civil Service Commission, Harry B. Mitchell, explained that the Commission was "very familiar with this legislation, having initiated the original recommendations and followed through during its consideration by the Congress." Letter from Harry B. Mitchell, President, Civil Service Commission, to President Harry Truman (June 28, 1945), *available at* https://catalog.archives.gov/id/74859433?objectPanel=extracted (page 115) (last accessed July 2, 2025).

Second, the regulation has remained in effect, without substantive change, for more than 80 years. Courts view the "contemporaneous and longcontinued construction of the statutes by the agency charged to administer them" as a reason to uphold a regulation. *See Mazer v. Stein*, 347 U.S. 201, 213 (1954). That neither the Civil Service Commission nor OPM has materially changed this regulation over the course of the regulation's 80-year application is a "certain credential of

reasonableness, since it is rare that error would long persist." *See Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 740 (1996).

Relatedly, Congress's reenactment of both the "officially ordered or approved" language and the statutory delegation in substantively the same form after the regulation was promulgated weighs in favor of upholding the regulation's validity. Congress has revisited the matter of overtime pay for Federal workers since 1945, including in the FEPA Amendments of 1954 and again when Congress recodified Title 5 in 1966. *See* Pub. L. No. 83-763, 68 Stat. 1105, 1109 (1954); Pub. L. No. 89-554, 80 Stat. 378, 485 (1966). Each time, Congress did not modify the "officially ordered or approved" language; did not limit the scope of the delegation of rulemaking authority to the Civil Service Commission; and did not disturb the regulation's writing requirement. *See id.* The inference that Congress was presumptively aware of the regulations enacted by the Commission, and by its inaction acquiesced to them, is strong. *See United States v. Clark,* 454 U.S. 555, 564 (1982) (recognizing Congressional inaction when Congress was "revamping the laws applicable to pay for prevailing wage positions" as evidence of Congressional intent to adopt OPM's interpretation); *Sabe v. Bustos*, 419 U.S. 65, 74 (1974) (explaining that "a history of administrative construction and congressional acquiescence may add a gloss of qualification to what is on its face unqualified statutory language.").

For all these reasons, OPM's statutory construction was within the boundaries of the statutory delegation, in light of the principles that the Supreme Court has traditionally applied when evaluating executive statutory interpretations.

c. The Regulation Is Supported By Precedent Upholding Similar Regulatory Writing Requirements

OPM's construction of the "officially ordered or approved" language finds further support from two particularly instructive cases (in addition to *Doe*, which we discuss at length above) in which courts upheld writing requirements imposed by agency regulations that were promulgated pursuant to delegated authority.

Hansen involved the Social Security Act, which extended benefits to a person who "has filed application." 450 U.S. 785; *see* 42 U.S.C. § 402(g)(1)(D) (1976). Until 1955, Social Security Administration (SSA) regulations permitted oral applications. *Hansen v. Harris*, 619 F.2d 942, 946 (2d Cir. 1980), *reversed by* 450 U.S. 785. Subsequently, pursuant to authority delegated by the Social Security Act, 42 U.S.C. § 405(a), SSA promulgated a regulation requiring the application to be in writing, 20 C.F.R. § 404.602 (1974), and SSA's manual required administrators to inform applicants that their applications must be filed in writing, *Hansen,* 450 U.S. at 786.

A claimant challenged the denial of her claim after she was orally (and incorrectly) told that she was ineligible for benefits without being informed of the requirement that applications be filed in writing. A Federal district court held that the regulation's writing requirement was invalid. *Hansen*, 619 F.2d at 946. The Second

Circuit disagreed, reasoning that the "the Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion and laxity in its administration." *Id.* at 947 (cleaned up). "The vastness of the program," the Second Circuit explained, "makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims and paying out insurance benefits." *Id.* (cleaned up). Accordingly, the Second Circuit held, as the Eighth Circuit did in a contemporaneous decision, that the writing requirement was valid. *Id.*; *see Leimbach v. Califano*, 596 F.2d 300, 304 (8th Cir. 1979) (holding that "the Agency's written application requirement is reasonably related to the need for prompt and effective administration of the Act," considering that the Secretary's "decision to require written applications reflects his experience and special Agency expertise in the day-to-day administration of the Act."). The Second Circuit nevertheless concluded that the Government was estopped from denying an earlier effective date for the benefits claim. The court explained that, considering the oral representation of the SSA employee, and because the claimant met the statute's substantive requirement for obtaining benefits, the SSA could not rely on the regulation's procedural writing requirement as a basis for denying her an earlier effective date. *Id.* at 948.

The Supreme Court did not disturb the Second Circuit's ruling that the regulation's writing requirement was valid. *Hansen*, 450 U.S. at 788. But the Court

reversed the Second Circuit because it rejected the panel's conclusion that the SSA was estopped from denying the benefits claim. *Id.* The Court explained that "Congress expressly provided in the Act that only one who 'has filed application' for benefits may receive them, and it delegated to petitioner the task of providing by regulation the requisite manner of application." *Id.* at 790. "A court is no more authorized to overlook the valid regulation requiring that applications be in writing than it is to overlook any other valid requirement for the receipt of benefits." *Id.*

Building upon *Hansen*, the D.C. Circuit sustained a Treasury regulation, issued pursuant to delegated authority,[3] that added a writing requirement to the Internal Revenue Code's provision regarding compromise agreements with the Internal Revenue Service.[4] *Boulez v. Commissioner*, 810 F.2d 209, 212-13 (D.C. Cir. 1987). The Court explained that "Congress, in enacting Section 7122, empowered the Secretary to compromise disputed tax liabilities, but left to the Secretary the mechanics of effecting settlements." *Id.* at 214. *Boulez* "f[ou]nd the requirement of a writing entirely reasonable, and a wholly permissible interpretation" of section 7122(a). The court

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[3] *See* 26 U.S.C. § 7805(a) (1982) (authorizing the Treasury Secretary to "prescribe all needful rules and regulations for the enforcement" of the internal revenue law).

[4] *See* 26 U.S.C. § 7122(a) ("The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.").

then quoted *Hansen* for the proposition that it is "the duty of all courts to observe the conditions defined by Congress for charging the public treasury," *id.* at 218 n. 68 (quoting *Fed. Crop Ins. Corp. v. Merrill,* 332 U.S. 380, 385 (1947)). The court explained that *Hansen* taught that this "principle is no different where the requirement is promulgated by the agency charged by Congress with administering a statute," *Boulez,* 810 F.2d at 218 n. 68 (citing *Hansen,* 450 U.S. 785). According to *Hansen*, "no distinction between substantive and procedural requirements suffices to mitigate the court's responsibility to ensure observance of regulations governing claims on the public fisc." *Id.* (citing *Hansen,* 450 U.S. at 790).

Ms. Lesko's attempt to distinguish this line of cases reflects a fundamental misunderstanding of the statutory framework. She argues that the regulation's writing requirement is not a permissible procedural requirement because employees cannot control whether they can get a written order or approval to work overtime. Pl.-App. *En Banc* Br. 41-42. But under section 5242, overtime pay is available only when overtime is ordered or approved by an official with the requisite authority. Thus, inherent in the plain language of the statute—"officially ordered or approved"—is that supervisors, and not employees, control whether employees receive orders or approval to work overtime and, thus, receive overtime pay.

In fact, the legislative history establishes that Congress was specifically concerned about the prospect of employees controlling how much overtime they work. *Doe*, 372 F.3d at 1362-63 (quoting statement from Representative Miller: "if I

am a $6,000 executive I just can't come in the morning and say, 'I decided to stay at the office last night for 2 hours and, therefore, I want $1.75 an hour.'"). Ms. Lesko's allegation that nurses' requests for overtime were routinely "*not* approved and/or allowed in many circumstances," Appx088, ¶¶ 63 (emphasis added), suggests that she takes issue with section 5542's "officially ordered or approved" requirement. But this is a complaint she must bring to Congress.

Both *Hansen* and *Boulez* recognize the validity of regulations imposing writing requirements. The reasoning of these cases, like the reasoning of *Doe*, provides support for OPM's promulgation of section 550.111(c).

d. The Regulation Appropriately Accounts For Congress's Concerns About Protecting Treasury Funds

As we explain above, OPM's construction of the statute is fully consistent with the statute's plain language, with the principles for reviewing exercises of delegated authority affirmed in *Loper Bright*, and with precedent. As a result, the Court need not resort to legislative history to resolve this appeal. *See, e.g., FlightSafety Int'l v. Sec'y of the Air Force*, 130 F.4th 926, 936 (Fed. Cir. 2025). If the Court were to examine the legislative history, though, that history makes clear that OPM's regulation is consistent with Congress's intent and furthers the purposes of the legislation. *See Gundy*, 588 U.S. at 141 ("Beyond context and structure, the Court often looks to history and purpose to divine the meaning of language.") (cleaned up).

The legislative history reveals that, in light of Congress's concern about the exploding Federal budget, members of the House Committee on Civil Service expressed concern to Commissioner Flemming that the proposed legislation could allow Federal agencies to incur overtime liability beyond the scope of their budgets. In particular, Representative Vursell expressed concern that overtime pay might lead to the need for deficiency appropriations. *House Committee Hearings* at 50-51. In response to this concern, Commissioner Flemming identified the requirement that compensable overtime be "officially ordered or approved" as a control that would prevent the Government from becoming subject to unexpected monetary liability. *Id.* Commissioner Flemming's testimony thus foreshadowed the imposition of conditions on the authorization of overtime payments. Far from pushing back against his suggestion, Congress enacted a statute that delegated rulemaking authority to the Commission overseen by Commissioner Flemming.

As *Doe* correctly recognizes, the implementing regulation "serves an important purpose of the statute—to control the government's liability for overtime." *Doe*, 372 U.S. at 1361; *see also Post v. United States*, 121 Ct. Cl. 94, 99 (1951) (describing the regulation as a "necessary safeguard against subjecting the government to improper expense."). A requirement that orders or approval be in writing makes less likely the type of unexpected liabilities that can arise when, as in this case, an employee asserts, after the fact, that she was induced to perform additional overtime by an implicit oral order of her supervisor. Indeed, the situation in this case is exactly the type of

situation likely to implicate Representative Vursell's concern about overtime pay resulting in a need for deficiency appropriations. *See House Committee Hearings* at 51; *cf. Michigan*, 576 U.S. at 753 ("[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions."). The regulation thus falls "within the allowable area of the [agency's] discretion in carrying out congressional policy." *See Brooks v. NLRB*, 348 U.S. 96, 104 (1954).

Nor is this the only benefit of sound "administration" that results from the regulation. Among other salutary effects, written orders or approvals function as evidence that overtime work was in fact authorized. Accordingly, a writing requirement tends to reduce the likelihood of disputes about entitlement to overtime pay. *Cf. Clark v. United States*, 95 U.S. 539, 541-42 (1877) ("The facility with which the government may be pillaged by the presentment of claims of the most extraordinary character, if allowed to be sustained by parol evidence, which can always be produced to any required extent, renders it highly desirable that all contracts which are made the basis of demands against the government should be in writing."). Written orders or approvals also make it easier to track the overtime that is approved or ordered, which promotes fiscal responsibility and facilitates oversight and accountability. *Cf. Rodriguez*, 189 F.3d at 1354 (explaining administrative problems that would result from allowing applications for VA benefits to be filed orally); HHS, *Instruction 550-1, Premium Pay, dated November 3, 2010*, https://www.hhs.gov/sites/default/files/hr-

resource-library-550-1.pdf, at 550-1-50 (last accessed June 2, 2025) (describing requirements for "documentation . . . in writing" of overtime and providing for "accountability" through "oversight activities").

This is thus not a case when the agency's construction is "so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment." *Gray v. Powell*, 314 U.S. 402, 413 (1941). The regulation should therefore be upheld.

e. The Regulation Reflects A Clear Rule That Is Superior To The Amorphous Standard Proposed By Ms. Lesko

Ms. Lesko asks the Court to hold the regulation invalid and instead to allow her to proceed on an inducement theory. Ms. Lesko's opening brief sets forth the following standard for inducement: "[A] supervisor with the authority to approve overtime would need to have knowledge that the work is being performed or required to be performed" and "the supervisor, through words or conduct or the policies of the workplace, encourages or expects it." Pl.-App. *En Banc* Br. 19. But the standard she articulates ultimately provides yet another reason that OPM's writing requirement makes sense.

The standard proposed by Ms. Lesko is both untethered from the plain language of section 5542 and raises numerous problems of administration. Self-evident is that there is a significant difference in meaning between (a) being "encouraged" to do something and (b) being "ordered" to do it. *See* Pl.-App. *En Banc*

Br. 19 (proffering definition of "order" as "command"). And Ms. Lesko's proposed standard would allow employees to recover overtime compensation even if they never sought approval for the "induced" overtime they allegedly worked. As the Court of Claims has explained, when plaintiffs do not seek approval for the overtime they worked, "the force of [their] argument is dissipated by their failure . . . to formally demand their immediate supervisors to take such action and carry their claims to authorized officials." *Bilello v. United States*, 174 Ct. Cl. 1253, 1258 (1966). "Administrative efficiency requires observance of orderly forms, and by voicing their demands through proper channels the plaintiffs conceivably could have secured a ruling which would have resulted either in an order for overtime compensation or in a justified refusal on the part of the plaintiffs to continue performing overtime work without compensation." *Id.*

The same can be said about Ms. Lesko's allegations and about the standard she proposes. IHS has a policy governing premium pay, including a form allowing employees to request authorization to work overtime.[5] Moreover, Ms. Lesko "routinely" received compensatory time off during the time governed by the complaint, App088, ¶ 63, which indicates both that she knew how to follow IHS's

[5] Department of Health and Human Services, *IHS Individual Overtime, Compensatory Time and Credit Hours Request Form*, *available at* https://www.ihs.gov/sites/ohr/themes/responsive2017/display_objects/documents/paytables/2024/IHS_Overtime_Compensatory_Form.pdf. (last accessed July 2, 2025).

policy relating to overtime and that IHS did not have a blanket practice of refusing to order or to approve overtime requested in accordance with its policy. Ms. Lesko nevertheless appears to contend that she is entitled to compensation for overtime alleged to have been worked even when she did not seek approval in accordance with IHS's policy. Under such circumstances, compensation is foreclosed by *Bilello*. *See* 174 Ct. Cl. at 1258.

Further, a departure from *Doe*'s bright-line rule, as Ms. Lesko seeks, would also likely mean a return to routine litigation over whether overtime was "induced" under the *Anderson* standard. *Doe*'s rule avoids the difficulties in after-the-fact determinations about whether often ambiguous oral communications—or, in the case of Ms. Lesko's standard, an agency policy that generally requires work to be done within time constraints, Pl.-App. *En Banc* Br. 19—constitute an "order" or "approval" of overtime work. Ms. Lesko contends that "there is no evidence that the government was unable to administer overtime pay without an enforceable writing requirement" for the 48 years between *Anderson* and *Doe*. Pl.-App. *En Banc* Br. 33-34. But the problems applying *Anderson*'s amorphous "inducement" standard are well documented. In describing "the difficulty of applying the correct FEPA standard to government employees," the trial court in *Doe* quoted a dissent from the Court of Claims to drive home just how unsettled the law was:

> In the court's decisions in *Albright, Baylor, Bates*, and this case, the court has taken almost every conceivable position with regard to overtime. Consequently, an employee

> seeking overtime can likely find an opinion of this court that fits his situation regardless of what it may be.

Doe v. United States, 54 Fed. Cl. 404, 410 (2002) (cleaned up) (quoting *Anderson v. United States,* 201 Ct. Cl. 660, 675 (1973) (Skelton, J., dissenting)). The Court should not retreat from the clear rule affirmed in *Doe* to the uncertainty inherent in the *Anderson* standard. *Cf. Seven Cnty. Infrastructure*, 145 S.Ct. at 1518 ("In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability.").

Finally, upholding OPM's regulation would not leave employees like Ms. Lesko without a remedy if they are confronted with requests to work unpaid overtime. Employees may ultimately obtain compensation if they address such instructions through an employees' supervisory chain or through the inspector general process. *Bilello*, 174 Ct. Cl. at 1258. And even if attempts to obtain compensation were unsuccessful, "an adverse personnel action . . . taken against an employee who declined to work uncompensated overtime . . . might well be found to be invalid." *Doe*, 372 F.3d at 1364.

OPM avoided the problems inherent in Ms. Lesko's standard by promulgating an easily administered requirement. This is yet another reason that its regulation should be upheld.

C. *Stare Decisis* Counsels In Favor Of Upholding The Validity Of The Regulation

Loper Bright recognizes that *stare decisis* principles apply to cases upholding regulations under *Chevron*. Those principles counsel in favor of affirming this Court's precedent in *Doe*.

The Supreme Court went out of its way in *Loper Bright* to make clear that its decision "do[es] not call into question prior cases that relied on the *Chevron* framework." 603 U.S. at 412. Rather, "[t]he holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite [the Court's] change in interpretive methodology." *Id.* This Court upheld the precise regulation at issue in this case in *Doe*, which was decided more than twenty-one years ago. Although this Court "relied on *Chevron*" in *Doe*, the Supreme Court addressed this exact scenario, explaining that "[m]ere reliance on *Chevron* . . . is not enough to justify overruling a statutory precedent." *Id.*

That conclusion follows from ordinary principles of *stare decisis*. As the Supreme Court has explained, although the application of *stare decisis* is "not an inexorable command," it is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee,* 501 U.S. 808, 827 (1991). Accordingly, "[b]efore overturning a long-settled precedent," courts "require special justification,

not just an argument that the precedent was wrongly decided." *Halliburton*, 573 U.S. at 266.

There is no "special justification," *id.*, for overturning *Doe*. To the contrary, the reliance interests engendered by *Doe* warrant affirmance. *Doe* has been the law for 21 years. OPM provides guidance to agencies explaining the regulation affirmed by *Doe*;[6] this guidance, in turn, leads to agencies establishing procedures and generating forms that govern requests for authorization of overtime pay.[7] In this way, the understanding of both supervisors and employees, most of whom have never heard of *Doe*, has been informed by *Doe*'s holding. That *Doe* interpreted a statute provides yet another reason to invoke *stare decisis*. The Supreme Court has explained that "*stare*

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[6] *See, e.g.,* OPM, *Fact Sheet: Guidance on Applying FLSA Overtime Provisions to Law Enforcement Employees Receiving Administratively Uncontrollable Overtime Pay*, *available at* https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/guidance-on-applying-flsa-overtime-provisions-to-law-enforcement-employees-receiving-administratively-uncontrollable-overtime-pay/ (referring to requirement that Title 5 overtime be ordered or approved in writing) (last accessed July 2, 2025).

[7] *See, e.g.,* HHS, *Instruction 550-1, Premium Pay, dated November 3, 2010*, at 550-1-50, *available at* https://www.hhs.gov/sites/default/files/hr-resource-library-550-1.pdf (last accessed July 2, 2025) ("Employees may not be compensated for overtime unless the work is authorized both in advance and in writing. In emergencies, employees may be ordered to work overtime without prior approval, provided approval is documented the next workday."); Department of Health and Human Services, *IHS Individual Overtime, Compensatory Time and Credit Hours Request Form*, *available at* https://www.ihs.gov/sites/ohr/themes/responsive2017/display_objects/documents/paytables/2024/IHS_Overtime_Compensatory_Form.pdf (last accessed July 2, 2025).

decisis carries enhanced force when a decision … interprets a statute" because "critics of [the Court's] ruling can take their objections across the street, and Congress can correct any mistake it sees." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015). As explained above, the agency announced its view of the statutory language eighty years ago and has not deviated from that understanding, yet Congress has left the same language intact.

In deciding what weight to afford *stare decisis* principles, courts look to whether a case's "statutory and doctrinal underpinnings have . . . eroded over time[,]" *Kimble*, 576 U.S. at 458. *Loper Bright* emphasizes that reliance on *Chevron* is not, without more, a "special justification" that warrants a departure from *stare decisis*. 603 U.S. at 412. And, notably, *Doe* is consistent with *Loper Bright* in important ways. *Loper Bright*'s central criticism of *Chevron*—that *Chevron* presumed that Congress intended to delegate any time a statutory term is ambiguous, *see* 603 U.S. at 399-407—does not implicate *Doe*, which considered a regulation promulgated pursuant to an explicit delegation of rulemaking authority, 372 F.3d at 1358, 1359. *Doe*'s conclusion that "OPM regulation's written order requirement does not contradict the language of FEPA[,]" *id.* at 1360, is also relevant to the statutory interpretation required under *Loper Bright*. And *Doe* relies in part upon an interpretative principle also emphasized by *Loper Bright*: that contemporaneous constructions of a statute are afforded particular respect. *Compare Doe,* 372 F.3d at 1362, *with Loper Bright,* 603 U.S. at 386.

Ms. Lesko offers several reasons why the Court should not adopt *Doe*'s rule. But her argument boils down to different ways in which, in Ms. Lesko's view, *Doe*'s reasoning was incorrect. Pl.-App. *En Banc* Br. 24-28. We disagree with her characterization for the reasons described above, but even if she were right, her contentions amount to "an argument that the precedent was wrongly decided." *Loper Bright*, 603 U.S. at 412 (quoting *Halliburton,* 573 U.S. at 266). That, by itself, provides no reason to abandon *stare decisis*. *See id.*

Court of Claims caselaw addressing this regulation does not undermine the *stare decisis* effect of *Doe*. To begin, early Court of Claims cases recognized the regulation as valid. *Post*, 121 Ct. Cl. at 99 (dicta); *Gaines v. United States*, 132 Ct. Cl. 408, 413 (1955). Starting with *Anderson*, subsequent cases came to the opposite conclusion. Pl.-App. *En Banc* Br. 15-17 (collecting cases). But the analysis in *Anderson* was flawed. As Ms. Lesko correctly writes in her opening brief, *Anderson* did "not properly examine [section 5548's] boundaries as *Loper* requires." Pl.-App. *En Banc* Br. 32-33. Nor does *Anderson* cite the litany of cases that we discuss above in which the Supreme Court explains the scope of review in cases when agencies exercise delegated rulemaking authority. *See id.* And it does not fully avail itself of the tools of statutory interpretation that, as explained above, support OPM's construction. In particular, A*nderson* articulates an "inducement" standard that is divorced from the "officially ordered or approved" language of section 5542. Instead of squaring its interpretation with the statute's text, *Anderson* focuses primarily upon Congress's purpose to extend

overtime benefits, which it described as "overriding[.]" *See id.* But the Supreme Court has squarely rejected this reductionist approach to statutory construction. *See Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 150 (2023) ("no law " 'pursues its ... purpose[s] at all costs.'"). Thus, *Anderson*'s "underpinnings have . . . eroded over time[,]" *Kimble*, 576 U.S. at 458. In any event, there could be no legitimate reliance interests considering that this Court overruled *Anderson* twenty-one years ago.

Mercier also does not help Ms. Lesko's argument. To begin, *Mercier* was proceeding on the assumption that *Anderson*'s interpretation of the "officially ordered or approved" language now contained in section 5542(a) was binding upon the panel. 786 F.3d at 980-82. But *Anderson* does not bind the *en banc* Court, as *Mercier* recognized. *Id.* at 981. Even more fundamentally, *Mercier* did not question the central holding of *Doe*: that the writing regulation was a reasonable interpretation of FEPA and thus should be upheld. *Id.* at 982. Indeed, *Mercier* considers a claim that was not covered by a regulation requiring the order or approval to be in writing. *Id.* at 972. *Mercier* thus provides no reason to diverge from *Doe*.

CONCLUSION

The Court should thus hold that the regulation is enforceable and should, for the reasons provided in this brief and in the response brief we submitted to the panel, affirm the trial court's judgment.

Respectfully submitted,

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July 7, 2025

ADDENDUM

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SEC. 2. TERMINATION OF REPRICING OF WAR CONTRACTS.

58 Stat. 93.
50 U. S. C., Supp. IV, app. § 1192 note.

Section 802 (b) of the Revenue Act of 1943 (relating to repricing of war contracts) is amended to read as follows:

"(b) Section 801 shall not apply to any contract with a Department or any subcontract made after (1) the date proclaimed by the President as the date of the termination of hostilities in the present war, or (2) the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, or (3) December 31, 1945, whichever date is the earlier."

Approved June 30, 1945.

[CHAPTER 211]

JOINT RESOLUTION

June 30, 1945
[H. J. Res. 184]
[Public Law 105]

To continue the temporary increases in postal rates on first-class matter, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1001 (a), as amended (relating to temporary increase in first-class postage rate), of the Revenue Act of 1932, and section 2, as amended (authorizing the President to modify certain postage rates), of the Act entitled "An Act to extend the gasoline tax for one year, to modify postage rates on mail matter, and for other purposes", approved June 16, 1933, are further amended by striking out "July 1, 1945" wherever appearing therein and inserting in lieu thereof "July 1, 1947", and by striking out "June 30, 1945" wherever appearing therein and inserting in lieu thereof "June 30, 1947".

47 Stat. 285; 48 Stat. 254; 57 Stat. 157.
39 U. S. C. § 280 note; Supp. IV, § 280 note.

SEC. 2. Section 732 (d) of the Internal Revenue Code is amended to read as follows:

56 Stat. 917.
26 U. S. C., Supp. IV, § 732 (d).

"(d) REVIEW BY SPECIAL DIVISION OF BOARD.—The determinations and redeterminations by any division of the Board involving any question arising under section 721 (a) (2) (C) or section 722 with respect to any taxable year shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board."

55 Stat. 22, 23.
26 U. S. C., Supp. IV, §§ 721 (a) (2) (C), 722.

Approved June 30, 1945.

[CHAPTER 212]

AN ACT

June 30, 1945
[S. 807]
[Public Law 106]

To improve salary and wage administration in the Federal service; to provide pay for overtime and for night and holiday work; to amend the Classification Act of 1923, as amended; to bring about a reduction in Federal personnel and to establish personnel ceilings for Federal departments and agencies; to require a quarterly analysis of Federal employment; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees Pay Act of 1945".

Federal Employees Pay Act of 1945.

TITLE I—COVERAGE AND EXEMPTIONS

COVERAGE

SEC. 101. (a) Subject to the exemptions specified in section 102 of this Act, titles II and III of this Act shall apply (1) to all civilian officers and employees in or under the executive branch of the Government, including Government-owned or controlled corporations, and in or under the District of Columbia municipal government, and (2) to those officers and employees of the judicial branch of the Government, the Library of Congress, the Botanic Garden, and the Office of

42 Stat. 1488. 5 U. S. C. § 661; Supp. IV, § 661 *et seq.* *Post*, p. 298 *et seq.*

the Architect of the Capitol who occupy positions subject to the Classification Act of 1923, as amended.

(b) Title IV of this Act shall apply to officers and employees who occupy positions subject to the Classification Act of 1923, as amended.

Legislative and judicial branches.

(c) Subject to the exemptions specified in section 102 of this Act, title V of this Act shall apply to officers and employees in or under the legislative or the judicial branch of the Government whose compensation is not fixed in accordance with the Classification Act of 1923, as amended, and to the official reporters of proceedings and debates of the Senate and their employees.

Supra.

(d) Subject to the exemptions specified in section 102 of this Act, title VI of this Act (containing miscellaneous provisions) shall apply to civilian officers and employees of the Government according to the terms thereof.

General Accounting Office.

(e) All provisions of this Act applicable to the executive branch of the Government shall be applicable to the General Accounting Office.

EXEMPTIONS

SEC. 102. (a) This Act shall not apply to (1) elected officials; (2) Federal judges; (3) heads of departments or of independent establishments or agencies of the Federal Government, including Government-owned or controlled corporations; (4) employees of the District of Columbia municipal government whose compensation is fixed by the Teachers' Salary Act of June 4, 1924, as amended; and (5) officers and members of the Metropolitan Police or of the Fire Department of the District of Columbia. As used in this subsection the term "elected officials" shall not include officers elected by the Senate or House of Representatives who are not members of either body.

43 Stat. 367. D. C. Code § 31–601 *et seq.* *Ante*, p. 99; *post*, p. 500.

Post, p. 304.

(b) This Act, except section 607, shall not apply to (1) officers and employees in the field service of the Post Office Department; (2) employees outside the continental limits of the United States, including those in Alaska, who are paid in accordance with local native prevailing wage rates for the area in which employed; (3) officers and employees of the Inland Waterways Corporation; (4) officers and employees of the Tennessee Valley Authority; (5) individuals to whom the provisions of section 1 (a) of the Act of March 24, 1943 (Public Law Numbered 17, Seventy-eighth Congress), are applicable; and (6) officers and members of the United States Park Police and the White House Police.

57 Stat. 45. 50 U. S. C., Supp. IV, app. § 1291 (a).

(c) This Act, except sections 203 and 607, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

(d) This Act, except sections 606 and 607, shall not apply to employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, to vessel employees of the Coast and Geodetic Survey, or to vessel employees of the Panama Railroad Company.

TITLE II—COMPENSATION FOR OVERTIME

OVERTIME PAY

Work in excess of 40 hours.

SEC. 201. Officers and employees to whom this title applies shall, in addition to their basic compensation, be compensated for all hours of employment, officially ordered or approved, in excess of forty hours in any administrative workweek, at overtime rates as follows:

Overtime rates. Compensation less than $2,980.

(a) For employees whose basic compensation is at a rate less than $2,980 per annum, the overtime hourly rate shall be one and one-half times the basic hourly rate of compensation: *Provided*, That in computing such overtime compensation for per annum employees, the basic

hourly rate of compensation shall be determined by dividing the per annum rate by two thousand and eighty.

(b) For employees whose basic compensation is at a rate of $2,980 per annum or more, the overtime hourly rate shall be in accordance with and in proportion to the following schedule: $2,980 or more.

Basic rate of compensation per annum	Overtime rate of compensation per 416 overtime hours
$2,980	$894.000
3,000	885.554
3,200	877.108
3,310	868.662
3,420	860.216
3,530	851.770
3,640	843.324
3,750	834.878
3,860	826.432
3,970	817.986
4,080	809.540
4,190	801.094
4,300	792.648
4,410	784.202
4,520	775.756
4,630	767.310
4,740	758.864
4,960	741.972
5,180	725.080
5,390	708.955
5,600	692.831
5,810	676.707
6,020	660.583
6,230	644.458
6,440 and over	628.334

COMPENSATORY TIME OFF FOR IRREGULAR OR OCCASIONAL OVERTIME WORK

SEC. 202. (a) The heads of departments, or of independent establishments or agencies, including Government-owned or controlled corporations, and of the District of Columbia municipal government, and the heads of legislative or judicial agencies to which this title applies, may by regulation provide for the granting of compensatory time off from duty, in lieu of overtime compensation for irregular or occasional duty in excess of forty-eight hours in any regularly scheduled administrative workweek, to those per annum employees requesting such compensatory time off from duty.

(b) The Architect of the Capitol may, in his discretion, grant per annum employees compensatory time off from duty in lieu of overtime compensation for any work in excess of forty hours in any regularly scheduled administrative workweek.

WAGE-BOARD EMPLOYEES

SEC. 203. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 23 of the Act of March 28, 1934 (U. S. C., 1940 edition, title 5, sec. 673c). The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows: 48 Stat. 522.

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and If basic rate fixed on annual basis.

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve Monthly basis.

to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half.

TITLE III—COMPENSATION FOR NIGHT AND HOLIDAY WORK

NIGHT PAY DIFFERENTIAL

SEC. 301. Any officer or employee to whom this title applies who is assigned to a regularly scheduled tour of duty, any part of which falls between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian, shall, for duty between such hours, excluding periods when he is in a leave status, be paid compensation at a rate 10 per centum in excess of his basic rate of compensation for duty between other hours: *Provided*, That such differential for night duty shall not be included in computing any overtime compensation to which the officer or employee may be entitled: *And provided further*, That this section shall not operate to modify the provisions of the Act of July 1, 1944 (Public Law Numbered 394, Seventy-eighth Congress), or any other law authorizing additional compensation for night work.

Differential not included in overtime.

58 Stat. 648. 31 U. S. C., Supp. IV, § 180.

COMPENSATION FOR HOLIDAY WORK

SEC. 302. Officers and employees to whom this title applies who are assigned to duty on a holiday designated by Federal statute or Executive order shall be compensated for such duty, excluding periods when they are in leave status, in lieu of their regular pay for that day, at the rate of one and one-half times the regular basic rate of compensation: *Provided*, That extra holiday compensation paid under this section shall not serve to reduce the amount of overtime compensation to which the employee may be entitled under this or any other Act during the administrative workweek in which the holiday occurs, but such extra holiday compensation shall not be considered to be a part of the basic compensation for the purpose of computing such overtime compensation. This section shall take effect upon the cessation of hostilities in the present war as proclaimed by the President, or at such earlier time as the Congress by concurrent resolution may prescribe. Prior to so becoming effective, it shall be effective with respect to any designated holiday only if the President has declared that such day shall not be generally a workday in the Federal service.

TITLE IV—AMENDMENTS TO CLASSIFICATION ACT OF 1923, AS AMENDED

ESTABLISHMENT OF RATES FOR CLASSES OF POSITIONS WITHIN GRADES

SEC. 401. Section 3 of the Classification Act of 1923, as amended, is amended by inserting at the end of such section a paragraph reading as follows:

42 Stat. 1489. 5 U. S. C. § 663.

"In subdividing any grade into classes of positions, as provided in the foregoing paragraph, the Civil Service Commission, whenever it deems such action warranted by the nature of the duties and responsibilities of a class of positions in comparison with other classes in the same grade, and in the interests of good administration, is authorized to establish for any such class a minimum rate, which shall be one of the pay rates, but not in excess of the middle rate, of that grade as set forth in section 13 of this Act, as amended. Whenever the Commission shall find that within the same Government organization and at the same location gross inequities exist between basic per annum rates

Rates for classes within grades.

Post, p. 300. Correction of inequities.

of pay fixed for any class of positions under this Act and the compensation of employees whose basic rates of pay are fixed by wage boards or similar administrative authority serving the same purpose, the Commission is hereby empowered, in order to correct or reduce such inequities, to establish as the minimum rate of pay for such class of positions any rate not in excess of the middle rate within the range of pay fixed by this Act for the grade to which such class of positions is allocated. For the purposes of this section the fourth rate of a six-rate grade shall be considered to be the middle rate of that grade. Minimum rates established under this paragraph shall be duly published by regulation and, subject to the foregoing provisions, may be revised from time to time by the Commission. The Commission shall make a report of such actions or revisions with the reasons therefor to Congress at the end of each fiscal year. Actions by the Civil Service Commission under this paragraph shall apply to both the departmental and field services and shall have the force and effect of law."

Middle rate of grade.

Report to Congress.

Applicability of actions.

PERIODIC WITHIN-GRADE SALARY ADVANCEMENTS

SEC. 402. Subsection (b) of section 7 of the Classification Act of 1923, as amended, is amended to read as follows:

55 Stat. 613. 5 U. S. C., Supp. IV, § 667 (b).

"(b) All employees compensated on a per annum basis, and occupying permanent positions within the scope of the compensation schedules fixed by this Act, who have not attained the maximum rate of compensation for the grade in which their positions are respectively allocated, shall be advanced in compensation successively to the next higher rate within the grade at the beginning of the next pay period following the completion of (1) each twelve months of service if such employees are in grades in which the compensation increments are less than $200, or (2) each eighteen months of service if such employees are in grades in which the compensation increments are $200 or more, subject to the following conditions:

Periodic within-grade advancements.

Conditions.

"(1) That no equivalent increase in compensation from any cause was received during such period, except increase made pursuant to subsection (f) of this section;

Post, p. 300.

"(2) That an employee shall not be advanced unless his current efficiency is 'good' or better than 'good';

"(3) That the service and conduct of such employee are certified by the head of the department or agency or such official as he may designate as being otherwise satisfactory; and

"(4) That any employee, (A) who, while serving under permanent, war service, temporary, or any other type of appointment, has left his position to enter the armed forces or the merchant marine, or to comply with a war transfer as defined by the Civil Service Commission, (B) who has been separated under honorable conditions from active duty in the armed forces, or has received a certificate of satisfactory service in the merchant marine, or has a satisfactory record on war transfer, and (C) who, under regulations of the Civil Service Commission or the provisions of any law providing for restoration or reemployment, or under any other administrative procedure with respect to employees not subject to civil service rules and regulations, is restored, reemployed, or reinstated in any position subject to this section, shall upon his return to duty be entitled to within-grade salary advancements without regard to paragraphs (2) and (3) of this subsection, and to credit such service in the armed forces, in the merchant marine, and on war transfer, toward such within-grade salary advancements. As used in this paragraph the term 'service in the merchant marine' shall have the same meaning as when used in the Act entitled 'An Act to provide reemployment rights for persons who leave their positions to serve in the merchant marine,

Employees leaving to join armed forces, etc.

Restoration or reemployment.

"Service in the merchant marine."

and for other purposes', approved June 23, 1943 (U. S. C., 1940 edition, Supp. IV, title 50 App., secs. 1471 to 1475, inc.)."

57 Stat. 162.

REWARDS FOR SUPERIOR ACCOMPLISHMENT; AUTHORIZATION AND LIMITATIONS

SEC. 403. Subsection (f) of section 7 of the Classification Act of 1923, as amended, is amended to read as follows:

55 Stat. 614. 5 U. S. C., Supp. IV, § 667 (f).

"(f) Within the limit of available appropriations, as a reward for superior accomplishment, under standards to be promulgated by the Civil Service Commission, and subject to prior approval by the Civil Service Commission, or delegation of authority as provided in subsection (g), the head of any department or agency is authorized to make additional within-grade compensation advancements, but any such additional advancements shall not exceed one step and no employee shall be eligible for more than one additional advancement hereunder within each of the time periods specified in subsection (b). All actions under this subsection and the reasons therefor shall be reported to the Civil Service Commission. The Commission shall present an annual consolidated report to the Congress covering the numbers and types of actions taken under this subsection."

Infra.

Ante, p. 299.

Report to Congress.

REWARDS FOR SUPERIOR ACCOMPLISHMENT; RESPONSIBILITY OF CIVIL SERVICE COMMISSION

SEC. 404. Subsection (g) of section 7 of the Classification Act of 1923, as amended, is amended to read as follows:

55 Stat. 614. 5 U. S. C., Supp. IV, § 667 (g).

"(g) The Civil Service Commission is hereby authorized to issue such regulations as may be necessary for the administration of this section. In such regulations the Commission is hereby empowered, in its discretion, to delegate to the head of any department or agency, or his designated representative, the authority to approve additional within-grade compensation advancements provided for in subsection (f), without prior approval in individual cases by the Commission. The Commission is also authorized to withdraw or suspend such authority from time to time, whenever post-audit of such actions by the Commission indicates that standards promulgated by the Commission have not been observed."

Administrative regulations.

Supra.

INCREASE IN BASIC RATES OF COMPENSATION

SEC. 405. (a) Each of the existing rates of basic compensation set forth in section 13 of the Classification Act of 1923, as amended, except those affected by subsection (b) of this section, is hereby increased by 20 per centum of that part thereof which is not in excess of $1,200 per annum, plus 10 per centum of that part thereof which is in excess of $1,200 per annum but not in excess of $4,600 per annum, plus 5 per centum of that part thereof which is in excess of $4,600 per annum. Such augmented rates shall be considered to be the regular basic rates of compensation provided by such section.

42 Stat. 1491. 5 U. S. C. § 673; Supp. IV, § 673.

Infra.

(b) (1) The proviso to the fifth paragraph under the heading "Crafts, Protective, and Custodial Service" in section 13 of the Classification Act of 1923, as amended, is hereby amended to read as follows: "*Provided*, That charwomen working part time be paid at the rate of 78 cents an hour, and head charwomen at the rate of 83 cents an hour".

Charwomen.

(2) Such section is amended so as to provide the following rates of compensation for positions in the clerical-mechanical service:

Clerical-mechanical service.

Grade 1, 78 to 85 cents an hour.
Grade 2, 91 to 98 cents an hour.
Grade 3, $1.05 to $1.11 an hour.
Grade 4, $1.18 to $1.31 an hour.

(c) The increase in existing rates of basic compensation provided by this section shall not be construed to be an "equivalent increase" in compensation within the meaning of section 7 (b) (1) of the Classification Act of 1923, as amended.

55 Stat. 613. 5 U. S. C., Supp. IV, § 667 (b). *Ante*, p. 299.

TITLE V—EMPLOYEES OF LEGISLATIVE AND JUDICIAL BRANCHES

PART I—EMPLOYEES OF THE LEGISLATIVE BRANCH

INCREASE IN RATES OF COMPENSATION

SEC. 501. Except as provided in section 503, each officer and employee in or under the legislative branch to whom this title applies shall be paid additional compensation computed as follows: 20 per centum of that part of his rate of basic compensation which is not in excess of $1,200 per annum, plus 10 per centum of that part of such rate which is in excess of $1,200 per annum but not in excess of $4,600 per annum, plus 5 per centum of that part of such rate which is in excess of $4,600 per annum. The additional compensation provided by this section shall be considered a part of the basic compensation of any such officer or employee for the purposes of the Civil Service Retirement Act of May 29, 1930, as amended. The additional compensation provided for by this section and section 502 shall not be taken into account in determining whether any amount expended for clerk hire, or the compensation paid to an officer or employee, is within any limit now prescribed by law.

Accounting for retirement purposes.

46 Stat. 468. 5 U. S. C. § 691 *et seq.*; Supp. IV, § 691 *et seq.* *Post*, pp. 577, 621.

TEMPORARY ADDITIONAL COMPENSATION IN LIEU OF OVERTIME

SEC. 502. During the period beginning on July 1, 1945, and ending on June 30, 1947, each officer and employee in or under the legislative branch entitled to the benefits of section 501 of this Act shall be paid additional compensation at the rate of 10 per centum of (a) the aggregate of the rate of his basic compensation and the rate of additional compensation received by him under section 501 of this Act, or (b) the rate of $2,900 per annum, whichever is the smaller.

COMPENSATION FOR OVERTIME

SEC. 503. Hereafter, for overtime pay purposes, per diem and per hour employees under the Office of the Architect of the Capitol not subject to the Classification Act of 1923, as amended, shall be regarded as subject to the provisions of section 23 of the Act of March 28, 1934 (U. S. C., 1940 edition, title 5, sec. 673c), and sections 501 and 502 of this Act shall not be applicable to such employees.

Office of the Architect of the Capitol.

42 Stat. 1488. 5 U. S. C. § 661; Supp. IV, § 661 *et seq.* *Ante*, p. 298 *et seq.* 48 Stat. 522.

PART II—EMPLOYEES OF THE JUDICIAL BRANCH

INCREASE IN BASIC RATES OF COMPENSATION

SEC. 521. Each officer and employee in or under the judicial branch to whom this title applies shall be paid additional basic compensation computed as follows: 20 per centum of that part of his rate of basic compensation which is not in excess of $1,200 per annum, plus 10 per centum of that part of such rate which is in excess of $1,200 per annum but not in excess of $4,600 per annum, plus 5 per centum of that part of such rate which is in excess of $4,600 per annum. The limitations of $6,500 and $7,500 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the eighth paragraph under the head "Miscellaneous Items of Expense" in The Judiciary Appropriation Act, 1946 (Public Law Numbered 61, Seventy-ninth Congress), shall be increased by the amounts necessary to pay the additional basic compensation provided

Aggregate salary, limitation.

Ante, p. 199.

42 Stat. 1488. 5 U. S. C. § 661; Supp. IV, § 661 *et seq.* *Ante*, p. 298 *et seq.*

by this section; and the changes in the rates of basic compensation in the Classification Act of 1923, as amended, made by section 405 of this Act shall not be taken into account in fixing salaries under such eighth paragraph.

TEMPORARY ADDITIONAL COMPENSATION IN LIEU OF OVERTIME

SEC. 522. During the period beginning on July 1, 1945, and ending on June 30, 1947, each officer and employee in or under the judicial branch entitled to the benefits of section 521 of this Act shall be paid additional compensation at the rate of 10 per centum of (a) the rate of his basic compensation, or (b) the rate of $2,900 per annum, whichever is the smaller. As used in this section the term "basic compensation" includes the additional basic compensation provided for by section 521 of this Act.

TITLE VI—MISCELLANEOUS PROVISIONS

EFFECT ON EXISTING LAWS AFFECTING CERTAIN INSPECTIONAL GROUPS

SEC. 601. The provisions of this Act shall not operate to prevent payment for overtime services or extra pay for Sunday or holiday work in accordance with any of the following statutes: Act of February 13, 1911, as amended (U. S. C., 1940 edition, title 19, secs. 261 and 267); Act of July 24, 1919 (U. S. C., 1940 edition, title 7, sec. 394); Act of June 17, 1930, as amended (U. S. C., 1940 edition, title 19, secs. 1450, 1451, and 1452); Act of March 2, 1931 (U. S. C., 1940 edition, title 8, secs. 109a and 109b); Act of May 27, 1936, as amended (U. S. C., 1940 edition, title 46, sec. 382b); Act of March 23, 1941 (U. S. C., 1940 edition, Supp. IV, title 47, sec. 154 (f) (2)); Act of June 3, 1944 (Public Law Numbered 328, Seventy-eighth Congress): *Provided*, That the overtime, Sunday, or holiday services covered by such payment shall not also form a basis for overtime or extra pay under this Act.

36 Stat. 901. 41 Stat. 241. 7 U. S. C., Supp. IV, § 394. 46 Stat. 715. 19 U. S. C., Supp. IV, § 1450 *et seq.* 46 Stat. 1467. 49 Stat. 1385. 55 Stat. 46. 58 Stat. 269. 19 U. S. C., Supp. IV, §§ 1451, 1451a.

INCREASE IN BASIC STATUTORY RATES OF COMPENSATION NOT UNDER CLASSIFICATION ACT OF 1923, AS AMENDED

Customs Service, etc.

SEC. 602. (a) The existing basic rates of pay set forth in the Act entitled "An Act to adjust the compensation of certain employees in the Customs Service", approved May 29, 1928, as amended, and those set forth in the second paragraph of section 24 of the Immigration Act of 1917, as amended, are hereby increased in the same amount that corresponding rates would be increased under the provisions of section 405 of this Act; and each such augmented rate shall be considered to be the regular basic rate of compensation.

45 Stat. 955. 19 U. S. C. §§ 6a–6d. 39 Stat. 893. 8 U. S. C. § 109; Supp. IV, § 109.

Positions in executive branch or D. C. government.

(b) Basic rates of compensation specifically prescribed by statute of Congress for positions in the executive branch or the District of Columbia municipal government which are not increased by any other provision of this Act are hereby increased in the same amount that corresponding rates would be increased under the provisions of section 405 of this Act; and each such augmented rate shall be considered to be the regular basic rate of compensation.

LIMITATIONS ON REDUCTIONS AND INCREASES IN COMPENSATION

SEC. 603. (a) The aggregate per annum rate of compensation with respect to any pay period, in the case of any full-time employee in the service on July 1, 1945, (1) who was a full-time employee on June 30, 1945, (2) whose per annum basic rate of compensation on June 30, 1945, did not exceed a rate of $1,800 per annum, and (3) whose compensation is fixed in accordance with the provisions of the Classification Act of 1923, as amended, or the Act entitled "An Act to adjust the compensation of certain employees in the Customs Service",

42 Stat. 1488. 5 U. S. C. § 661; Supp. IV, § 661 *et seq.* *Ante*, p. 298 *et seq.*

approved May 29, 1928, as amended, shall not, under the rates of compensation established by this Act, so long as he continues to occupy the position he occupied on June 30, 1945, be less than his per annum basic rate of compensation on such date, plus the rate of $300 per annum or 25 per centum of such per annum basic rate of compensation, whichever is the smaller amount. 45 Stat. 955. 19 U. S. C. §§ 6a–6d.

(b) Notwithstanding any other provision of this Act, no officer or employee shall, by reason of the enactment of this Act, be paid, with respect to any pay period, basic compensation, or basic compensation plus any additional compensation provided by this Act, at a rate in excess of $10,000 per annum, except that (1) any officer or employee who was receiving overtime compensation on June 30, 1945, and whose aggregate rate of compensation on such date was in excess of $10,000 per annum may receive overtime compensation at such rate as will not cause his aggregate rate of compensation for any pay period to exceed the aggregate rate of compensation he was receiving on June 30, 1945, until he ceases to occupy the office or position he occupied on such date or until the overtime hours of work in his administrative workweek are reduced by action of the head of his department or independent establishment or agency, or Government-owned or controlled corporation, and when such overtime hours are reduced such rate of overtime compensation shall be reduced proportionately, and (2) any officer or employee who, because of the receipt of additional compensation in lieu of overtime compensation, was receiving aggregate compensation at a rate in excess of $10,000 per annum on June 30, 1945, may continue to receive such rate of aggregate compensation so long as he continues to occupy the office or position he occupied on such date but in no case beyond June 30, 1947. Aggregate compensation, limitation. Exceptions.

ESTABLISHMENT OF BASIC WORKWEEK; PAY COMPUTATION METHODS

SEC. 604. (a) It shall be the duty of the heads of the several departments and independent establishments and agencies in the executive branch, including Government-owned or controlled corporations, and the District of Columbia municipal government, to establish as of the effective date of this Act, for all full-time officers and employees in their respective organizations, in the departmental and the field services, a basic administrative workweek of forty hours, and to require that the hours of work in such workweek be performed within a period of not more than six of any seven consecutive days.

(b) Beginning not later than October 1, 1945, each pay period for all officers and employees of the organizations referred to in subsection (a), except officers and employees on the Isthmus of Panama in the service of The Panama Canal or the Panama Railroad Company, shall cover two administrative workweeks. When a pay period for such officers and employees begins in one fiscal year and ends in another, the gross amount of the earnings for such pay period may be regarded as a charge against the appropriation or allotment current at the end of such pay period. Biweekly pay periods. Exceptions.

(c) The following provisions of law are hereby repealed: (1) the provisions of the Saturday half-holiday law of March 3, 1931 (46 Stat. 1482; U. S. C., 1940 edition, title 5, sec. 26 (a)), and (2) the provisions of so much of section 5 of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-four, and for other purposes", approved March 3, 1893, as amended (30 Stat. 316; U. S. C., 1940 edition, title 5, sec. 29), as precedes the second proviso in such section. The first sentence of section 6 of the Act of June 30, 1906 (34 Stat. 763; U. S. C., 1940 edition, title 5, sec. 84), is amended by inserting after "United States" the following: "(except persons whose compensation is computed in Repeals. 5 U. S. C., Supp. IV, § 26a. 27 Stat. 715. 5 U. S. C., Supp. IV, § 29. Amendments.

Infra.

accordance with section 604 (d) of the Federal Employees Pay Act of 1945)"; and the last sentence of such section 6 is amended by striking out "Any person" and inserting "Any such person".

Basic per annum rates of compensation.

(d) (1) Hereafter, for all pay computation purposes affecting officers or employees in or under the executive branch, the judicial branch, or the District of Columbia municipal government, basic per annum rates of compensation established by or pursuant to law shall be regarded as payment for employment during fifty-two basic administrative workweeks of forty hours.

Conversion of pay rates.

(2) Whenever for any such purpose it is necessary to convert a basic monthly or annual rate to a basic weekly, daily, or hourly rate, the following rules shall govern:

(A) A monthly rate shall be multiplied by twelve to derive an annual rate;

(B) An annual rate shall be divided by fifty-two to derive a weekly rate;

(C) A weekly rate shall be divided by forty to derive an hourly rate; and

(D) A daily rate shall be derived by multiplying an hourly rate by the number of daily hours of service required.

(e) The Architect of the Capitol may, in his discretion, apply the provisions of subsection (a) to any officers or employees under the Office of the Architect of the Capitol or the Botanic Garden, and the Librarian of Congress may, in his discretion, apply the provisions of such subsection to any officers or employees under the Library of Congress; and officers and employees to whom such subsection is so made applicable shall also be subject to the provisions of subsections (b) and (d) of this section.

REGULATIONS

SEC. 605. The Civil Service Commission is hereby authorized to issue such regulations, subject to the approval of the President, as may be necessary for the administration of the foregoing provisions of this Act insofar as this Act affects officers and employees in or under the executive branch of the Government.

VESSEL EMPLOYEES

SEC. 606. Employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, vessel employees of the Coast and Geodetic Survey, and vessel employees of the Panama Railroad Company, may be compensated in accordance with the wage practices of the maritime industry.

PERSONNEL CEILINGS

Termination of employment of excess personnel.

SEC. 607. (a) It is hereby declared to be the sense of the Congress that in the interest of economy and efficiency the heads of departments, and of independent establishments or agencies, in the executive branch, including Government-owned or controlled corporations, shall terminate the employment of such of the employees thereof as are not required for the proper and efficient performance of the functions of their respective departments, establishments, and agencies.

Periodic reports to Budget Bureau.

(b) The heads of departments, and of independent establishments or agencies, in the executive branch, including Government-owned or controlled corporations, shall present to the Director of the Bureau of the Budget such information as the Director shall from time to time, but at least quarterly, require for the purpose of determining the numbers of full-time civilian employees (including full-time intermittent employees who are paid on a "when actually employed"

basis, and full-time employees paid nominal compensation, such as $1 a year or $1 a month) and the man-months of part-time civilian employment (including part-time employment by intermittent employees who are paid on a "when actually employed" basis, and part-time employment by employees paid nominal compensation such as $1 a year or $1 a month) required within the United States for the proper and efficient performance of the authorized functions of their respective departments, establishments, and agencies. The Director shall, within sixty days after the date of enactment of this Act and from time to time, but at least quarterly, thereafter, determine the numbers of full-time employees and man-months of part-time employment, which in his opinion are required for such purpose, and any personnel or employment in such department, establishment, or agency in excess thereof shall be released or terminated at such times as the Director shall order. Such determinations, and any numbers of employees or man-months of employment paid in violation of the orders of the Director, shall be reported quarterly to the Congress. Each such report shall include a statement showing for each department, independent establishment, and agency the net increase or decrease in such employees and employment as compared with the corresponding data contained in the next preceding report, together with any suggestions the Director may have for legislation which would bring about economy and efficiency in the use of Government personnel. As used in this subsection the term "United States" shall include the Territories and possessions.

Determinations by Director.

Report to Congress.

(c) Determinations by the Director of numbers of employees and man-months of employment required shall be by such appropriation units or organization units as he may deem appropriate.

(d) The Director shall maintain a continuous study of all appropriations and contract authorizations in relation to personnel employed and shall, under such policies as the President may prescribe, reserve from expenditure any savings in salaries, wages, or other categories of expense which he determines to be possible as a result of reduced personnel requirements. Such reserves may be released by the Director for expenditure only upon a satisfactory showing of necessity.

Employment studies.

Expenditure reserve.

(e) Casual employees, as defined by the Civil Service Commission, and employees hired without compensation may be excluded from the determinations and reports required by this section.

Casual employees

(f) Until the cessation of hostilities in the present war as proclaimed by the President, the provisions of this section shall not be applicable to (1) employees of the War and Navy Departments except those who are subject to the provisions of titles II and III of this Act; or (2) individuals employed or paid by or through the War Shipping Administration (A) who are outside the United States, (B) to whom the provisions of section 1 (a) of the Act of March 24, 1943 (Public Law Numbered 17, Seventy-eighth Congress), are applicable, (C) who are undergoing a course of training under the United States Maritime Service or who have completed such training and are awaiting assignment to ships, or (D) who are on stand-by wages awaiting assignment to ships. As used in this subsection the term "United States" means the several States and the District of Columbia.

Nonapplicability of section to certain groups.

57 Stat. 45.
50 U. S. C., Supp. IV, app. § 1291 (a).

EXEMPTION FOR PURPOSES OF VETERANS LAWS AND REGULATIONS

SEC. 608. Amounts payable under the provisions of this Act, other than increases under sections 405, 501, 521, and 602, shall not be considered in determining the amount of a person's annual income or annual rate of compensation for the purposes of paragraph II (a) of part III of Veterans Regulation Numbered 1 (a), as amended, or

38 U. S. C. note foll. ch. 12; Supp. IV, note foll. ch. 12.

section 212 of title II of the Act entitled "An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932, as amended (U. S. C., 1940 edition, title 5, sec. 59a; Supp. IV, title 5, sec. 59b).

47 Stat. 406.

APPROPRIATION AUTHORIZED

SEC. 609. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 610. This Act shall take effect on July 1, 1945.

Approved June 30, 1945.

[CHAPTER 213]

AN ACT

June 30, 1945
[S. 937]
[Public Law 107]

To amend the Act suspending until June 30, 1945, the running of the statute of limitations applicable to violations of the antitrust laws, so as to continue such suspension until June 30, 1946.

Antitrust laws.
Suspension of running of statute of limitations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act to suspend until June 30, 1945, the running of the statute of limitations applicable to violations of the antitrust laws", approved October 10, 1942 (56 Stat. 781; U. S. C., Supp. III, title 15, note following sec. 16), is amended by striking out the date "June 30, 1945" where it appears in such section and inserting in lieu thereof the date "June 30, 1946".

15 U. S. C., Supp. IV, § 16 note.

Approved June 30, 1945.

[CHAPTER 214]

JOINT RESOLUTION

June 30, 1945
[S. J. Res. 30]
[Public Law 108]

Extending the effective period of the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1945" and substituting "June 30, 1946".

56 Stat. 24.
50 U. S. C., Supp. IV, app. § 901 (b).

SEC. 2. Section 6 of the Stabilization Act of 1942, as amended, is amended by striking out "June 30, 1945" and substituting "June 30, 1946".

56 Stat. 767.
50 U. S. C., Supp. IV, app. § 966.

SEC. 3. Section 2 (b) of the Emergency Price Control Act of 1942, as amended, is hereby amended to read as follows:

56 Stat. 25.
50 U. S. C., Supp. IV, app. § 902 (b).
Defense-area housing rentals.

"(b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give

Establishment of maximum rents.

Rents prevailing April 1, 1941.

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 10 NUMBER 132

Washington, Wednesday, July 4, 1945

The President

EXECUTIVE ORDER 9578

APPROVING REGULATIONS OF THE CIVIL SERVICE COMMISSION UNDER THE FEDERAL EMPLOYEES PAY ACT OF 1945

By virtue of the authority vested in me by section 605 of the Federal Employees Pay Act of 1945, I hereby approve the following regulations prescribed by the Civil Service Commission:

REGULATIONS UNDER THE FEDERAL EMPLOYEES PAY ACT OF 1945

By virtue of the authority vested in the U. S. Civil Service Commission by section 605 of the Federal Employees Pay Act of 1945, the Commission hereby promulgates the following regulations for the administration of the provisions of that Act, effective on and after July 1, 1945.

CHAPTER I. OVERTIME PAY REGULATIONS

Part I. Extent of Overtime Pay Regulations

SECTION 101. *Employees to whom these regulations apply.* These regulations apply to all civilian officers and employees in or under the executive branch of the United States Government, including Government-owned or controlled corporations, except those specified in section 102 of these regulations.

SEC. 102. *Employees to whom these regulations do not apply.* These regulations do not apply to:

(a) Elected officials;

(b) Heads of departments or independent establishments or agencies, including Government-owned or controlled corporations; i. e., heads of governmental establishments in the executive branch which are not component parts of any other such establishments.

(c) Officers and employees in or under the field service of the Post Office Department;

(d) Employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose, except that section 404 (d) of these regulations shall be applicable to such employees whose basic rate of compensation is fixed on an annual or monthly basis;

(e) Employees outside the continental limits of the United States, including those in Alaska, who are paid in accordance with local prevailing native wage rates for the area in which employed;

(f) Officers and employees of the Inland Waterways Corporation;

(g) Officers and employees of the Tennessee Valley Authority;

(h) Individuals to whom the provisions of section 1 (a) of the Act entitled "An Act to amend and clarify certain provisions of law relating to functions of the War Shipping Administration, and for other purposes," approved March 24, 1943 (Public Law No. 17—78th Congress), are applicable;

(i) Officers and members of the United States Park Police and the White House Police; and

(j) Employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, vessel employees of the Coast and Geodetic Survey, and vessel employees of the Panama Railroad Company.

Part II. Definitions

SEC. 201. *Basic workweek for full-time officers and employees.* "Basic workweek" for full-time officers and employees means the forty-hour workweek established pursuant to section 301 (a) of these regulations.

SEC. 202. *Administrative workweek for full-time officers and employees.* "Administrative workweek" for full-time officers and employees means the administrative workweek established pursuant to section 301 (b) of these regulations.

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SEC. 203. *Basic rate of compensation.* (a) "Basic rate of compensation" means the rate of compensation fixed by law or administrative regulation for the position held by the officer or employee, exclusive of overtime compensation and extra pay for night or holiday work, but inclusive of (a) any salary differential for duty outside the continental United States, or in Alaska, and (b) the value of quarters, subsistence, and other maintenance allowances under section 3 of the Act of March 5, 1928, 45 Stat. 193, U. S. Code, Title 5, Sec. 75a.

(b) Hereafter for all pay computation purposes basic per annum rates of compensation established by or pursuant to law shall be regarded as payment for employment during fifty-two basic workweeks of forty hours.

SEC. 204. *Irregular or occasional overtime duty.* "Irregular or occasional overtime duty" means hours of employment in excess of the regularly scheduled administrative workweek.

Part III. Regulations To Be Prescribed by Heads of Departments and Agencies

SEC. 301. *Establishment of basic workweek and administrative workweek.* Heads of departments or independent establishments or agencies, including Government-owned or controlled corporations, shall, with respect to each group of full-time employees to whom these regulations apply, establish by general public regulation, to be effective July 1, 1945:

(a) A regularly scheduled basic workweek of forty hours in length which shall not extend over more than six of any seven consecutive days. Such regulation shall specify the names of the calendar days constituting the basic workweek and, for each of such calendar days, the number of hours of employment included within the basic workweek.

(b) (1) A regularly scheduled administrative workweek which shall consist of the forty-hour basic workweek established in accordance with section 301 (a) of these regulations, plus such period of overtime work as will be regularly required of each group of employees. The periods of time included in such administrative workweek which do not constitute a part of the basic workweek shall be identified by names of calendar days and by number of hours per day for purposes of leave and overtime pay administration.

(2) In the case of employees whose work includes periods during which they are required to remain on duty and render "stand-by service" at or within the confines of their stations, the length of the administrative workweek, for the purpose of these regulations, shall be the total number of regularly scheduled hours of duty per week (or in rotating-shift systems, the average number of regularly scheduled hours of duty per week for the cycle), including all such "stand-by" or "on call" time except that allowed by regulation of the department or independent establishment for sleep and meals.

SEC. 302. *Compensatory time off for irregular or occasional overtime duty.* Heads of departments or independent establishments or agencies, including Government-owned or controlled corporations, may, with respect to officers and employees to whom these regulations apply, prescribe regulations effective as of July 1, 1945, for the granting of compensatory time off from duty, in lieu of overtime compensation, for irregular or occasional duty in excess of forty-eight hours in any regularly scheduled administrative workweek, to those per annum employees requesting such compensatory time off from duty.

Part IV. Overtime Work and Overtime Compensation

SEC. 401. *Overtime compensation authorized.* (a) Officers or employees to whom these regulations apply shall be paid overtime compensation, computed as provided in section 404 of these regulations, for all hours of employment officially ordered or approved in excess of

forty hours in any administrative workweek, including irregular or occasional overtime duty.

(b) Any per annum employee may request compensatory time off, in lieu of overtime pay, for irregular or occasional duty in excess of forty-eight hours in any regularly scheduled administrative workweek, in accordance with administrative regulations issued pursuant to section 302 of these regulations. Unless compensatory time off for such irregular or occasional overtime duty is specifically requested by the employee it shall be paid for in money when due.

(c) Heads of departments or independent establishments or agencies, including Government-owned or controlled corporations, may delegate to any officer or employee authority to order or approve overtime in excess of the administrative workweek. No overtime in excess of the administrative workweek shall be ordered or approved except in writing by an officer or employee to whom such authority has been specifically delegated by the head of the department or independent establishment or agency, or Government-owned or controlled corporation.

SEC. 402. *Computation of overtime employment.* The computation of the amount of overtime employment of an officer or employee shall be subject to the following conditions:

(a) *Leave with pay.* Absence from duty on authorized leave with pay during the time when an employee would otherwise have been required to be on duty during the basic workweek (including authorized absence on legal holidays and during the compensatory time off provided for in section 302 and 401 (b) of these regulations) shall be considered to be employment and shall not have the effect of reducing the amount of overtime compensation to which the employee may be entitled during an administrative workweek. Leave of absence with pay shall not be charged for any absence which does not occur during the forty hours prescribed as the basic workweek. If in an administrative workweek, the officer or employee does not actually work during any overtime period in excess of the forty hours prescribed as the basic workweek, no overtime compensation shall be paid.

(b) *Night or holiday duty.* Hours of night or holiday duty shall be considered as employment on the same basis as daytime hours or an ordinary day's duty for the purpose of computing the number of hours of overtime employment under these regulations. Any extra compensation for night or holiday duty shall not, however, be included in any basic rate in computing overtime compensation under these regulations.

(c) *Service subject to other overtime statutes.* Overtime services for which overtime compensation is paid under any of the following statutes shall not form a basis for overtime employment under these regulations: Act of February 13, 1911, as amended (U.S.C., title 19, secs. 261 and 267) involving inspectors, storekeepers, weighers, and other customs officers and employees; Act of July 24, 1919 (41 Stat. 241; U.S.C., title 7, sec. 394) involving employees engaged in enforcement of Meat Inspection Act; Act of June 17, 1930, as amended (U.S.C., title 19, sec. 1450, 1451, and 1452) involving customs officers and employees; Act of March 2, 1931 (46 Stat. 1467; U.S.C., title 8, secs. 109a and 109b) involving inspectors and employees, Immigration and Naturalization Service; Act of May 27, 1936, as amended (52 Stat. 345; U.S.C., title 46, sec. 382b) involving local inspectors of steam vessels and assistants, U. S. shipping commissioners, deputies and assistants, and customs officers and employees; Act of March 23, 1941 (55 Stat. 46; U.S.C., sup. IV, title 47, sec. 154 (f) (2)) involving certain inspectors of the Federal Communications Commission; Act of June 3, 1944 (Public Law 328—78th Congress) involving customs officers and employees.

SEC. 404. *Computation of overtime compensation.* (a) For employees whose basic compensation is at a rate less than $2,980 per annum, the overtime hourly rate shall be one and one-half times the basic hourly rate of compensation: *Provided*, That in computing such overtime compensation for per annum employees, the basic hourly rate of compensation shall be determined by dividing the basic per annum rate by two thousand and eighty (2,080).

(b) For employees whose basic compensation is at a rate of $2,980 per annum or more, the overtime hourly rate shall be in accordance with and in proportion to the following schedule, subject to the limitation contained in subsection (c) of this section.

Basic rate of compensation per annum:	*Overtime rate of compensation per 416 overtime hours*
$2,980	$894.000
$3,090	885.554
$3,200	877.108
$3,310	868.662
$3,420	860.216
$3,530	851.770
$3,640	843.324
$3,750	834.878
$3,860	826.432
$3,970	817.986
$4,080	809.540
$4,190	801.094
$4,300	792.648
$4,410	784.202
$4,520	775.756
$4,630	767.310
$4,740	758.864
$4,960	741.972
$5,180	725.080
$5,390	708.955
$5,600	692.831
$5,810	676.707
$6,020	660.583
$6,230	644.458
$6,440 and over	628.334

NOTE.—In the foregoing schedule the overtime rate for 416 overtime hours for any basic rate of compensation in excess of $2,980 per annum is computed by subtracting from $894, 7.6782 per centum of the amount by which such basic rate is in excess of $2,980 per annum; with the condition that the rate for 416 overtime hours for all salaries of $6,440 or more shall be $628.334.

(c) Notwithstanding the provisions of subsection (b) of this section, the overtime compensation payable to any officer or employee to whom these regulations apply shall, with respect to any pay period, be limited to such rate as will not cause his aggregate compensation for such pay period to exceed a rate of $10,000 per annum: *Provided, however*, That any such officer or employee who was receiving overtime compensation on June 30, 1945, and whose aggregate rate of compensation on such date was in excess of $10,000 per annum may receive overtime compensation at such rate as will not cause his aggregate rate of compensation for any pay period to exceed the aggregate rate of compensation he was receiving on June 30, 1945, until he ceases to occupy the office or position he occupied on such date or until the overtime hours of work in his administrative workweek are reduced by action of the head of his department or independent establishment or agency, or Government-owned or controlled corporation, and when such overtime hours are reduced such rate of overtime compensation shall be reduced proportionately.

(d) Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 23 of the Act of March 28, 1934 (U.S.C., 1940 edition, title 5, sec. 673c). The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

(1) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty (2080) and multiply the quotient by one and one-half; and

(2) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand eighty (2080), and multiply the quotient by one and one-half.

(e) Whenever, for the purpose of computing overtime pay under these regulations, it is necessary to convert a basic monthly or annual rate to a basic weekly, daily or hourly rate the following rules shall govern:

(1) A monthly rate shall be multiplied by 12 to derive an annual rate;

(2) An annual rate shall be divided by 52 to derive a weekly rate;

(3) A weekly rate shall be divided by 40 to derive an hourly rate; and

(4) A daily rate shall be derived by multiplying an hourly rate by the number of daily hours of service required.

CHAPTER II. PERIODIC WITHIN-GRADE SALARY ADVANCEMENT REGULATIONS

Part I. Extent of Periodic Within-Grade Salary Advancement Regulations

SEC. 101. *Officers and employees to whom these regulations apply.* These regulations apply to all officers and employees, except those who are appointed by the President, by and with the advice and consent of the Senate, who (a) are compensated on a per annum basis, (b) occupy permanent positions within the

scope of the compensation schedules fixed by the Classification Act of 1923, as amended, and (c) have not reached the maximum rate of compensation for the grade in which their positions are respectively allocated.

Part II. Definitions

SEC. 201. *Permanent positions.* "Permanent positions" means positions other than those designated as temporary by law and other than those established for definite periods of one year or less. Positions to which appointments are made under the War Service Regulations for the duration of the war and six months thereafter are permanent positions within the scope of this definition.

SEC. 202. *Positions within the scope of the compensation schedules fixed by the Classification Act of 1923, as amended.* "Positions within the scope of the compensation schedules fixed by the Classification Act of 1923, as amended", means positions in the departmental and field services, in the executive, legislative, and judicial branches, in Government-owned or Government-controlled corporations, and in the municipal government of the District of Columbia, the compensation of which has been fixed on a per annum basis, pursuant to the allocation of such positions to the appropriate grade either by the Civil Service Commission or by administrative action of the department, establishment, agency, or corporation concerned, in accordance with the compensation schedules of the Classification Act of 1923, as amended.

SEC. 203. *Equivalent increase in compensation.* (a) "Equivalent increase in compensation" means any increase or increases in basic compensation which in total, at the time such increase or increases are made, are equal to or greater than the compensation increment in the lowest grade in which the employee has served during the time period of twelve or eighteen months, as the case may be.

(b) The following are not "equivalent increases in compensation":

(1) Increases in basic rates of compensation provided by section 405 of the Federal Employees Pay Act of 1945;

(2) Rewards for superior accomplishment as provided in sections 403 and 404 of the Federal Employees Pay Act of 1945; or

(3) Increases as the result of the establishment of a new minimum rate for any class of positions in accordance with section 401 of the Federal Employees Pay Act of 1945.

SEC. 204. *Current efficiency.* "Current efficiency" means the official efficiency rating on record appropriate for within-grade salary advancement purposes, in accordance with the uniform efficiency-rating system.

SEC. 205. *War transfer.* "War transfer" means any transfer authorized by the Civil Service Commission under Executive Order Nos. 8973 of December 12, 1941, or 9067 of February 20, 1942, War Manpower Commission Directive No. X, or War Service Regulation IX, under conditions entitling the employee to reemployment in his former position or a position of like seniority, status, and pay.

SEC. 206. *Satisfactory record on war transfer.* "A satisfactory record on war transfer" means a record or finding that the transferred employee has been involuntarily furloughed or terminated without cause such as would reflect on his suitability for reemployment in the Federal service, from the position to which transferred.

SEC. 207. *Service in the merchant marine.* "Service in the merchant marine" means service as an officer or member of the crew on or in connection with a vessel documented under the laws of the United States or a vessel owned by, chartered to, or operated by or for the account or use of the Administrator, War Shipping Administration, service as an enrollee in the United States Maritime Service on active duty, and, to such extent as said Administrator shall prescribe, any period awaiting assignment to such service and any period of education or training for such service in any school or institution under the jurisdiction of the Administrator.

SEC. 208. *Certificate of satisfactory service in the merchant marine.* "Certificate of satisfactory service in the merchant marine" means the certificate issued by the War Shipping Administrator pursuant to the Act of June 23, 1943, 57 Stat. 162, U. S. Code, 1940 ed., supp. IV, Title 50 app., secs. 1471–1475, providing reemployment rights for persons who leave their positions to serve in the merchant marine.

Part III. Computation of Periods of Service

SEC. 301. *Service to be credited.* In computing the periods of service required for within-grade salary advancements there shall be credited to such service:

(a) Continuous civilian employment in any branch (legislative, executive, or judicial), executive department, independent establishment or agency, or corporation of the Federal Government or in the municipal government of the District of Columbia.

(b) Time elapsing on annual, sick, or other leave with pay.

(c) Time elapsing in a non-pay status (including break in service) not exceeding thirty days within any one time period of twelve or eighteen months, as the case may be.

(d) Service rendered prior to absence on furlough or leave without pay where such absence is in excess of thirty days but not exceeding one year.

(e) Service in the armed forces, in the merchant marine, or on war transfer subject to the following conditions: The employee must have (1) left his position to enter the armed forces or the merchant marine, or to comply with a war transfer, (2) been separated under honorable conditions from active duty in the armed forces, or have received a certificate of satisfactory service in the merchant marine, or have a satisfactory record on war transfer, and (3) been restored, reemployed, or reinstated in any permanent position within the scope of the compensation schedules fixed by the Classification Act of 1923, as amended, under regulations of the Civil Service Commission, or the provisions of any law providing for restoration or reemployment, or any other administrative procedure with respect to employees not subject to civil service rules and regulations. Any employee entitled to be credited with service under this subsection shall also be entitled to credit for civilian employment prior to leaving his position to enter the armed forces or the merchant marine, or to comply with a war transfer, in accordance with subsections (a), (b), (c), and (d) of this section.

Part IV. Conditions of Eligibility for Periodic Within-Grade Salary Advancements

SEC. 401. *Eligibility requirements and effective date.* Officers and employees to whom these regulations apply shall be advanced in compensation successively to the next higher rate within the grade at the beginning of the next pay period (including July 1, 1945) following the completion of (a) each twelve months of service if such officers or employees are in grades in which the compensation increments are less than $200 per annum or (b) each eighteen months of service if such officers or employees are in grades in which the compensation increments are $200 or more, subject to the following conditions:

(1) That no equivalent increase in compensation from any cause was received during such period;

(2) That an officer or employee shall not be advanced unless his current efficiency rating is "Good" or better than "Good."

(3) That the service and conduct of such officer or employee are certified by the head of the department or independent establishment or agency, or Government-owned or controlled corporation, or such official as he may designate, as being otherwise satisfactory.

SEC. 402. *Exceptions to conditions (2) and (3) stated in section 401.* Conditions (2) and (3) of section 401 shall not apply upon the return to duty of any officer or employee (a) who, while serving under permanent, war service, temporary, or any other type of appointment, left his position to enter the armed forces or the merchant marine, or to comply with a war transfer, (b) who has been separated under honorable conditions from active duty in the armed forces, or has received a certificate of satisfactory service in the merchant marine, or has a satisfactory record on war transfer, and (c) who, under regulations of the Commission or the provisions of any law providing for restoration or reemployment, or under any other administrative procedure with respect to officers and employees not subject to civil service rules and regulations, is restored, reemployed, or reinstated in a permanent position within the scope of the compensation schedules fixed by the Classification Act of 1923, as amended, in which he would otherwise be eligible for within-grade salary advancement under these regulations.

Part V. Effect of Efficiency-Rating Changes

SEC. 501. *Effect of efficiency-rating changes.* In the event a change or ad-

justment is made in an officer's or employee's current efficiency rating, either by administrative action or as the result of a review and determination by a board of review in accordance with the provisions of section 9 of the Classification Act of 1923, as amended, the employee's eligibility for salary advancement shall be determined according to the efficiency rating as changed or adjusted and other conditions of the salary advancement plan, and any periodic within-grade salary advancement to which he may be entitled shall be made effective as of the date he would have received the advancement had no error been made in the original rating.

CHAPTER III. NIGHT PAY DIFFERENTIAL REGULATIONS

Part I. Extent of Night Pay Differential Regulations

SEC. 101. *Employees to whom these regulations apply.* These regulations apply to all civilian officers and employees in or under the executive branch of the United States Government, including Government-owned or controlled corporations, except those specified in section 102 of these regulations.

SEC. 102. *Employees to whom these regulations do not apply.* These regulations do not apply to:

(a) *Elected officials;*

(b) Heads of departments or independent establishments or agencies, including Government-owned or controlled corporations; i. e., heads of governmental establishments in the executive branch which are not component parts of any other such establishments.

(c) Officers and employees in or under the field service of the Post Office Department;

(d) Employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose;

(e) Employees outside the continental limits of the United States, including those in Alaska, who are paid in accordance with local prevailing native wage rates for the area in which employed;

(f) Officers and employees of the Inland Waterways Corporation;

(g) Officers and employees of the Tennessee Valley Authority;

(h) Individuals to whom the provisions of section 1 (a) of the Act entitled "An Act to amend and clarify certain provisions of law relating to functions of the War Shipping Administration, and for other purposes", approved March 24, 1943 (Public Law No. 17—78th Cong.), are applicable;

(i) Officers and members of the United States Park Police and the White House Police;

(j) Employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, vessel employees of the Coast and Geodetic Survey, and vessel employees of the Panama Railroad Company;

(k) Employees of the Bureau of Engraving and Printing who are entitled to a night pay differential under the Act of July 1, 1944 (Public Law 394—78th Cong.); and

(l) Employees who are entitled to additional compensation for night work under any provision of law other than section 301 of the Federal Employees Pay Act of 1945.

Part II. Definitions

SEC. 201. *Basic rate of compensation.* "Basic rate of compensation" means the rate of compensation fixed by law or administrative regulation for the position held by the officer or employee, exclusive of overtime compensation and extra pay for night or holiday work but inclusive of (a) any salary differential for duty outside the continental United States, or in Alaska, and (b) the value of quarters, subsistence, and other maintenance allowances under section 3 of the Act of March 5, 1928, 45 Stat. 193, *U. S. Code, Title 5, sec. 75a.*

SEC. 202. *Regularly scheduled tour of duty.* "Regularly scheduled tour of duty" means the regular administrative workweek prescribed by the general public regulations issued by the head of a department or independent establishment or agency, including Government-owned or controlled corporations, in accordance with section 301 (b) of the Overtime Pay Regulations issued by the Civil Service Commission pursuant to the Federal Employees Pay Act of 1945.

SEC. 203. *Night work.* "Night work" means that part of a regularly scheduled tour of duty which falls between 6 o'clock p. m. and 6 o'clock a. m.

SEC. 204. *Night pay differential.* "Night pay differential" means the ten percent increase over the officer's or employee's basic rate of compensation, authorized by section 301 of the Federal Employees Pay Act of 1945.

Part III. Night Work and Payment of Night Differential

SEC. 301. *Night pay differential authorized.* Any officer or employee to whom these regulations apply shall be entitled to a ten percent increase over his basic rate of compensation for all hours of night work, computed in accordance with section 302 (c) of these regulations.

SEC. 302. *Computation of night pay differential.* (a) *Leave.* Payment of a night pay differential is not authorized during any period when the officer or employee is in a leave status.

(b) *Overtime.* The night pay differential shall not be included in the basic rate of compensation in computing any overtime compensation to which the officer or employee may be entitled.

(c) *Computation of rate of night pay differential.* Whenever it is necessary to convert a basic monthly or annual rate to a basic weekly, daily, or hourly rate for the purpose of computing the amount of the night pay differential, the following rules shall govern:

1. A monthly rate shall be multiplied by 12 to derive an annual rate;

2. An annual rate shall be divided by 52 to derive a weekly rate;

3. A weekly rate shall be divided by 40 to derive an hourly rate; and

4. A daily rate shall be derived by multiplying an hourly rate by the number of daily hours of service required.

U. S. Civil Service Commission.

Approved: June 29, 1945.

H. B. MITCHELL,
LUCILE FOSTER MCMILLIN,
ARTHUR S. FLEMING,
Commissioners.

THE WHITE HOUSE,
June 30, 1945.

Approved: HARRY S. TRUMAN

[F. R. Doc. 45-11902; Filed, July 2, 1945; 5:03 p. m.]

EXECUTIVE ORDER 9579

AMENDMENT OF EXECUTIVE ORDER NO. 8937 OF NOVEMBER 7, 1941, EXTENDING THE PERIOD OF ELIGIBILITY ON CIVIL SERVICE REGISTERS OR LISTS OF PERSONS WHO SERVE IN THE ARMED FORCES OF THE UNITED STATES

By virtue of the authority vested in me by section 2 of the Civil Service Act (22 Stat. 403, 404), and in order to extend the period of time for applying for the benefits of Executive Order No. 8937 of November 7, 1941, entitled "Extending the period of Eligibility on Civil Service Registers or Lists of Persons Who Serve in the Armed Forces of the United States", it is ordered that the proviso contained in the said order be, and it is hereby, amended to read as follows:

"*Provided*, That such persons shall notify the Civil Service Commission within 90 days after termination of their service in the armed forces or of hospitalization continuing after discharge for a period of not more than one year."

This order shall be effective as of December 8, 1944.

HARRY S. TRUMAN

THE WHITE HOUSE,
June 30, 1945.

[F. R. Doc. 45-11899; Filed, July 2, 1945; 5:03 p. m.]

EXECUTIVE ORDER 9580

AMENDMENT OF EXECUTIVE ORDER NO. 1888 OF FEBRUARY 2, 1914, AS AMENDED, RELATING TO CONDITIONS OF EMPLOYMENT IN THE SERVICE OF THE PANAMA CANAL AND THE PANAMA RAILROAD COMPANY ON THE ISTHMUS OF PANAMA

By virtue of the authority vested in me by section 81 of title 2 of the Canal Zone Code, as amended by section 3 of the act approved July 9, 1937, 50 Stat. 487, it is hereby ordered as follows:

SEC. 1. Paragraph 31 of Executive Order No. 1888 of February 2, 1914, as amended by Executive Order No. 2514 of January 15, 1917, is hereby amended to read as follows:

"31. Leave taken shall be paid for at the same rate as that which the employee

SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE

HEARINGS

BEFORE THE

COMMITTEE ON THE CIVIL SERVICE HOUSE OF REPRESENTATIVES

SEVENTY-NINTH CONGRESS

FIRST SESSION

ON

H. R. 2497 and H. R. 2703

A BILL TO IMPROVE SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE; TO PROVIDE PAY FOR OVERTIME AND FOR NIGHT AND HOLIDAY WORK; TO AMEND THE CLASSIFICATION ACT OF 1923, AS AMENDED; AND FOR OTHER PURPOSES

MAY 14, 15, 16, 17, AND 18, 1945

Printed for the use of the Committee on the Civil Service

UNITED STATES
GOVERNMENT PRINTING OFFICE
73101 WASHINGTON : 1945

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HENRY M. JACKSON, *Chairman*

MR. MILLER
MR. COMBS

MR. HERTER
MR. VURSELL

II

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SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE

MONDAY, MAY 14, 1945

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON THE CIVIL SERVICE,
Washington, D. C.

The subcommittee met at 10:30 a. m., Hon. Henry M. Jackson, of Washington (chairman of the subcommittee) presiding.

Present: Messrs. Jackson, Miller of California, Combs, of Texas, and Vursell, of Illinois, members of the subcommittee.

Also present: Mr. Edward H. Rees of Kansas.

Mr. JACKSON. The subcommittee will come to order. Congressman Ramspeck, a short time ago, appointed a special subcommittee to deal with the question of pay-raise legislation. He appointed me as chairman, and the other members of the subcommittee are Congressman Miller of California, Congressman Combs, of Texas, Congressman Herter, of Massachusetts, and Congressman Vursell, of Illinois.

I believe all the members have a copy of the report and study that was made by Mr. McCormack and his staff in connection with the pay structure of the executive branch of the Federal Government

I personally want to compliment Colonel McCormack and his staff for the excellent job which they have done in compiling this information. It certainly will be most helpful to the committee.

I think that the members of the subcommittee will find that the pay structure of the executive branch of the Government is a bit complicated, because there are so many different laws and Executive orders that affect the various categories of employment, making it difficult to understand the entire picture without an analysis such as the one which the staff headed by Mr. McCormack has made possible for us.

At this point in the record the bills under consideration by the subcommittee will be inserted.

(The bills referred to are as follows:)

[H. R. 2497, 79th Cong., 1st sess.]

A BILL To improve salary and wage administration in the Federal service; to provide pay for overtime and for night and holiday work; to amend the Classification Act of 1923, as amended; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—COVERAGE

GENERAL COVERAGE

SEC. 101. That the provisions of this Act shall, except as otherwise expressly stated, apply to all civilian officers and employees in or under the executive branch of the United States Government, including Government-owned or controlled corporations, and to those employees of the District of Columbia municipal

(c) Determinations by the Director of numbers of employees and man-months of employment required shall be by such appropriation units or organization units as he may deem appropriate.

(d) The Director of the Bureau of the Budget shall maintain a continuous study of all appropriations and contract authorizations in relation to personnel employed and shall, under such policies as the President may prescribe, reserve from expenditure any savings in salaries, wages, or other categories of expense which he determines to be possible as a result of reduced personnel requirements. Such reserves may be released by the Director for expenditure only upon a satisfactory showing of necessity.

(e) As used in this section—

(1) the term "United States" shall include the Territories and possessions;

(2) the term "full-time civilian employees" shall include full-time intermittent (when actually employed), $1 per year, without compensation, and casual workers, as defined by the Civil Service Commission; and

(3) the term "part-time civilian employment" shall include part-time employment by intermittent (when actually employed), $1 per year, without compensation, and casual workers, as defined by the Civil Service Commission.

(f) Until the cessation of hostilities in the present war as proclaimed by the President, the provisions of this section shall not be applicable to employees of the War and Navy Departments except those who are subject to the provisions of title I of this Act.

APPROPRIATION AUTHORIZED

SEC. 407. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 408. Amounts payable under the provisions of this Act, other than as an increase in the basic rates under title III or under section 403, shall not be considered in determining the amount of a person's annual income or annual rate of compensation for the purposes of paragraph II (a) of part III of Veterans Regulation Numbered 1 (a), as amended, or section 212 of title II of the Act entitled "An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932, as amended.

REPEAL OF CONFLICTING PROVISIONS OF EXISTING LAW

SEC. 409. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed.

EFFECTIVE DATE

SEC. 410. This Act shall take effect on July 1, 1945.

Passed the Senate May 17 (legislative day, April 16), 1945.

Attest: LESLIE L. BIFFLE, *Secretary.*

Mr. JACKSON. We will hear first from the Government witnesses. and then from the employee representatives. This morning Mr, Arthur Flemming, Commissioner of the Civil Service Commission, will be our first witness. Mr. Flemming.

STATEMENT OF HON. ARTHUR S. FLEMMING, MEMBER OF THE CIVIL SERVICE COMMISSION, WASHINGTON, D. C.

Commissioner FLEMMING. Mr. Chairman and members of the subcommittee, the current consideration by the Congress of the United States of the pay schedules for salaried Federal employees has done more, it seems to us, to lift the morale of those employees than anything which has been said or done since the beginning of the war. They realize that government as an employer is vitally interested in those human problems in which all employers must be interested if they are to obtain the maximum possible contribution of time, energy, and talents from their employees.

And this consideration of these pay problems has done more to add to the attractiveness of Government service as a career than anything that has been said or done in recent years.

Government will have tremendous responsibilities to discharge until the war with Japan is over. Government will likewise have tremendous responsibilities to discharge following the cessation of hostilities. If it is to discharge these responsibilities efficiently, it must attract and hold the services of the best qualified persons. Government as an employer cannot expect to attract and hold the services of outstanding personnel unless it demonstrates its interest in those human problems which its employees are called upon to face and to solve.

Mr. Chairman, I would like to add to what you have said about the study that has been made by the staff of this committee. I think, certainly, insofar as recent years are concerned, that this is the first comprehensive presentation of the salary structure of the Federal Government as it affects the executive branch. I have had the opportunity of going through it, and I feel that it is an excellent job and that it sets forth the complicated situation in just as simple and brief a manner as it is possible to set it forth; and I think the fact that this committee called upon its staff to go into the matter in the way in which it has does mean a great deal to the executive branch and to the employees that comprise the executive branch.

H. R. 2497, one of the bills before you, embodies all of the recommendations relative to pay adjustments which were incorporated in a message transmitted by the Civil Service Commission to the President of the Senate and to the Speaker of the House of Representatives.

H. R. 2703 embodies the same recommendations, with the addition of a section calling for an increase of 15 percent in basic rates of compensation.

The principal provisions of H. R. 2703 are comparable to the provisions contained in S. 807, a bill introduced by Senator Downey, the chairman of the Senate Civil Service Committee.

The Civil Service Commission endorses enthusiastically the principles underlying the provisions contained in H. R. 2703.

In connection with the submission of a formal report on S. 807 we were authorized by the Director of the Bureau of the Budget to state that the legislation contained in that bill would be in accord with the program of the President of the United States.

The overtime-pay provisions of H. R. 2703 and H. R. 2497 affect approximately 1,525,000 positions in the executive branch of the Government; the provisions relating to amendments to the Classification Act of 1923, including the section in H. R. 2703 calling for an increase in basic rates of pay, affect approximately 1,220,000 positions in the executive branch.

I am going to discuss, first of all, the provisions relative to an increase in basic rates of compensation.

Congress should, in our judgment, grant to the salaried Federal employees, subject to the Classification Act of 1923, an increase of 15 percent in basic rates of compensation as provided for in section 406 of H. R. 2703.

Mr. VURSELL. Mr. Chairman, is the witness open to questions at this time, or later?

78101—45——2

Mr. REES. It was assumed that he wouldn't hire a person for more than 40 hours.

Mr. FLEMMING. That is right.

Mr. REES. And to keep him from hiring an employee for more than 40 hours you penalized the operator, the employer, to hold him down.

Mr. FLEMMING. That is right.

Mr. REES. So it wouldn't cost him so much.

Mr. FLEMMING. That is right.

Mr. REES. So now it is brought into the Government and we penalize the Government if they hire a man for more than 40 hours.

Mr. FLEMMING. That is right.

Mr. REES. It was not intended so much to give the man the money as it was to hold down the hours of work.

Mr. FLEMMING. That is right. Just before you came in, Congressman Rees, I pointed out that as a permanent proposition an overtime pay policy of this kind was desirable, particularly if there is a tight control over appropriations, because then before the administrator decides to work his people overtime he has got to figure out where the money is coming from in order to work them overtime, and if he is under that kind of pressure he will do a better job of planning his work so as not to make it necessary for his employees to work overtime.

Mr. REES. And when Congress way back in 1923 or 1924 decided to pay a certain group time and a half for overtime it was because they were mechanics and so forth, they belonged to labor unions, where time and a half prevailed.

Mr. FLEMMING. That is right.

Mr. REES. And at that time the percentage was comparatively small anyhow.

Mr. FLEMMING. Yes.

Mr. REES. That is to say, only a small percentage at tha ttim were under the time and a half rule; isn't that correct?

Mr. FLEMMING. That is right.

Mr. REES. Now, the thing has grown to where almost half are in one category and half in the other.

Mr. FLEMMING. Yes. And in some of our establishments that provides an awkward situation because you have got about half getting overtime pay at time and a twelfth, and the others getting it at true time and a half.

Our whole concept of what is sound wage policy has evolved since 1923 to a considerable degree. I am in complete agreement with you. Our feeling is that now the time has come to put these employees under the classification law on a comparable basis as far as overtime is concerned.

Mr. REES. Why don't you just put them under one control and be done with it?

Mr. FLEMMING. Congressman, I think that I could sit down with you and in a rather detailed way indicate the very difficult administrative problems that would develop if you attempted to take this class of employment and handle it on a wage-board basis. I am not saying it can't be done but it would make a very complicated picture.

Mr. REES. Your business is nothing but staffing these agencies; you have nothing to do with classifying.

Mr. FLEMMING. Yes, we do, as far as the central offices of these agencies are concerned.

Mr. REES. You give the examination and if an agency wants a certain classification you staff them accordingly.

Mr. FLEMMING. No, as far as the departmental service, the central office of these agencies, are concerned, we look at the duties and responsibilities of the various jobs, and we allocate them to an appropriate service and an appropriate grade.

As far as the field service is concerned, the agencies do it.

Mr. REES. That is right.

Mr. FLEMMING. Yes.

Mr. REES. Where most of it is done.

Mr. FLEMMING. That is correct. The bulk of your employment is outside of Washington, D. C., these days.

Mr. REES. Yes. What percentage? Just roughly.

Mr. FLEMMING. It is about 91 percent.

Mr. REES. Ninty-one percent. You have nothing to do with classifying them.

Mr. FLEMMING. The heads of the agencies classify those jobs, that is correct.

Mr. REES. Yes. All you do is staff them.

Mr. FLEMMING. That is right. Our job is to staff them, that is correct.

Now, the present overtime pay bill, in addition to this difference in rate, also provides that overtime computations for salaried workers is to be limited to that part of a person's salary not in excess of a rate of $2,900 per annum. In the case of those Federal workers who are engaged in skilled or unskilled work in field establishments such as navy yards and arsenals, there is, of course, no salary ceiling insofar as payment of overtime is concerned.

To the extent possible, under the Government's salary stabilization policy, we believe that inconsistency in overtime pay computation methods for skilled and unskilled workers and for salary workers should be corrected.

Section 201 in both bills sets forth a method of equalization which is in conformity with salary stabilization policy.

For employees receiving basic compensation at a rate of less than $3,800 a year, the overtime hourly rate would be computed by dividing the annual rate by 2,080 and multiplying by 1½. For this group, therefore, overtime will be compensated at true time-and-a-half rates.

For employees receiving basic compensation of $3,800 or more, a specific schedule of overtime rates based on 416 overtime hours, that is, 8 hours a week for 52 weeks, is provided in the bill. The purpose of this schedule is to taper off the overtime rate of true time and one-half at $3,800 a year, down to a flat amount of $654 to $6,500 and higher, for the 416 overtime hours.

So, for employees receiving basic compensation of $3,800 or more, the schedule of overtime rates endeavors to apply to the Classification Act schedules the Government's salary stabilization policy for industry.

The Government's stabilization policy in this respect is based on the recognition that when hours are extended and some workers receive additional pay for overtime, they may, unless some provision is made for workers at higher levels, receive more total compensation than employees doing more difficult or responsible work.

And so we feel that the overtime pay provisions of these two bills if enacted into law would provide the Government with a permanent overtime pay policy which would be fair to both the employee and the Government, and which would, at the same time, keep the Government in line with its own wage stabilization policy. We urge favorable consideration of this section.

Mr. HERTER. Are you going on to another section now?

Mr. FLEMMIMG. Yes.

Mr. HERTER. In connection with this scale that you have drafted here, can you tell me what the philosophy is of paying the fellow who gets $3,800 a year roughly $3 an hour overtime, whereas the fellow who gets double the salary, and who presumably is worth twice as much per hour, gets only half of that?

Mr. FLEMMIMG. Well, that, as I have indicated here, Congressman Herter, is consistent with the policy which the Commissioner of Internal Revenue has insisted on industry following in connection with these upper-salary brackets.

Mr. HERTER. Is the Commissioner of Internal Revenue determining peoples' salaries?

Mr. FLEMMING. Yes, for anybody receiving a salary of $5,000 or over, if you were a private employer and wanted to raise his salary you would have to go to the Commissioner of Internal Revenue and get his approval and he would have to certify that the proposed increase in salary was in conformity with the wage stabilization policy. He administers that part of it rather then the War Labor Board.

And it would also apply under $5,000 if the employees are not organized.

Mr. HERTER. But the whole purpose of the wage-stabilization policy is to maintain retail prices at some kind of a steady level.

Mr. FLEMMING. Yes.

Mr. HERTER. That has nothing to do with any permanent policy of the Government and we are talking now about a permanent policy of the Government. Therefore, it seems to me that it is a very bad jumping-off point from the point of view of peacetime legislation. It may be justifiable in wartime but I am wondering why that same thing has been applied to this particular scale.

Mr. FLEMMING. Of course, it could be approached in this way. A scale such as outlined there could remain effective we will say, for the fiscal year 1947 with the proviso that as you go into the postwar period that the ceiling would not become operative.

In other words, as we move into the postwar period we assume that overtime is going to be the exception rather than the rule, as Congressman Rees has indicated. As far as our recommendations are concerned, we couldn't recommend anything more liberal than this, because if we did so we would be recommending that Congress establish for the Federal employees a policy which agencies of government operating another law passed by Congress wouldn't approve for industry.

That is the reason for the recommendation in that form.

Mr. HERTER. May I ask this very basic question? That is, this particular bill, as I understand it, is to set a standard for the postwar period.

Mr. FLEMMING. That is correct.

Mr. HERTER. Presumably we are working against time, the expiration of the act at the end of June.

Mr. FLEMMING. That is right.

Mr. HERTER. By considering a policy, when we know we have perhaps a year more of abnormal conditions, it looks as though, in that event, that we are legislating more for the abnormal conditions than we are for the permanent policy, when we get into this type of scale.

Mr. FLEMMING. I think you have made a good point. Our only plea there would be, Congressman Herter, that for the remainder of the war that these employees be treated, at least, as liberally as provided for in the bill that is now before you.

In other words, that they be treated at least as liberally as the other parts of the Federal service and as liberally as industrial workers. As the situation now stands their present treatment is way below what the others are getting.

Mr. HERTER. But this will remain on the statute books as a permanent thing unless you open it all up the minute VJ-day comes.

Mr. FLEMMING. Yes.

Mr. HERTER. Have you in mind that this should stay as a permanent thing or are you going to suggest amendments that a time limit be put on it?

Mr. FLEMMING. I was thinking out loud with you when you raised that particular point. I would be glad to give that further consideration and make a specific recommendation to the committee on it.

Mr. HERTER. I just think that that is an awfully hard scale to justify as a permanent peacetime matter.

Mr. FLEMMING. From the standpoint of strict logic you cannot justify it, I agree. The way you put it is a fair way of putting it. A fellow at $3,800 gets paid a certain overtime rate whereas a man whose duties are important enough to justify his being paid at the rate of $8,000 gets an overtime rate that is below the man getting $3,800.

Mr. JACKSON. Is there a distinction under the Federal law relating to time and a half between executive positions and the so-called hourly rate position? I am wondering if there isn't some justification for this formula on that basis.

Mr. FLEMMING. The Fair Labor Standards Act recognizes a line of demarcation of that kind.

Mr. JACKSON. I agree with the logic of the argument.

Mr. COMBS. Mr. Flemming, it seems to me what Congressman Herter is suggesting is that, as I gather from your testimony, these provisions you are advocating, are so planned in order to equalize the situation with respect to one set of employees who are being governed by purely wartime regulations.

Mr. FLEMMING. That is right.

Mr. COMBS. And if that be true what we are doing is necessarily tied to that situation.

Mr. FLEMMING. That is right.

Mr. COMBS. In view of that wouldn't it be well to consider whether we should enact a temporary piece of legislation with a view of making further adjustments when times return to normal? In other words, not just close the door but go back and restudy the thing as soon as conditions level off.

Mr. FLEMMING. If this section were enacted as contained in both bills it would correct the present inequitable situation as between these various groups of employees, and it is altogether possible that many of the Congressmen might want to say, "Now, we recognize that this

corrects the inequitable situation as of the present, but we still feel that this cut-off point is not logical and after the war is over the whole question ought to be looked at again."

Personally, I would think that that would be a sound approach.

Mr. VURSELL. Mr. Chairman, may I ask a question?

Mr. JACKSON. Mr. Vursell.

Mr. VURSELL. As I understand this table, if a man is hired at a salary of $6,000, under H. R. 2497 he would be entitled to overtime after 48 hours?

Mr. FLEMMING. No; after 40 hours.

Mr. VURSELL. After 40 hours.

Mr. FLEMMING. That is right.

Mr. VURSELL. Now, most men who are hired at from $5,000 to $6,000 are, more or less, executives; are they not?

Mr. FLEMMING. You can't generalize. Some are and some are not. A good many are chemists, physicists, engineers, and so on. Many are doing scientific work but without supervisory responsibility. Others are administrators and supervisors.

Mr. VURSELL. Who is going to keep the time over these executives, who is going to say when it is necessary to work a little overtime in the evening? It seems to me that when you get up to where they are drawing $5,000 a year you ought to be a little more sparing about this overtime. I just don't get that myself.

Mr. HERTER. The more they get in salary the less overtime they get.

Mr. VURSELL. But they get a substantial amount of overtime.

Mr. JACKSON. The overtime ends at $3,800. I mean, straight time and a half ends at $3,800, as I understand the section, and from that figure on down it diminishes.

Mr. MILLER. At $6,000 he would get roughly $1.75 an hour overtime.

Mr. JACKSON. Just about half of what he would get at $3,800.

Mr. MILLER. And at $3,800 he would get $2–$2.50. $2.40 overtime at $3,800.

Mr. JACKSON. Isn't this essentially a compromise? I mean, it is difficult to determine in the departments. You have got to have some sort of rule of thumb to take care of a situation like this.

Mr. HERTER. I am not complaining about it as an equalizing measure.

Mr. JACKSON. I understand. I think there is a vast difference, as has been pointed out by Mr. Vursell, or Mr. Rees, where a man acts in an administrative capacity his hours are indefinite. He may have to get to the office before the rest of the crew and he is there after the rest of the crew. But the difficulty is that if you just take the salary brackets there are so many people that are purely employees, without any administrative responsibilities, and are hired almost on a per hour basis, because of their peculiar skill, knowledge, or scientific ability.

Mr. HERTER. Mr. Chairman, isn't it true that the whole scale is based on the assumption that you are going to have a very large number of employees working on the 48-hour shift? It wasn't to apply to occasional hours

Mr. FLEMMING. That is right.

Mr. HERTER. But you go back into the permanent organization period.

Mr. JACKSON. That is right.

Mr. MILLER. Getting back to Mr. Vursell's question, he asked who is going to determine when these men work overtime. As a matter of fact, isn't that pretty well worked out? The rules are set up by a superior authority.

Mr. FLEMMING. Yes.

Mr. MILLER. And they must meet those conditions. In other words, if I am a $6,000 executive I just can't come in in the morning and say, "I decided to stay at the office last night for 2 hours and, therefore, I want $1.75 an hour."

But the final check, as I see it, is the money that will have to be very definitely set up in the budgets of the departments for overtime pay.

Mr. FLEMMING. That is correct.

Mr. VURSELL. We do have the deficiency appropriations brought in rather regularly. So I am fearful that you don't have that check.

Mr. FLEMMING. If I could just say this along the line of Congressman Miller's comments. It might be kept in mind first that the heads of departments and agencies are not subject to any of the provisions of this bill.

Mr. JACKSON. Yes.

Mr. FLEMMING. Secondly, the proposed section states that they get additional compensation for all hours of employment officially ordered or approved in excess of 40 hours. And. speaking now for my own agency, I know that the regulations under which overtime is ordered and conpensated for are very strict, and in most instances requests for approval have to come all the way to the top.

And under normal conditions, when appropriations would be much tighter than they are at the present time, the head of the agency, I can assure you, would put even stricter controls on than he might at the present time. If he didn't he would find himself in a position where he couldn't meet his pay roll.

And in normal times, Congressman Vursell, Congress isn't in session so much and it isn't as easy for an agency to come up and ask for supplemental funds.

Mr. REES. They will get here in time to do that. [Laughter.]

Mr. MILLER. But that throws it back on us.

Mr. REES. I have been here for 9 years and they have always been in time.

Mr. MILLER. There isn't anything comparable to, say, travel for Government employees.

Mr. FLEMMING. No.

Mr. MILLER. In times of stress there is a good deal of travel and the obtaining of travel orders, but in normal times when a man wants to travel he has to have his travel order in advance and it is pretty thoroughly checked.

Mr. FLEMMING. That is right.

Mr. JACKSON. Speaking of abuses in this respect, if I may interject, what about the thousands and thousands of employees who are paid from funds which are reimbursed by the Government in connection with private contracts, where they receive time and a half and the contractor merely puts in a claim for reimbursement to the Federal Government?

So, if we are looking at it purely from the standpoint of this present emergency, which undoubtedly will continue for at least a year, you

have identically the same situation with respect to control and supervision as in the case of Federal employees.

They are, for all practical purposes, Federal employees, except that they are hired by a private contractor, but his pay roll is paid by Federal funds.

Mr. Vursell.

Mr. VURSELL. As I understand it, the Senate has not provided for straight time and a half for overtime in their bill. Now, there have been exhaustive hearings over there but none of the members of this committee have had an opportunity to learn the reasons why they have sent this bill over to the House without time and a half for overtime.

Can you tell us, Mr. Flemming, what their main objections were to the time and a half for overtime, so that we may have their argument?

Mr. FLEMMING. It is a little dangerous for a member of the executive branch to attempt to interpret action taken on the legislative side, but I think the record will bear this out, that the principal objection to it was the additional cost involved.

Mr. VURSELL. Can you tell us about what that would be, according to their estimate?

Mr. FLEMMING. Assuming the same number of employees that we have in the Federal service at the present time, and also assuming a 48-hour week for a period of an entire year, and also assuming an increase of 15 percent in basic ratse of pay, the additional cost would be about $290,000,000.

About $300,000,000, roughly.

Mr. VURSELL. In other words, the way we are running now in the use of overtime it would add about $300,000,000 to the expense of Government?

Mr. FLEMMING. That is right.

Mr. VURSELL. That is for overtime only.

Mr. FLEMMING. If this formula as set forth in these bills were added.

Mr. REES. Put it this way, how much does this bill cost and how much does the Senate bill cost?

Mr. FLEMMING. I will have to ask you to wait until the Bureau of the Budget comes in on that tomorrow, because there is a slight additional cost in the Senate bill, although they are using the same overtime-pay formula, because they have increased the basic rates of pay.

Now, what that cost is I don't know. The Bureau of the Budget will have to give you that.

It may be in this report here. Yes. The Senate committee estimates that present overtime pay, using the present formula, and then providing for the increase in basic rates of pay which they have provided for, that that will increase the cost of overtime by $77,200,000.

Now, that assumes, of course, the same number of employees, and assumes a 48-hour week for an entire year.

If the formula as set forth in the House bill were put into effect, and if the increase in basic rates of pay were also put into effect, and again assuming the same number of employees, and assuming a 48-hour week for an entire year, there would be an additional cost, roughly, of about $200,000,000.

Mr. HERTER. An additional $200,000,000?

Mr. FLEMMING. Yes.

Mr. HERTER. I have great difficulty in following that. If your entire overtime cost is $300,000,000——

Mr. FLEMMING. No; it was not.

Mr. COMBS. You include in that the 15 percent as well as the overtime.

Mr. FLEMMING. Yes.

Let me restate it. Let us take the Senate bill as reported to the Senate by the Senate Civil Service Committee. They figure that because of the increase in basic rates of pay that they have provided for that there will be an increase in the overtime pay cost of $77,200,000 using the present formula.

If you should substitute for the present overtime pay formula the pay formula in the House bill, that would represent an additional cost for overtime pay of about $200,000,000.

Mr. COMBS. $227,000,000 altogether?

Mr. FLEMMING. No. These are all additional costs of overtime.

Mr. COMBS. Additional over the Senate overtime or additional over the present overtime?

Mr. REES. Couldn't you tell us how much more the Government would have to pay if you put this new bill into effect?

Mr. FLEMMING. Let me take the House bill, which contains the 15-percent increase in basic rates of pay right straight across the board. If you took that bill and added to it, added to the 15 percent increase the present overtime pay formula, you would get an additional overtime cost, an increase in your overtime cost of about $290,000,000.

Mr. REES. Forget the present act.

Mr. FLEMMING. I have forgotten it.

Mr. REES. With time and a half.

Mr. FLEMMING. That is right.

Mr. REES. How much more would it cost the Government?

Mr. FLEMMING. It would cost you for overtime—you want the total cost?

Mr. REES. The increased cost. How much increased cost would there be? It is just an increase of 15 percent plus time and a half.

Mr. JACKSON. It is more than that because the time and a half is figured on a new basis.

Mr. FLEMMING. I think I can give you the answer you want, Congressman Rees. Take your present House bill.

Mr. REES. That is right.

Mr. FLEMMING. All of the provisions of that bill would cost the United States Government an additional $768,000,000, assuming the same number of people on the pay roll as are on now, and assuming a 48-hour week over a period of 1 year.

Mr. REES. About $768,000,000?

Mr. FLEMMING. Yes. The $290,000,000 I gave you was the increased cost of the Overtime Pay Act.

Mr. JACKSON. What is the present cost of time and one-twelfth?

Mr. FLEMMING. $611,000,000. That is what the present overtime pay bill of the Government is.

Mr. JACKSON. So this would be one-hundred-and-some-odd million more?

Mr. FLEMING. No. I am going to have to start over again in order to identify that $768,000,000.

Taking the House bill that contains the 15 percent increase in basic rate of pay, all of the provisions of that bill would cost the Government

an additional $768,000,000 over what is now being paid for base salary, for overtime, night differentials, and so on.

Mr. HERTER. Over what is now being paid?

Mr. FLEMMING. That is right.

Mr. HERTER. With the additional overtime pay that is being paid today?

Mr. FLEMMING. That is right.

Mr. HERTER. Isn't the overtime pay roughly 15 percent?

Mr. FLEMMING. No. Your overtime is roughly 20.5 of your total. That is, overtime has the effect of lifting the total pay roll about 20.5 percent.

Mr. HERTER. Let me ask you this. Forgetting this overtime provision that is in here, and using only the 15-percent basic increase, how does that compare with the present total cost of the Federal employees?

Mr. VURSELL. I think you have the answer in the last paragraph in the report on the Downey bill.

Mr. FLEMMING. No. That is another bill now. If I may take Congressman Herter's question, at the present time the pay-roll cost—this is basic rates of pay now——

Mr. HERTER. I want to know what you are paying the Federal employees at this moment, what the total cost is.

Mr. FLEMMING. All right. Including overtime?

Mr. HERTER. Including the overtime that is being paid them now.

Mr. FLEMMING. About $3,100,000,000.

Mr. HERTER. Then what would the cost of this bill be without overtime?

Mr. JACKSON. It is just a 15-percent increase straight across the board.

Mr. HERTER. No; it isn't a 15-percent increase for that total figure. It is, if anything, smaller than that total figure.

Mr. FLEMMING. The pay-roll cost, Congressman Herter, without overtime is $2,464,000,000. If you add the 15 percent increase in basic rates of pay you will add an additional $369,700,000.

Mr. HERTER. That amounts to a total of how much?

Mr. FLEMMING. That comes to $2,834,000,000.

Mr. HERTER. $2,834,000,000?

Mr. FLEMMING. That is right.

Mr. JACKSON. That is for the employees that we are dealing with under this act.

Mr. FLEMMING. That is right.

Mr. HERTER. As against the three-billion-what today? As against the three billion that you are paying now with the overtime.

Mr. FLEMMING. With the overtime it is $3,075,000,000.

Mr. HERTER. So this bill, for the same employees, assuming we went back to the 48-hour week—went back to the 40-hour week—would be a saving of approximately $250,000,000.

Mr. FLEMMING. Yes. With the same force; yes, sir.

Mr. HERTER. If we carried the same force on and tomorrow went to a 40-hour week our pay roll would drop by $250,000,000.

Mr. FLEMMING. That is correct.

Mr. MILLER. Could we follow that through?

Mr. FLEMMING. Mr. Chairman, I hope I am not getting in trouble with the Budget Bureau. I am getting out of the territory of the Civil Service Commission.

SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE

HEARINGS

BEFORE THE

COMMITTEE ON CIVIL SERVICE
UNITED STATES SENATE

SEVENTY-NINTH CONGRESS

FIRST SESSION

ON

S. 807

A BILL TO IMPROVE SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE; TO PROVIDE PAY FOR OVERTIME AND FOR NIGHT AND HOLIDAY WORK; TO AMEND THE CLASSIFICATION ACT OF 1923, AS AMENDED; AND FOR OTHER PURPOSES

APRIL 25, 26, 27, 30, and MAY 2, 1945

Printed for the use of the Committee on Civil Service

UNITED STATES
GOVERNMENT PRINTING OFFICE
72175 WASHINGTON : 1945

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SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE

WEDNESDAY, APRIL 25, 1945

UNITED STATES SENATE,
COMMITTEE ON CIVIL SERVICE,
Washington, D. C.

The committee met, pursuant to call, at 10:30 a. m., in room 249, Senate Office Building, Senator Sheridan Downey (chairman) presiding.

Present: Senators Downey (chairman), Langer, Hickenlooper, and Byrd.

The CHAIRMAN. I will place a copy of the bill under consideration, S. 807, in the record.

(Bill S. 807 is as follows:)

[S. 807, 79th Cong., 1st sess.]

A BILL To improve salary and wage administration in the Federal service; to provide pay for overtime and for night and holiday work; to amend the Classification Act of 1923, as amended; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I—COMPENSATION FOR OVERTIME, NIGHT, AND HOLIDAY WORK

COVERAGE

SEC. 101. The provisions of this title shall, except as provided in section 401, apply to (a) all civilian officers and employees in or under the executive branch of the United States Government, including Government owned or controlled corporations; (b) all civilian employees of the Library of Congress, the Botanic Garden, or the Office of the Architect of the Capitol, except those covered by section 202 (c); and (c) those employees of the District of Columbia municipal government who occupy positions subject to the Classification Act of 1923, as amended.

OVERTIME PAY

SEC. 102. Subject to the provisions of section 103, employees to whom this title applies shall, in addition to their basic compensation, be compensated for all hours of employment, officially ordered or approved, in excess of forty hours in any administrative workweek, at overtime rates as follows:

(a) For employees whose basic compensation is at a rate less than $3,800 per annum, the overtime hourly rate shall be one and one-half times the basic hourly rate of compensation: *Provided*, That in computing such overtime compensation for per annum employees, the basic hourly rate of compensation shall be determined by dividing the per annum rate by two thousand and eighty.

SALARY AND WAGE ADMINISTRATION IN THE FEDERAL SERVICE

THURSDAY, APRIL 26, 1945

UNITED STATES SENATE,
COMMITTEE ON CIVIL SERVICE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m. in room 249, Senate Office Building, Senator Sheridan Downey (chairman) presiding.

Present: Senators Downey (chairman), Byrd and Hickenlooper.

Present also: Arthur S. Flemming, Civil Service Commissioner.

The CHAIRMAN. Senator Langer and Senator Byrd have told me they would be late, but I think we should go ahead.

Senator HICKENLOOPER. Did you prepare that statement you had yesterday?

Mr. FLEMMING. I will have it here within the next day or two.

The CHAIRMAN. Our next witness is Mr. Edward Young, representing the Bureau of the Budget, and if you will state your full name, address, official position, Mr. Young, we will be very glad to hear from you, indeed.

STATEMENT OF EDGAR YOUNG, EXECUTIVE ASSISTANT, DIVISION OF ADMINISTRATIVE MANAGEMENT, BUREAU OF THE BUDGET

Mr. YOUNG. My full name is Edward B. Young, executive assistant, Division of Administrative Management, Bureau of the Budget.

Mr. Chairman, Senator Hickenlooper. Since Commissioner Flemming yesterday gave the committee a very full outline of the provisions of this bill and a complete analysis of the factual background surrounding the recommendations for the various divisions, I have assumed that the committee would be primarily interested this morning in receiving from the representative of the Bureau of the Budget a brief discussion of the cost aspects of the bill, and so I will direct my comments primarily to that and then attempt to answer any questions which the committee may wish to raise.

In discussing the cost of the bill I should like to give the members of the committee a table which may make more clear the summary discussion. I would like to discuss the cost of the bill in respect to the various sections.

First, section 306, which would authorize a 15 percent increase in the Classification Act pay scale.

The CHAIRMAN. Mr. Young, excuse me. Have you other copies you could give to the press?

Mr. YOUNG. There are about four additional copies here.

The 15 percent increase in compensation would apply to those employees who are compensated under the pay scales of the Classification Act. As of December 31, 1944, there were 1,221,000 such employees in the executive branch. Now, assuming for purposes of the estimate only the continuation of that number of employees, the 15 percent increase in the pay scale of the Classification Act would represent an annual increase of $369,700,000 for the executive branch, and an additional $3,100,000 for the legislative branch and the District of Columbia Government employees who are paid under the pay scales of the Classification Act, or a total of $372,800,000.

The CHAIRMAN. Well, now, Mr. Young, I do not quite understand this. So far as employees of the legislative branch are concerned, they are already receiving a 15-percent emergency increase.

Mr. YOUNG. May I clarify that? This relates only to those employees of the legislative branch who are paid under the compensation schedules of the Classification Act, those in the Library of Congress, Botanical Gardens, and Office of the Architect of the Capitol and the District of Columbia. It does not apply to these employees classed by title II of this bill.

The CHAIRMAN. I understand.

Mr. YOUNG. Now, the second major provision of this bill which will relate to overtime compensation is section 102.

Now, this provision of the bill would, as Commissioner Flemming explained yesterday, change the formula for the calculation of overtime. The result would be the payment of true time and one-half, or an increase of 30 percent above base pay for employees who were required to work a 48-hour week. That 30 percent would compare with 21.6 percent increased earnings above base pay for those employees now in salary levels of $2,900 or below.

The coverage of the overtime compensation section of this law is broader than the coverage of the 15 percent increase in the Classification Act pay scales, because there are about 260,000 employees who are compensated on an annual basis, but whose salary rates are fixed administratively, not under the Classification Act, and who receive their overtime compensation under the pre-war overtime pay law. If this law were enacted, these employees would receive overtime under this provision; hence, the coverage for the overtime features of this bill, as of December 31, 1944, was 1,481,000 employees in the executive branch, the legislative branch, and the District of Columbia government.

Now, again for purposes of estimating, assuming the continuation of that same number of employees and assuming the continuation of working schedules requiring 8 hours of overtime per week and, thirdly, assuming the present base-pay rate of the Classification Act, the corresponding increase in overtime would be a total of $252,600,000.

Now, if the Congress should adopt the recommendation contained in this bill for a 15 percent increase in base pay, that in turn brings about a corresponding increase in overtime earnings, because the overtime would be computed on the higher base salary. Hence there is a higher proportionate increase in overtime earnings, so if there were a 15 percent increase in base pay, then the overtime earnings on the formula for computing overtime in the present law—that is, the 21.6 formula—would cost $707,100,000 as against $614,700,000 under the

present law; and then if the overtime formula were raised, that $707,100,000 would go up an additional $290,000,700.

Now, the third major feature of the bill which has cost implications is the proposal for night differential, section 104. Inquiry of the departments and agencies revealed that as of the end of December 1944, there were approximately 89,000 employees who were working on shifts, regularly scheduled, which included hours of duty either entirely or in part of the shift between the hours of 6 p. m. and 6 a. m. The cost of paying a 10-percent night differential to that group would be $12,900,000.

The fourth major provision of the bill which has cost implications is the one which would speed up the rate of the within-grade salary advances. That is——

Senator HICKENLOOPER. May I interrupt there, Mr. Chairman?

The CHAIRMAN. Please do, Senator.

Senator HICKENLOOPER. You have this chart. I do not understand the totals here. As I get it, it is something over $900,000,000. The total down here in figures is $768,000,000.

Mr. YOUNG. That 768, Senator, is the sum of the $372,800,000 for the 15 percent increase, plus $383,000,000—it is the difference between the $614,700,000 which is the present overtime on present pay scales, and the $997,800,000.

Senator HICKENLOOPER. Well, I was taking the totals of each category here on the increases.

Mr. YOUNG. Well, the "(a)" and "(b)" categories are alternatives. Under no circumstances would it be both.

"(B)" would represent the adoption of the basic-pay increase proposed in this bill. The "(a)" merely represents what would be the increase in overtime on the present pay scales, plus the basic-pay increase and plus the $12,000,000 for night pay differential, comes to the total of $768,000,000.

Now, the fourth major section of the bill which has——

The CHAIRMAN. Let me intervene there. You have no schedule prepared on that?

Mr. YOUNG. No; for reasons I will indicate immediately is the section which would speed up the periodic within-grade salary advancements section 303. The cost of within-grade salary advancements is directly dependent upon rate of turn-over and opportunities for promotion from grade to grade, because an individual employee is eligible for a within-grade advancement only if he has not received within the time period specified in the law an equivalent increase in compensation from some other clause.

Hence, Federal employees who either leave the service or who are promoted to higher grades are not eligible for increase. Likewise, those employees who leave the service, or who are promoted, create vacancies which are filled by appointments of individuals normally at entrance salary rates of the grade, so that as there is turn-over—employees leaving one grade or position either to leave the Federal service or to go into a higher grade or position—new employees are coming into that same grade at entrance rates.

That constant process tends to affect the average on all salaries paid to all employees in any one grade.

It is like water in a cistern. On the one hand, you have more water coming in, in the form of higher pay rates for those employees that remain in the grade and who become entitled to salary increases

within-grade, and you have water being pumped out, in the form of those employees who leave the grade and are replaced by appointments at the entrance rates.

Now, when the present salary advancement law was adopted, it was based upon a study that the Congress requested the Bureau of the Budget to make. At that time we first made the estimates of cost of the salary advancement plan based upon then existing rates of turnover and based upon the then existing distribution of salary rates for employees among each grade.

That estimate was never realized because the war period brought with it, not only the tremendous expansion in Federal employment, but it brought with it a very much higher rate of turn-over. The rate of turn-over at the time we made that survey 4 years ago was 7.3 percent a year. It is now estimated to be 55 percent per year. The rate of promotion from grade to grade at that time was 10.9 percent a year. It is now estimated to be 36 percent a year.

Now, the net result of those higher rates of turn-over and the higher rates of promotion from grade to grade has been that within each Classification Act grade the average salary of all employees in that grade has dropped rather than gone up under the operation of the salary advancement law.

It is a paradox, but it is understandable only in terms of the appointment of this vast number of new employees at entrance rates to the grade. Hence, the result of the operation of the salary advancement law has been to bring down within each grade rather than to bring up within each grade the average of all salaries.

Senator HICKENLOOPER. Do you estimate that as a permanent policy—a permanent result?

Mr. YOUNG. No, not at all.

Senator HICKENLOOPER. Or is it due in part to the confusion existing today?

Mr. YOUNG. It is entirely due, we think, to the war situation, the high turn-over which exists in Government and industry. It is not a permanent situation.

Senator HICKENLOOPER. In other words, if employment were stabilized under normal conditions, leaving out the present situation, your figures would not show quite such a dip?

Mr. YOUNG. That is right. There would then be an increase in the average of all salaries paid within each grade.

Senator HICKENLOOPER. In other words, your system of recommendations would come nearer to working out as you have hoped it would?

Mr. YOUNG. I have engaged in that rather long discussion of the factors that influence the cost of this provision in order to attempt to make understandable the contrast between the extremes of cost that may result from the speed-up in the Ramspeck promotions, which extremes would vary with changes in the promotion or the turn-over rate.

At one extreme, if you assume a continuation of the present high rates of turn-over and promotion, we confidently expect that the rate of periodic within-grade increases could be advanced as proposed in this bill without any increase in the average of salaries paid, and hence without any increase in the net pay roll of the Federal Government.

The present rate of turn-over is so high that the promotions within grades could be made at the schedule of 12 months for the lower and

18 months for the higher grades, as proposed in section 103 without producing any increase in the total pay roll of the Government.

The CHAIRMAN. Mr. Young, may I intervene at this point?

Have you made any investigation to determine the probable number of governmental employees covered on this chart here who will probably be discharged—for whom positions will no longer be available—after the wars are over? Or would you expect a big enough diminution of employment to offset the increasing costs of this bill?

Mr. YOUNG. I would not venture, Senator, to make that kind of a prediction. The subject of post-war size of the Government is a subject of constant and continual inquiry and concern to the Bureau.

Senator HICKENLOOPER. You don't need to limit that to the Bureau.

Mr. YOUNG. To all of us as taxpayers, as well as to you gentlemen.

The CHAIRMAN. Did you say "inquiry" or "controversy"?

Mr. YOUNG. I am not prepared to make any prediction as to what the post-war size of the Government will be. Obviously, it will be considerably less than it is now.

The CHAIRMAN. Mr. Flemming has something he desires to say.

Mr. FLEMMING. Just this, Mr. Chairman, along this line in considering the cost. I do think that we ought to keep under consideration the comment that Senator Byrd made yesterday, to the effect that as we move into more normal times, overtime among the group of employees we are talking about will diminish to a very low figure. Hence, these estimated costs, insofar as overtime compensation is concerned, are bound to go down the minute you move into VE-day and some agencies are cut back to 48 hours and others go back to 40 hours.

Then, of course, whatever reduction there is in the total number on the pay roll will affect not only overtime compensation but also the first item of $372,000,000, namely, the cost of the 15 percent increase.

Mr. YOUNG. I would like to add to Commissioner Flemming's comments that these estimates are, for the reason he has indicated, maximum estimates. We find that the only valid basis for making predictions was an assumed continuation of the present number of employees and the present working schedules.

Then as conditions bring about either a reduction in number of employees or working hours, obviously the cost of the proposal contained in this bill will be proportionately reduced.

Senator HICKENLOOPER. I think you are going to face a serious practical factor. As Mr. Flemming said just now, as overtime requirements go down living costs are going to stay about the same, at least for a substantial period of time, and there will be less money to buy the things that you will have to have. There will be a period of perhaps substantial hardship over and above what may be considered a hardship at the present time.

Is that reasonable to assume?

Mr. FLEMMING. Yes, and that is why, Senator, we feel that the proposed 15 percent increase in section 306 is so important insofar as the future of the Federal service is concerned.

Mr. YOUNG. In that connection, Senator, may I be permitted to call the attention of the committee to a passage in President Roosevelt's budget message of this year pertaining to this direct thought?

The CHAIRMAN. Yes.

Mr. YOUNG. The President said:

> Prior to the expiration of the overtime pay law the Congress should reexamine the entire subject of hours of work and pay. Regardless of the progress of the

war in Europe, many Federal employees will continue to be needed on a 48-hour work schedule and provision must be made for their overtime compensation. I recommend that the Congress enact permanent legislation which would allow overtime compensation at true time and one-half rate. When at some future date it becomes possible for most Federal employees to go on a 40-hour workweek their earnings will be materially reduced. A situation of hardship and unfairness will then exist until an increase in basic salary rates has been granted in recognition of the rise in the cost of living. I recommend a prompt reexamination of the Federal salary rates with a view to making adjustments consistent with the national stabilization policy.

The CHAIRMAN. Thank you. Mr. Young, may I ask this question? Have you some estimate for the committee as to what might be the cost of these within-grade advancements such as would be allowed under this law when we might guess that what would be normal conditions would be restored?

Mr. YOUNG. Yes. At the other extreme from the prediction that under a continuation of present turn-over and promotion rates there would be no increased cost, if turn-over and promotion rates should come back to the pre-war level of 7.3 percent per year for turn-over and 10.9 percent for promotions, then we estimate that the net increase in pay roll which would result from this section of the bill would be $20,600,000 per 100,000 employees. Or said another way, an average net increase per employee over a period of years of $206.

Now, you can apply that to any size of government anyone wants to venture to predict.

The CHAIRMAN. Will you repeat that? I did not understand your formula.

Mr. YOUNG. We think the maximum cost of this section 303, in the event turn-over and promotion rates should drop clear back down to the pre-war level, would be at a rate of $20,600,000 per 100,000 employees.

The CHAIRMAN. You mean for 100,000 employees who were promoted, or taken for the whole Government?

Mr. YOUNG. No. Take it for the size of the Government.

The CHAIRMAN. Then, assuming 1,000,000 employees, it would be $200,000,000?

Mr. YOUNG. $206,000,000.

Mr. FLEMMING. Each year?

Mr. YOUNG. Annually. That would not be cumulative, but the annual pay roll would, over a period of years of operation, have increased by that amount.

Senator HICKENLOOPER. In other words, the rough level average would be $206 increase?

Mr. YOUNG. Per employee.

Senator HICKENLOOPER. Regardless of the number of employees?

Mr. YOUNG. That is correct.

The CHAIRMAN. Mr. Davis, we understand you have some other responsibilities besides this. Can you wait a few minutes, or would you rather have us——

Mr. DAVIS. I am at your disposal. I will wait.

The CHAIRMAN. Mr. Young, of the Bureau of the Budget, has been testifying and I think will be through in a few minutes and if you can wait—we are fairly conscious of your heavy obligations. They do not have very much to do in the Bureau of the Budget, and Mr. Young says he can wait.

Mr. YOUNG. Senator, that completes my comment about the costs. I am very happy to yield to Mr. Davis.

The CHAIRMAN. Oh, no. I have one point I want to develop with you here.

You have prepared no estimate on the cost of increasing the salaries of our legislative employees?

Mr. YOUNG. That is right.

The CHAIRMAN. Now, I said rather facetiously yesterday when I was in a colloquy with Senator Byrd that the formula I applied in the drafting of this bill was this—that under the bill we are increasing overtime compensation of the administrative employees about 50 percent since there was a 15 percent allowance given to the legislative employees in lieu of overtime. I added the same percentage of increase for them as was being allowed in the bill for overtime compensation, and it came out 21.6 percent.

Now, I wonder if you could prepare the figures for this committee showing the additional cost for the legislative employees who would be affected by the provision of the bill as compared with the present cost.

Mr. YOUNG. We will be glad to, Senator. May I say that we have made inquiries of the Budget officers of both the Senate and the House and have learned from them that they were supplying that information directly to the committee.

If you wish, we will be glad to go back again and ask them for it.

The CHAIRMAN. I think perhaps it would be better if it did come from the Bureau of the Budget, anyway. Now, as I understand Mr. Flemming, there was no recommendation made on that feature of the bill?

Mr. YOUNG. That is correct, Mr. Chairman, in view of the fact that it did not involve employees of the executive branch of the Government and we made no comment on title II.

The CHAIRMAN. That being, you felt, wholly within the judgment of the Congress of the United States?

Mr. FLEMMING. That is correct.

The CHAIRMAN. We are very happy to have that.

Senator Byrd, Mr. Young from the Bureau of the Budget has just been giving us very valuable figures and information. I think perhaps you will want to ask him some questions. I am sure you will. But Dr. Davis is here now and before we have a further examination of Mr. Young, I suggest we might hear from Mr. Davis, the Director of Economic Stabilization.

Senator Byrd. I am sorry I am late, Mr. Chairman. The Naval Affairs Committee has another bill along the same line as this one.

The CHAIRMAN. Mr. Davis.

STATEMENT OF WILLIAM H. DAVIS, DIRECTOR OF ECONOMIC STABILIZATION

Mr. DAVIS. Well, Senators, I do not know just how much you want me to say or how much you want me to go into the particulars of this bill. I have read it and I have read Mr. Flemming's statement about it, and so forth, and discussed it with Dr. Taylor of the War Labor Board.

I can state my position in general very simply, I think.

The wage stabilization policy is based on two basic fundamental ideas. One of them is to hold the general level of wages, to have no

further rises, and the other is to do what equity we can within that limitation.

In other words, it was not a freeze, an arbitrary freeze of things as they were, but it was a policy of stabilization and still is. I am not afraid of that stabilization program so long as we have definite rules with limits in the rules and so long as we stick to those rules and make no exception whatever.

If we did not have the general rule, I think we would not really conform to that notion of American government which is that all men should be treated equal under similar circumstances. If we break the rule at all, we might as well throw it away and I would not want to be responsible for civilization.

Those are trite remarks on the subject, but they apply here, it seems to me, in this way. I think the employees—I think the Congress of the United States, I will put it that way—would not be in any way threatening the stabilization program to give to the employees of the United States, these employees covered by the bill, the wage adjustments which are permissible under the stabilization program.

It might be the judgment of Congress that it should for some reason give them less. I do not know. I say up to that limit Congress could give them the whole of it without impairing the stabilization program.

On the other hand, if Congress were to give to these people in any way an adjustment which is inconsistent with that program, we would never hear the last of it and we would not be able to hold the line.

So when Mr. Flemming came to me on the subject, I said that I would not be opposed—on the contrary, I would be in favor of it, as far as my judgment was asked, of giving to these workers the adjustment permissible under the rules of the stabilization program. I think they ought to be given that, provided I know anything about it.

It is inequitable, I think, not to do it. There has been, I think, Senator, an idea that somehow it is an honor—and I think it is—to work for the Government and that people are willing to work for the Government for less than they can get in private employment.

They may be. But when you get to the levels of income you are talking about here, in the face of a 30 percent increase in the cost of living that affects the people directly, I would be in favor of bringing them up to some decent level.

Senator BYRD. Mr. Davis, may I ask a question? When you speak of the wage-stabilization program do you mean the Little Steel formula?

Mr. DAVIS. I mean the Little Steel formula and the other rules completing the program.

Senator BYRD. Would you give an application of what you mean by a percentage of increase of wages over a certain time compared with some other time?

Mr. DAVIS. Yes; I would like to preface it a little bit by saying this: We have tried to explain to the American people—when I was with the War Labor Board—that the wage-stabilization program was basically this: No more general wage increases. Then we were enjoined to try to do equity within that limitation.

At the very start of the program, or rather, actually before it was announced by the President in April 1942, we had been working on

the problem of stabilization and before the act of Congress as you know, we had worked out this Little Steel formula.

Well, that formula was to do equity in a certain measure which we had determined from our judgment—exercised on the basis of the best statistics available—an equitable adjustment that could be made without threatening the stabilization. That was the 15-percent formula.

Senator BYRD. Fifteen percent over——

Mr. DAVIS. Fifteen percent of the straight time hourly earnings as of January 1, 1941.

Senator BYRD. Straight time hourly earnings. That did not take overtime into consideration.

Mr. DAVIS. No; that is right. And when we said that you can make that adjustment without threatening the program, that adjustment was made as an equity in view of the increase in cost of living.

That did not take into consideration overtime.

Mr. DAVIS. No; that is right. And we said, "You can make that adjustment without threatening the program" and that adjustment was made as an equity in view of the increase in cost of living.

There was not much of an offset against the increase in the cost of living. Now, there were other rules that were developed, the rule that they refer to as the bracket system. Perhaps you do not want me to go into details on that, but that is a rule with respect to differences in rates of pay for the same occupation in the same community.

We regretted the idea that there would be an attempt to equalize those rates and worked out with Justice Byrnes this bracket system which permits a man to come up only to the lower rate in the area in which he can buy labor.

Then we have, of course, by injunction of Congress, as well as in the President's original message, the substandard living adjustment which we were directed to make without regard to the cost of living. The point I am making, Senator, is that those rules are quite independent of one another.

But altogether the thing has been developed, Senators, to the point where the whole field is covered by definite rule, so that stabilization has been achieved—I mean, the variation has not been enough to bring about runaway inflation—it can be continued until we can get sufficiently rid of the war to increase the flow of consumer goods and services and hold the prices in that way.

We can do that if you go ahead with these rules as they are. Now, they do not do absolute justice. No rule does. But they work very well and I say to you that in my judgment if they are adhered to until we can turn around and get this flow of consumer goods and services, we are going to be all right in the wage field.

Senator BYRD. Well, the 15 percent is the main factor, isn't it?

Mr. DAVIS. Well, today quantitatively it is out of the picture because everybody has had the 15 percent now, so that today the main adjustments are under the bracket system and that, too, is pretty well out of the picture. That is one of the reasons there is all this pressure for a change in the rules.

The gravy is all gone and they are asking for another helping and you can't blame them for that.

The CHAIRMAN. Mr. Davis, you don't mean by that remark the Federal employees have had a 15 percent increase?

Mr. DAVIS. No; I am talking about the general industrial workers in the country. Of course, I ought to say this, that the industrial workers in the country are now chiefly concerned with what is going to happen to them when these cut-backs come, and they should be concerned; so are the Government offices that have any relation to that problem.

Those are the problems we are working on and I would like to say, Senators, if you will just leave the stabilization rules alone, continue to apply them until we can get these problems of reconversion solved by putting our heads together, we are going to be all right.

So, when I say—when I made that remark about gravy, I did not mean that there are not problems ahead, very real ones; there are.

Now, to get back to your question about the 30 percent. There has been an increase in the cost of living. I think Mr. Hinrichs will agree with this. Since January 1, 1941, substantially 30 percent—that is as good a figure as you need to take. People say, "Well, yet you only allow a 15-percent increase." But for most workers the actual straight time hourly earnings have increased more rapidly than their basic wage rates.

That does not apply so much to these Government employees. It is a matter of upgrading, and so forth, which is rigidly held down by the civil-service rules.

But to finish up what I started to say. So when Mr. Flemming came to me, I said to him that I would be in favor of a wage increase to Government employees if the War Labor Board were consulted and if they would satisfy me that the proposed increase was within their rules.

May I make this suggestion to you for what it is worth, although in so doing I may not be adhering quite to the protocol, I do not know. If I don't, you will forgive me, I am sure—but since there is in this bill more than one adjustment item and since, as I understand it, it is still in a formative stage, my hope would be that whatever the Congress finally decides to do, or whatever this committee finally decides to recommend to Congress, the bill should be submitted to the War Labor Board in some fairly formal manner so that you can have from the War Labor Board a finding that the changes would not be in violation of the program.

I suggest that for two reasons, because there are ways in which you can violate the program on overtime, and so forth, that might be very troublesome.

One of them is 10 percent for night work, which I do not like at all. That is a detail. But if the War Labor Board has gone over it, they can point those things out to you in detail.

Secondly, if the country knew that this change had been approved by the War Labor Board, so to speak, I think it would be very helpful.

Now, Congress, I suppose, does not ask the approval of the War Labor Board in one sense, but if it is the procedure to have the final result of the committee's deliberations approved in that sense by the War Labor Board, I should think it would be a very excellent thing to do.

I know it would be, from my point of view. It would help me a lot.

Now, just one more word. In looking the thing over in detail—and I don't want to go into the details but I do say this—this 10 percent for work after 6 o'clock worries me a whole lot. I spoke to Dr. Taylor about it this morning and asked him to look into it; he said

he would and would talk with Mr. Flemming about it. I think there are hidden dangers there.

The CHAIRMAN. We would appreciate very much having your advice on that, Mr. Davis—as to why you think it is an undesirable feature of the bill.

Mr. DAVIS. Well, what I say now is just expressing my doubts about it. Dr. Taylor and the War Labor Board could clear it up. But the difficulty is this—we have very definite rules for the amount of the second-shift premium which, in general, is limited to 4 cents an hour and the third-shift premium is limited to 8 cents an hour. There are exceptions to that which are well established in practice, but exceptions would not apply here.

Now, if you say that any work done after 6 o'clock at night is going to be at a premium of 10 percent it seems to me you are going to have claims from second-shift workers whose second shift runs after 6 o'clock (and it is bound to do that) for an increase in their shift differential. There is going to be fussing it seems to me about the fellow, for instance, who starts the second shift at 4 o'clock, and who will want to work his straight-time rate plus 4 percent for 2 hours and then will want to go up to 10 percent. You might say, "Well, this rule of 10 percent shall not apply to anyone except people who work on shifts that start after 6 o'clock."

That would give rise to some difficulties, too, perhaps. I do not know. Let us assume that you accept that much difficulty and that you have this provision in the bill. Then your next question is what the amount should be and I just don't think it should be more than 8 cents an hour.

I do not know what that percentage would figure out to. Maybe the Budget Bureau can tell us here. But that is the danger. I have discussed it and Dr. Taylor and Mr. Flemming, I am sure, will go into it in detail.

There is just one other thing I am uncertain about here. The War Labor Board from the beginning, in allowing this 15-percent increase, endeavored to include in the group of workers to whom the allowance was made, the largest possible number of workers—that is, all levels of wages—so that the group would include the minimum-wage man and on up to the highest-wage man in the plant, and then we averaged the total wage and allowed the 15 percent, not as a percentage increase but as so many cents an hour across the board, as we say.

For instance, take steel, where the increase turns out to be 4½ cents. We gave all steel workers 4½ cents. The fellow who worked for 50 cents got 54½ cents. The fellow who worked for $1.50, got $1.54½. Now, we did that quite deliberately and after very careful thought.

The basic purpose was, that we felt that with the rise in the cost of living the fellow who got the lower wage is really suffering more in proportion than the fellow who gets the high wage. That, unfortunately, is true not only in the proportion of dollars and cents but marketwise, the low-wage man is getting the short end of it. He always does.

"To them that hath it shall be given," and so forth. The cost of living has increased more for many persons than it has for me. The lower-priced goods have gone out of the market. There is more hidden increase in quality deterioration in the low-wage man's cost of living than in mine. The Bureau of Labor Statistics based its

finds, as you know, on allocation to different items of certain proportions to the total cost of living.

For instance, I think food is something like 40 percent and clothing 13 or 14 percent. Now, unfortunately, the food and clothing have gone up most. Food has been under good control now, excellent control, for a year or more, but clothing is our worst problem, right now.

I am having conferences with the Bureau of Labor Statistics next week. But food and clothing represent a larger proportion of a poor man's total expenditures than they do of other men's, as we all know. Housing has been kept pretty level. So it is actually true that the lower wage person has had a greater percent of increase in his cost of living.

We knew that would be so. So we said, "We will follow the policy of spreading this increase across the board and of favoring the little fellow." We have made departures in the War Labor Board from that policy in particular cases for particular reasons, but very few.

Now, I notice in this plan, the other procedure is proposed. It is a percentage increase. The fellow at $2,900 gets 15 percent on his $2,900. I do not know the reason. Mr. Flemming does, of course. There may be perfectly good reasons for doing it that way. But in the absence of what I think of as almost compelling reasons I must say that I would be in favor of an across-the-board increase that favored the low-wage person.

The CHAIRMAN. Mr. Davis, let me intervene there. If it is satisfactory to you, I would like to have Mr. Flemming state his opinion and position right now, and then you comment for the committee on that. I think this is very valuable to all of us.

Mr. FLEMMING. Mr. Chairman, just to round out the record on the point that Mr. Davis made relative to a certification from the War Labor Board. Insofar as the increase of 15 percent is concerned, as Mr. Davis appreciates, the Board did certify, as I pointed out yesterday, that the proposed increase of 15 percent for the Federal white-collar worker is entirely consistent with the Little Steel formula and the national wage-stabilization policy.

We did not put the other items in the bill specifically before the War Labor Board at this time, because they are similar to items in a proposed bill which the Civil Service Commission transmitted to Congress a number of months ago. Those items were all discussed with Judge Vinson prior to the time that the Bureau of the Budget authorized us to state to the Congress that those items were in conformity with the policy of the President.

Now, insofar as the night differential is concerned, we went into that at that time. Some of the members of Judge Vinson's staff were concerned about it at that time. Since then I have discussed it informally with Dr. Taylor. I pointed out that in the Federal Government we were up against a situation where by law the great bulk of the postal employees were already entitled to a 10-percent night differential from 6 p. m. to 6 a. m.

Certain other groups were already entitled to a 15-percent night differential.

It was felt that taking those facts into consideration and considering what is already the prevailing practice in a fairly large segment of the Government service, it would probably be wise to recommend the 10 percent. Mr. Young here has just written down a note which is

just off the cuff, of course, that on an average the night differential would probably approximate about 7 cents per hour which would be, of course, just a cent under the 8 cents that you have indicated.

Now, the cut-off point of $2,900 that you refer to does not apply to the 15-percent increase in basic rate of pay under S. 807. That enters into the present overtime-pay formula. The new formula for overtime that is incorporated in S. 807 is one that we worked out in order to parallel the practice of the Commissioner of Internal Revenue in similar situations in industry involving salaried workers, particularly in the brackets above $3,800.

That grew out of conversations that we had with Judge Vinson's staff at the time.

Mr. DAVIS. What do you mean by the "cut-off point"?

Mr. FLEMMING. In the present overtime pay bill there is a time and one-half provision. Really it is time and one-twelfth up to $2,900. Now, in the bill before the committee full time and one-half is paid up to $3,800. When you hit $4,600, the employee receives straight time. Above that he receives about one-half straight time. The amount in the highest brackets—$6,500 and up—is consistent with the present rate.

There is, as you indicate, a 15-percent basic-rate increase, but it is that particular proposal which the War Labor Board certified was in conformity with the wage stabilization policy.

Mr. DAVIS. Well, there is no doubt, as I understand it, that these workers have not had an increase in their basic rates of pay from January 1, 1941. It follows directly from that that to give them 15 percent now is not only within the stabilization program—I say not to give them 15 percent now would be outside of the stabilization program although Congress might decide that for some reason they wanted to keep them outside; but I think that to give the people the equity provisions that the program provides for is just as much part of the stabilization program as to deny them a larger amount, and I do not say that fundamentally from the point of view of equity at all. I mean from the point of view of stabilization.

But the two points I come back to are—one of them is, as I say, it is a general rule of the War Labor Board, I will put it that way, to spread the 15 percent in cents per hour across the board, thereby favoring the low-wage groups.

The CHAIRMAN. Mr. Flemming, I did not understand you to talk to that particular point, did you?

Mr. FLEMMING. No, I was just pointing out on that particular point that the proposed 15-percent increase in the basic rate—and that matter was put before the War Labor Board—has been certified as being consistent with the policy.

The CHAIRMAN. Yes, I understand that, but I think the committee will be interested to hear your views and Mr. Davis' views that the natural thing would be to calculate the 15 percent on all the salaries and equalize distribution in the hourly increases to all employees. That is what you stated.

Mr. DAVIS. Yes; you see either plan might be within the stabilization policy, but for reasons I have stated the very reasons that led the War Labor Board to follow the general rule, almost without exception, of spreading it across the board would seem to impel Congress to do

the same thing unless there are some special circumstances here that I do not know about.

Mr. FLEMMING. Mr. Chairman, in direct response, that raises certain basic administrative problems so far as our per annum group in the civil service is concerned. I would like to have the opportunity of thinking this through and commenting further to the committee.

Mr. DAVIS. Well, then I will just say one more word on the 10 percent at night. I wish you gentlemen would—as you suggested, Senator, I asked George Taylor this morning to look into it very carefully and confer with Mr. Flemming and I beg you to give him time to do that and get their full advice. When you get Dr. Taylor's advice, and after he has talked with Mr. Flemming, I am almost sure they will be together and you will certainly have the whole story.

That would be much better than the partial story I have tried to tell; I am very much concerned about this and it ought to be worked out so that everybody will know what is being done.

The CHAIRMAN. Unless someone has further questions to ask Mr. Davis, the chairman will express his appreciation. You have been a very great help and I think the committee will want to hear from you again.

Mr. DAVIS. Any time.

The CHAIRMAN. Thank you very much.

I see Senator Byrd has in hand the memorandum submitted by Mr. Young showing the anticipated increase in cost to the Government through the suggested program; I might say that it was suggested that the very large item for increased overtime compensation will probably be an ephemeral one, passing with the wartimes. Likewise, Senator Byrd inquired of Mr. Young and Mr. Flemming as to what extent they thought diminishing employment might overcome increasing per capita compensation but neither of them was willing to express any opinion on it.

If you desire to place in the record your own views on that, they undoubtedly would be of great value to the committee, Senator Byrd, because you have done the leading work on that in Congress, and I do think this is something on which the Senate would want to be advised about your ideas.

Senator BYRD. I will be glad to put into the record what I think it should be. My theory is that the Government employees ought to be paid fair wages and those employees who are unnecessary ought to be dismissed from the public service. That can be accomplished in the way of cutting down, I think. The committee of which I am chairman has repeatedly recommended a reduction of 300,000 immediately in the classified service. The Civil Service Commission says that can't be done. The Bureau of the Budget says it can't be done. I think it can be done.

All we have got to do is walk through some of these departments. It would not take a great deal of investigation to see that there can be curtailments, and I think the whole position of the Government employees would be immeasurably strengthened if those unnecessary employees were taken out of the service and then the remaining were paid properly adjusted wages.

I would like to get a little more explanation about this big increase in overtime pay by reason of the change in formula. As I read it, it is $252—is that the per capita?

Mr. YOUNG. Those figures are in millions of dollars, the total cost based on the coverage as at the end of December 1944; $252,600,000 would represent the increase in overtime.

Senator BYRD. That is the increase due to changing the formula?

Mr. YOUNG. That is right, and that figure relates to an assumed continuation of present salary rates.

Now, if salary rates were increased by 15 percent, look down the column headed "present cost" and take "(b)," the overtime under the present formula with a 15 percent increase which would be $707,100;000. It would be increased by $290,000 if the formula was changed.

Senator BYRD. A total increase of $768,000,000 a year.

Mr. YOUNG. That is right. That is the sum of the increase for these three major provisions.

Mr. FLEMMING. That is, assuming all the way through that the Government is the size it is at present and with a 48-hour week.

Mr. YOUNG. Well, again as to that assumption of a 48-hour week I would like to make some comment about the suspension of the Saturday half-holiday law. I would like to express the hope that at an early date after the end of hostilities in Europe it will be possible to reduce hours of work in many of the Government departments and agencies, and I would like to express the further hope that as hours are reduced we work toward a 5-day, 40-hour week.

Now, if those objectives should be accepted by the committee and by the Congress then the mere suspension of the Saturday half-holiday law would complicate that process; hence I think it is desirable that consideration be given to some arrangements which would permit flexibility of hours and reduction of hours in those departments and agencies that can accomplish their work on a shorter work schedule as soon as the general war conditions and general employment conditions will permit it.

The CHAIRMAN. Do you have any comment on that, Mr. Flemming?

Mr. FLEMMING. I think that the objectives outlined by Mr. Young are desirable objectives.

The CHAIRMAN. Well, Mr. Flemming, might I ask your opinion of this? How soon after the Japanese War is ended would you be of the opinion that we could expect to restore employment to the 40-hour week, generally speaking?

Mr. FLEMMING. It seems to me that we ought to be able to move very, very rapidly in that direction after the end of the Japanese War.

The CHAIRMAN. Now, Mr. Young, of this $768,000,000, how much of it would come from the increase in the basic pay, and how much from increase in the overtime pay formula?

Mr. YOUNG. $372,800,000 would come from the increase in the basic pay; $383,000,000 would come from the overtime based upon the 15 percent higher rate of pay.

The CHAIRMAN. Well, that is to say, less than half of the total increase would come from the basic increase of 15 percent.

Mr. YOUNG. That is right.

Senator BYRD. Am I correct in stating that the total over-all increase is approximately 25 percent for the same number of employees?

Mr. YOUNG. I think it would be about 22 percent, Senator.

Senator BYRD. Well now, you have got here, present cost—this second line is "Present cost," $2,485,000,000.

Mr. YOUNG. That is right.

Senator BYRD. Now, you add "(b)" to that, don't you?

Mr. YOUNG. Yes, sir.

Senator BYRD. That makes a total of $3,192,000,000, and then you say the increase would be $768,000,000, assuming that the increase is made and the overtime is based on that basis. That is approximately 25 percent, isn't it?

Mr. YOUNG. That includes the night differential figure and brings it up to approximately 25 percent.

Senator BYRD. Instead of a 15-percent increase, it is actually 25 percent, assuming overtime?

Mr. YOUNG. I think it should be added that the night differential applies to a very small number of employees.

Senator BYRD. I am not talking about the night differential. I am talking about the whole picture. If the overtime is changed and 15-percent increase is made, and assuming we continue the same number of employees as before, there will be an increase in the cost of government of 25 percent and not 15 percent.

Mr. YOUNG. That is true.

Mr. FLEMMING. As we move in and eliminate overtime, it would work down to 15 percent.

Senator BYRD. Yes; but if it continues as we are going now, it will be a 25-percent increase to the Government, and that will be reflected approximately on the basis of 25 percent to each individual employee except those that do not get overtime in the higher brackets.

Mr. FLEMMING. That is right.

The CHAIRMAN. Mr. Young, just to clarify this problem a little further along the lines discussed by Senator Byrd. The present overtime-pay formula has added about 20 percent to the wages of the Federal workers, hasn't it?

Mr. YOUNG. That is right.

The CHAIRMAN. And this will increase it to a little over 30 percent.

Mr. YOUNG. That will be a little under 30 percent; 30 percent on salaries up to and including $3,800 and a lesser amount above that line.

The CHAIRMAN. So this formula on overtime would add about 10 percent to the take-home, and the basic increase of 15 percent would make the 25 percent that Senator Byrd is asking about.

Senator Byrd, I might intervene with this comment: I do think it is unfortunate from a psychological viewpoint that we have to approach this pay bill with a suggested increase of 25 percent in the total compensation.

On ther othe hand, we are dealing with two different problems, one a 15-percent increase in the basic wage which, in the opinion of the chairman, is long overdue; and the other comes from the attempt to get the overtime-pay formula for Federal workers in line with the industrial formula.

Senator BYRD. Of course, Mr. Chairman, that involves the number of days that are allowed for leave, too, and the number of days for sickness. I mean you have to consider that whole picture if you want to compare it strictly with the industrial workers.

I am strongly in favor of the 15-percent increase in basic pay. I think that is entirely justified and proper. I want to be perfectly frank in saying I am not satisfied about the other question. That is my personal position. I have not gone into it fully. I think it would be unfortunate to present the Congress a bill that actually gives a

25-percent increase to the employees if they continue to work their present schedule.

There may be difficulty in passing such a bill. I see no particular justification for this change in the overtime formula which has been in existence on this basis for a long time.

The overtime will increase the total cost 10 percent.

The CHAIRMAN. I see the difficulty in getting the Congress to accept the entire bill. One thing that might be wiser would be to make the basic increase at this time if it can be done and wait a year thereafter until overtime has been largely done away with and then bring the Federal standards into conformity with the industrial.

Senator BYRD. Well, the opposition to this bill will be on the overtime, assuming it is continued. Nobody can say whether it will or will not be. If it is continued it might be better to bring in an overtime bill on the other basis; however, to combine the two, with a 25-percent increase—I am somewhat doubtful of that, and I speak as one who is friendly to the Government worker, especially with respect to the 15 percent, which I think is long overdue.

I would like to know a little more about the overtime, if there is any good justification or reason for it. I know what you are trying to do is to put it on the basis of the industrial workers, which is pretty difficult to do.

Industrial Government workers, of course, are taken care of by the War Labor Board.

Mr. YOUNG. Mr. Chairman, might I be permitted to call attention also to the fact that there is not only a contrast between the method of calculating overtime as between Government white-collar workers and industry but also the contrast within the Government itself, in which a very large number, nearly a million employees, have no overtime calculated at present in precisely the same manner as it is calculated in industry.

So there is not only the Government-industry contrast, but there is a contrast internally within the Government.

Senator BYRD. I know they are doing a different kind of work. I did not ask Mr. Davis as to whether the supervisory officials in these various corporations receive overtime. I do not think they do. I may be mistaken. This bill gives them overtime here.

The head of the bureau who fixes his own overtime receives the benefit of the number of hours that he decides his bureau should work overtime.

The CHAIRMAN. Do you have a comment on that, Mr. Flemming?

Mr. FLEMMING. Mr. Chairman, of course the reason why we reopened the overtime issue in our presentation of the matter to the Congress is that the present Overtime Pay Act expires on June 30. The issue needs to be faced. I would suggest, Mr. Chairman, that when the Army and Navy representatives appear, and I think probably they are scheduled tomorrow, they will be able to give Senator Byrd specific instances showing that the computation of overtime for one group on one basis and for another group on another basis has led to very difficult administrative problems in the operation of their establishments. I think that will help to clarify, to a very considerable degree, the issue you have raised in connection with this overtime proposal. There is not only the equity of the situation, which we feel rather keenly—we think it is rather unfair to discriminate between two groups that are working in the same establishment, insofar as

computing overtime pay is concerned—but also, when you discriminate, then you immediately create administrative problems for those who are operating those establishments that are very difficult to solve.

I have heard of some specific cases, but I won't go into them. I know that Admiral Crisp, of the Navy, for example, is prepared to give some very concrete information along that line.

Senator BYRD. Prior to this emergency, did the white-collar workers perform any overtime as a rule?

Mr. FLEMMING. Normally they were not called upon to work overtime.

Senator BYRD. As a matter of fact, this question is due entirely to the emergency, isn't it? It is not conceivable that when the war is over there is going to be any overtime.

Mr. FLEMMING. Except in a few isolated cases.

Senator BYRD. That would not be of any consequence?

Mr. FLEMMING. I think certainly the hours of work will go back to 40. It seems to me, as I said yesterday, that government must set the right kind of an example. If some people are going to work a lot of overtime it means that some other people are not going to have an opportunity to work at all.

Consequently, it is going to be necessary to pull back to a basic workweek generally. There will be some exceptions here and there.

Senator BYRD. Now, if your total cost here of nearly $300,000,000 is in overtime, I say 40 percent of the increased pay in overtime which the Federal employees will enjoy may be for not longer than 6 months after it becomes operative, assuming that the war does not last too long in Japan.

It might be—it might endanger the other increase. I do not know. I think, Mr. Chairman, that ought to be given very full consideration.

Mr. FLEMMING. I really think the testimony of the War and Navy Departments representatives will be very helpful in considering that particular problem.

Senator BYRD. Still they have gone through the war period on this basis, and it has been very satisfactory.

Mr. FLEMMING. Well, they have had some difficulties along this line.

Senator BYRD. Everybody has had some difficulties. But even private industry has had difficulties. I know the War Labor Board in many instances refused to increase the white-collar workers in industry. I have taken it up with them. There was some formula they had. There was quite a bad situation, especially in the banks.

Mr. FLEMMING. I think that they have been willing to increase as far as basic rates are concerned.

Senator BYRD. Yes; but they did not make these allowances which Mr. Davis is referring to here, which amount to as much as 15 percent in some instances. They refused to do it, and these people went to other work.

The CHAIRMAN. Mr. Young, did you have some charts here that you wanted to put in evidence?

Mr. YOUNG. Mr. Chairman, I would be glad to leave for the information of the committee some charts which portray graphically the trend of the cost of living and earnings for Federal salaried employees, for the average Federal employees, and for workers in industry. I think the chart does not call for discussion or explanation at the moment, but it may be of interest to the committee.

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 726

FEDERAL EMPLOYEES PAY ACT OF 1945

JUNE 8, 1945.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAMSPECK, from the Committee on the Civil Service, submitted the following

REPORT

[To accompany H. R. 3393]

The Committee on the Civil Service, to whom was referred the bill (H. R. 3393) to improve salary and wage administration in the Federal service; to provide pay for overtime and for night and holiday work; to amend the Classification Act of 1923, as amended; to bring about a reduction in Federal personnel and to establish personnel ceilings for Federal departments and agencies; to require a quarterly analysis of Federal employment; and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

1. *Overtime pay.*—The temporary War Overtime Pay Act of 1943, under which about 1,480,000 employees have been receiving extra pay for working longer hours, expires on June 30, 1945. This enactment and its immediate predecessor, the act of December 22, 1942, were the first laws in the history of the United States Government to provide overtime pay for salaried workers outside the postal service on any general basis. They superseded a variety of special temporary laws, applicable only to specified departments and groups, which had produced unwarranted discriminations and inequities.

If, on July 1, 1945, the War Overtime Pay Act of 1943 is not replaced by continuing legislation authorizing overtime pay for overtime work, the general situation will be that salaried employees outside the postal service can and will be required to work overtime without additional compensation therefor. No other large group of Federal employees will be so treated. The Government, although a single employer, will count hours in excess of 40 a week as compensable overtime for some employees and as part of the regular basic workweek for others.

Overtime pay is compensation for work performed outside of and in addition to that required by the employee's basic workweek. From the employee's standpoint, he should receive extra pay for work beyond his normal working hours, and the rate of overtime pay in principle should be higher than the regular rate to compensate for increase in fatigue, decrease in normal leisure time, and often additional personal expense. From the Government's standpoint also, overtime should call for extra payment at a premium rate, because overtime work under usual conditions is to be discouraged. It is generally not as effective in the long run as work during regular hours of duty. Further, the necessity of securing additional funds to meet the extra expense for overtime should be an occasion for the encouragement of better management to avoid overtime work schedules.

In normal times, overtime service should be seldom required, but when it is required it should be paid for.

During the war the necessities of the service have required a general 48-hour workweek. It is the expectation of the committee that hours of work will be reduced as soon as possible. A letter from the President, dated June 1, 1945, to the chairman of the committee, indicates that it will be the policy of the Government to reduce hours of work in labor-market areas classified in groups II, III, and IV by the War Manpower Commission, i. e., in areas other than those in which acute labor shortages exist or are anticipated that will endanger essential war production. A copy of the President's letter appears at the end of this report.

After the war, the provisions of this bill will permit the establishment of 40 hours a week as a general standard.

There is no permanent general law authorizing overtime pay for salaried employees outside the postal service. Consequently, for such employees, express statutory authorization is required for payment for overtime services in addition to their basic annual rate.

One of the principal purposes of the bill is to provide a continuing authorization for extra payment for overtime services, whenever such services are required by the necessities of government.

Another purpose of the bill in connection with overtime pay is to equalize the method of computing overtime pay for salaried employees with that established under existing law for wage-schedule employees, to the extent possible under salary stabilization policy, and within reasonable present cost limits.

In the mechanical trades and crafts paid at rates fixed by wage boards, the overtime hourly rate is 1½ times the straight-time hourly rate. There are 2,080 hours in the basic, or straight-time, work year, consisting of 52 weeks of 40 hours each.

This is the same basic work year that now exists for salaried employees. However, the War Overtime Pay Act of 1943 now establishes for such employees the following method of computing overtime hourly rates: Divide the annual rate by 360 to get the straight-time daily rate. Divide this quotient by 8 to get the straight-time hourly rate. Multiply this result by 1½ to get the overtime hourly rate. The basic work year underlying this computation is 360 days of 8 hours each, or a total of 2,880 hours. The effect is to diminish the overtime hourly rate for salaried workers as contrasted with that for mechanical trades and crafts or labor positions of equal basic rates. This formula, it will be seen, does not realistically reflect the length of a salaried

employee's actual basic work year of 52 weeks of 40 hours, or a total of 2,080 hours.

Also, under the War Overtime Pay Act, not more than $2,900 of salary can be used in the computation of overtime pay.

It is pertinent to note in passing that the postal salary bill, H. R. 3035, recently passed by the House, stipulates that overtime payments be computed from annual rates on the basis of a work year of 253 days, which is 365 days less 52 Sundays, 52 Saturdays, and 8 holidays. That is, the overtime hourly rate is computed by dividing the annual rate by 253 times 8, or 2,024, and multiplying the quotient by 1½.

On the basis of 8 hours of overtime each week, in addition to 40 basic hours, the formula of the War Overtime Pay Act of 1943 results in a 21.67-percent increase in aggregate compensation for employees receiving $2,900 or less. That is, for working 20 percent more time, the employee receives 21.67 percent more pay. This is time and one-twelfth (21.67 divided by 20). True time and one-half means that for working 20 percent more time, the employee receives 1½ times 20, or 30 percent more pay.

The bill provides overtime pay at true time and one-half rates for employees receiving salaries not in excess of $2,980. Employees receiving higher salaries are to be paid overtime at a gradually decreasing rate, in accordance with a schedule contained in the bill.

For employees receiving basic compensation of $2,980 or more, the tapering schedule used in the bill (shown below in the explanation of sec. 201), applies the Government's salary stabilization policy used in analogous situations in industry. Also, it is intended to preserve that feature of the present War Overtime Pay Act which provides the same dollar amount as overtime pay in the higher brackets.

The Government's stabilization policy in this respect is based upon the recognition that when hours are generally extended and some workers receive additional pay for overtime, adjustments in aggregate compensation must be made for other workers in order that proper relationships may be maintained between duties and responsibilities, on the one hand, and pay, on the other. The adjustment that is made in such a situation is to authorize additional amounts of pay to employees in the higher classifications or levels in such a way that each succeeding higher level receives a proportionately lesser amount.

2. *Basic salary rates.*—The schedules of pay rates prescribed by Congress in the Classification Act of 1923, as amended, under which 1,220,000 Government employees are compensated, have remained virtually static since 1930. Since January 1941 the cost of living has risen at least 26 percent. Other workers, both in Government and in industry, have enjoyed basic pay increases up to the 15-percent limit established by the Little Steel formula of the National War Labor Board to compensate, at least in part, for this considerable increase in living expenses. Yet, with minor exceptions of slight over-all effect, the basic compensation schedules of the Classification Act are at the same levels as they were 15 years ago. To establish a reasonable relationship between the rates of the Classification Act and the changes that have taken place in economic conditions, the bill proposes basic pay adjustments consistent with national salary and wage stabilization policy.

By and large, the present basic salary levels of the Classification Act were established in 1928 and 1930. No changes since that time have been made for the professional and scientific service, the clerical, administrative, and fiscal service; the greater part of the subprofessional service; and the highest two grades of the crafts, protective, and custodial service. In these groupings fall the great bulk of the employees concerned.

With respect to smaller groups, basic pay levels of the Classification Act have been raised since 1930. These groups are in the first two grades of the subprofessional service (e. g., hospital attendants and minor laboratory aides), the first eight grades of the crafts, protective and custodial service (e. g., messengers, guards, maintenance mechanics, etc.), the clerical-mechanical service (Bureau of Engraving and Printing), and part-time char forces.

Most of the minimum or hiring salaries are those of 1928. The effect of the 1930 act was to add one step at the top of most salary ranges. However, the highest three salary ranges of the professional and scientific service and the clerical, administrative, and fiscal service are today the same as they were in 1928. In those brackets are the top technical and management positions in the Government service.

The salary scales of the Classification Act, under which the bulk of the white-collar workers of the Government are compensated, have thus lagged far behind the increase in the cost of living.

In January 1941 the national cost-of-living index (1935–39=100), computed by the Bureau of Labor Statistics, was 100.8. In December 1944 it was 127. This means that between January 1941 and December 1944 the cost of living had increased 26 percent. Among the items making up the cost-of-living budget, the cost of food, for which the average family spends one-third or more of its income, increased 40.5 percent in the same period.

A report to the President, November 10, 1944, submitted by William H. Davis, Chairman, President's Cost of Living Committee, confirmed the accuracy of the Bureau of Labor Statistics index figures as "a competent measure of price changes for goods customarily purchased by families of wage earners and lower-salaried workers living in large cities." The committee also reported that under the exceptional market conditions of wartime, "allowance should be made for a hidden increase in the cost of living of probably as much as 3 and certainly not more than 4 percentage points, due to quality deterioration, disappearance of cheaper goods, decrease of special sales, and increases in underreporting of prices actually charged."

The Little Steel formula, in the words of George W. Taylor, Chairman of the National War Labor Board—

> holds open the door for those groups of employees whose wages have lagged far behind the cost-of-living increase. When the Board created the Little Steel formula in 1942, it knew that approximately two-thirds of American workers already had received more than a 15-percent increase above their January 1941 rates. The general cycle of wage increases was interrupted by the wage-stabilization program, and the Board thought it only just that the laggards be brought up at least to the 15-percent rise in cost of living at that time.

The facts presented to the committee show ample justification for increasing basic pay rates under the Classification Act within the limits of the Little Steel formula, in order to compensate, partially at least, for the general rise in living costs.

Further evidence indicates the relatively disadvantageous position of Classification Act employees in relation to other Government employees whose compensation is fixed under prevailing rate wage schedules. The latter group have received basic pay increases, generally up to the limit of the Little Steel formula; have been paid for overtime at true time and one-half rates, instead of time and one-twelfth; have been subject to more liberal within-grade or merit-increase plans; and have enjoyed the same opportunities as any group for promotion or transfer to higher-paid jobs of greater difficulty or responsibility.

In deciding upon the amount of increases in basic rates of pay, and upon the manner in which they should be apportioned among the various brackets, as shown in detail in the discussion of section 405, the committee necessarily was governed by the requirements of national salary and wage stabilization policy. In particular, the committee recognized that any program for salary increases at this time must be in conformity with the Little Steel formula. The plan recommended in the bill meets pay stabilization requirements.

Nevertheless, it is the sense of the committee that factors other than the relationship of salaries to living costs deserve more weight in the future than can be given to them at present. In the postwar period, the problems of Government, the inevitable complexities of administration, and the importance of effective service to the people will justify unusual emphasis upon high standards in selecting, promoting, and retaining personnel. This is particularly true of the middle and higher brackets. But with high qualification standards must be associated rates of compensation that are reasonably attractive to persons who meet those standards.

The committee appreciates that Government cannot compete with industry in this respect, nor should it attempt to do so. But, at an appropriate time, the Congress can and should make the gap between private salaries and public salaries less disadvantageous to Government than it is now and will still be under the plan of increases recommended in the bill.

The sliding scale used in this bill, which in effect discriminates against those in the middle and higher brackets, is not intended as a permanent policy.

3. *Personnel ceilings.*—The size of the Federal staff is an important factor in determining the cost of governmental administration. The determination of numbers of employees required for the proper and efficient performance of the work of the Federal Government presents difficult and complex problems.

During the war and reconversion periods, these difficulties and complexities are multiplied. Going into the war period, the tendency of many organizations was to hoard manpower by building their staffs above immediate actual needs in anticipation of future increased work loads. As the Nation moves into the reconversion period, governmental organizations may be slow to release personnel and effect corresponding reductions in expenditures on their own initiative. Unless direction is provided, the release of excess personnel and reductions in expenditures will not keep pace with the reduction in work load resulting from the curtailment of functions.

The committee believes that the Director of the Bureau of the Budget in making his determinations of personnel requirements under

the War Overtime Pay Act of 1943, has exercised a function which should be provided for on a continuing basis.

The committee recommends that provision be made by Congress, as in section 607 of the bill, for a periodic determination by the Director of the Bureau of the Budget of the civilian personnel requirements of the departments and agencies, for the release by the agencies of all personnel in excess of determinations made by the Director, and for authority for the Director of the Bureau of the Budget to reserve from expenditure any savings which he determines to be possible as a result of reduction in personnel.

For the duration of the present war, the bill exempts certain positions from these determinations, particularly crafts, trades, and labor positions paid under wage board procedures in the War and Navy Departments, and certain personnel connected with the merchant marine who are employed or paid by or through the War Shipping Administration.

4. *Forty-hour basic workweek policy and pay computation methods.*—The War Overtime Pay Act of 1943 established 40 hours uniformly as the length of the basic workweek for salaried employees. In view of the expiration of this law on June 30, 1945, this policy should be established on a continuing basis. To make this policy effective, the committee has provided in the bill for the repeal of three statutes, passed in 1893, 1906, and 1931, which interfere with this objective.

At present, no permanent law uniformly identifies service as overtime when performed by a salaried employee, i. e., one paid on a per annum basis. Outside the postal service, there is no permanent 40-hour statute or other permanent law which states the exact number of hours a day or a week required for full-time work in salaried employments, after which overtime begins. This is a matter which by the act of March 14, 1936 (5 U. S. C. 29a), has been left for decision by each department and agency.

In addition to the postal service, the Government's present 40-hour basic workweek policy applies to about a million employees paid under prevailing-rate schedules and subject to section 23 of the act of March 28, 1934.

It is desirable to establish by legislation a definite, uniform number of hours as the length of the basic workweek, because (*a*) the number of hours in the basic workweek is the number of hours a week an employee is regularly expected to work to earn his basic rate of pay and (*b*) service in excess of that number of hours is identified as overtime, for which additional compensation is payable.

The committee favors such action, as indicated in section 604 of the bill.

One of the laws which would be repealed by section 604 is the act of March 3, 1893, as amended. This law, which applies to the departmental service, requires a minimum workday of 7 hours; permits extension of such hours by administrative officials; but expressly provides that "in case of an extension it shall be without additional compensation."

The establishment of a 40-hour basic workweek policy would also make it necessary to repeal the Saturday half-holiday law, rather than to continue its present suspension. This law states that 4 hours shall constitute a full day's work on Saturdays, and that compensatory time off [in lieu of overtime pay] shall be granted for Saturday work in

excess of 4 hours. The proposed establishment of a 40-hour basic workweek would naturally encourage the establishment, administratively, of basic workweeks of 5 days of 8 hours each, as has been done for the postal service and for mechanical crafts, trades, and labor groups in navy yards, ordnance establishments, and other industrial plants of the Government.

The committee recommends, also, the expression of policy in section 604 of the bill that for all pay computation purposes, basic per annum rates of compensation established by or pursuant to law shall be regarded as payment for employment during 52 basic workweeks of 40 hours each, or a total of 2,080 hours.

At present, the basic salaries of employees paid on a per annum basis are regarded as payment for every calendar day in the year, including Sundays, even though they are not, of course, required to work every such day, and even though for pay computation purposes, the year is regarded as composed of 360 days, rather than 365 or, in leap year, 366.

Section 6 of the act of June 30, 1906, governs the computation of pay for fractions of a year worked by employees outside the postal service whose compensation is on an annual or monthly basis.

Some results of this law are summarized below:

1. For pay-roll computation purposes, per annum rates are associated with 360 days, regardless of the number of days or hours that employees are actually required to work in a year.

For example, a per annum employee whose regularly scheduled tour of duty does not include Sunday is nevertheless regarded as being paid for Sunday. If on transfer there is a break in service on a Sunday, he loses 1 day's pay (17 Comp. Gen. 138, August 14, 1937; 19 Comp. Gen. 236, August 22, 1939). For disciplinary reasons he may be suspended on a Sunday—when he would normally be off duty anyway—and 1 day's pay deducted (23 Comp. Gen. 541, January 25, 1944).

2. The act adds a theoretical twenty-ninth and thirtieth day to the month of February, except in leap years when a theoretical thirtieth day is added. "We cannot convert them into actual days. There can be no actual service to correspond to them. They are theoretical and used as a basis of computation only, and as such, and by virtue of the express provision of the statute, they must attach themselves to and become practically a part of the twenty-eighth day" (20 Comp. Dec. 772, Apr. 30, 1914).

Examples:

(*a*) A regular per annum employee works 27½ days during February, but is in a nonpay status during the second half of February 28, the last day of that month. He is entitled only to 27½/30 of a month's pay. For being in a nonpay status during the afternoon of February 28, he loses 2½ days' pay (5 Comp. Gen. 935, May 25, 1926).

(*b*) When an employee begins work on February 28 of a nonleap year, he receives for that 1 day's service 3/30 of a month's pay, i. e., 3 normal days' pay. In the reverse situation, when an employee serves 27 days in February and is separated,

the Government retains 3/30 of a month's pay for the 1 non-work day—the 28th of the month (10 Comp. Gen. 11, July 3, 1930).

3. An employee entering the service on the 31st day of a month is not entitled to pay for services rendered on that day. The day eliminated from a 31-day month is the last day of such a month (11 Comp. Gen. 105, September 10, 1931).

The divisor of 2,880 (360×8) presently used to derive straight-time hourly rates from annual rates for overtime pay purposes stems from this 1906 act.

The real difficulty lies in the fictions inherent in the 1906 law. It is based on a type of calendar year that does not exist; it does not recognize the actual number of working hours in a year. This law also should be repealed.

In order to (*a*) simplify pay roll-procedures and computations, (*b*) bring about more fairness and consistency in converting rates from one time basis to another, and (*c*) tie into the proposed continuing overtime pay provisions, the committee recommends the provisions of section 604. These provisions would (*a*) relate the pay for fractions of a workyear directly and realistically to the number of hours in the fractional work period being paid for and (*b*) establish 26 pay periods, each composed of two basic workweeks, in lieu of the customary 24 semimonthly pay periods used at present for per annum employees.

5. *Other items.*—The United States Government, a single employer, now establishes pay policies and methods for its employees in a large number of individual statutes. Frequently, inconsistencies and inequities are created by treating similar groups in different ways. Also, the Government establishes pay policies for industry that it does not always adopt for its own employees. Accordingly, apart from overtime pay and adjustments of basic pay levels, it is desirable, whenever occasion permits, in such matters as night-pay differentials, holiday pay, or merit increases within the employee's established pay scale, to move toward equalization of policy, not only within the Government but between Government as an employer and Government as a regulator of private industry.

EXPLANATION AND DISCUSSION OF THE BILL

The bill, proposed to be cited as the Federal Employees Pay Act of 1945, consists of six titles, as follows: I, Coverage and Exemptions; II, Compensation for Overtime; III, Compensation for Night and Holiday Work; IV, Amendments to Classification Act of 1923, as amended; V, Employees of Legislative and Judicial Branches; and VI, Miscellaneous Provisions.

TITLE I—COVERAGE AND EXEMPTIONS

Section 101. Coverage.—This section identifies the groups of positions and employees covered by the various provisions of the bill.

The provisions for overtime, night, and holiday pay set forth in titles II and III apply to about 1,480,000 employees in the executive branch of the Government. About 1,220,000 of these are paid under the basic compensation schedules of the Classification Act of 1923, as amended.

Titles II and III also cover about 11,000 employees not in the executive branch. Among these are employees of the municipal government of the District of Columbia and those of the Library of Congress, the Botanic Garden, the Office of the Architect of the Capitol, the Administrative Office of United States Courts, and the Municipal Court and the Municipal Court of Appeals of the District of Columbia, who are subject to the Classification Act.

Title IV, which consists of amendments to the Classification Act of 1923, as amended, applies only to positions and employees subject to that act. One of these amendments, section 405, provides increases in basic compensation schedules. The same basic-pay increase plan is followed in section 602 for positions outside of the Classification Act whose salaries, being specifically prescribed by other acts of Congress, can be changed only by legislative action.

However, other positions in the executive branch for which existing law provides no statutory control over basic salaries are not included within the provisions for increases in basic compensation. However, they are covered by the overtime-pay provisions of the bill, as is the case under the present War Overtime Pay Act of 1943.

These positions are scattered throughout the service and are located in many organizations, including the executive departments, the Reconstruction Finance Corporation, Federal Housing Administration, Home Owners' Loan Corporation, Federal Deposit Insurance Corporation, Export-Import Bank, Federal Reserve System, Farm Credit Administration, Securities and Exchange Commission, Office of Price Administration, Selective Service System, Office of War Mobilization and Reconversion, Retraining and Reemployment Administration, Surplus Property Board, and Office of Contract Settlement.

Organic acts, appropriation acts, or other statutes in such cases confer upon the heads of the agencies authority to fix and adjust basic salary schedules for such positions from time to time by administrative action. The committee anticipates, accordingly, that this authority will be exercised to bring such schedules into line with the compensation schedules of the Classification Act, as amended by this bill.

The committee wishes to emphasize that it is within the power of such agencies to conform to the job evaluation and pay standards of the Classification Act, without the necessity of additional legislative authorization. A good many departments, in expending excepted funds, have done so as a matter of good business. In fact, Executive Order No. 6746, June 21, 1934, as amended, which is followed by some of the agencies named above, specifically permits them to elect to follow the provisions and compensation schedules of the Classification Act of 1923, as amended. When that election is carried out under Executive Order No. 6746, all the provisions of the Classification Act, as amended, become applicable, according to a decision of the Comptroller General (14 Comp. Gen. 867, May 31, 1935).

It is further the opinion of the committee that as far as practicable these positions should be classified and graded in the same manner and according to the same job evaluation standards as positions under the Classification Act are classified and graded. Until this is done, there can be no assurance that the basic pay scales sought to be raised have been established or are being applied in conformity with the general system approved by Congress in the Classification Act

of 1923, as amended. A review of this sort would seem to be essential before any attempt is made to apply by administrative action the basic pay increase plan set forth in section 405 of the bill.

Section 101 further defines the coverage of title V to include employees of the legislative and judicial branches who are not covered by title II, III, or IV. It also refers to title VI, which consists of miscellaneous provisions applicable to various groups of positions and employees as indicated in that title.

Section 102. Exemptions.—Elected officials (except officers elected by the Senate or House of Representatives who are not members of either body), judges, and heads of executive departments, independent establishments and agencies, or Government-owned or controlled corporations, are excluded from the bill by subsection (a) of this section. This subsection also excludes District of Columbia employees paid under the Teachers' Salary Act and the Metropolitan Police and the Fire Department of the District of Columbia.

Except for the purposes of the personnel ceiling provisions (sec. 607), the following are excluded by subsection (b): (1) Postal field service; (2) natives paid local prevailing rates in extracontinental areas; (3) Inland Waterways Corporation; (4) Tennessee Valley Authority; (5) individuals in the merchant marine service referred to in section 1 (a) of the act of March 24, 1943; and (6) the United States Park Police and White House Police.

Also, except for the purposes of the personnel ceiling section and for the purpose of providing true time and one-half overtime rates for prevailing-rate or wage-board employees paid at monthly or per annum rates (sec. 203), subsection (c) excludes all employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

The personnel ceiling section, however, will not be applicable until the cessation of hostilities in the present war as proclaimed by the President to certain groups in the merchant marine service and to mechanical trades, crafts, and labor positions in the War and Navy Departments.

Likewise, except for personnel ceiling purposes (sec. 607) and for the purpose of maintaining the present general policy of applying the wage practices of the maritime industry (sec. 606), subsection (d) excludes from the bill employees of the Transportation Corps of the Army on vessels operated by the United States, vessel employees of the Coast and Geodetic Survey, and vessel employees of the Panama Railroad Company.

TITLE II—COMPENSATION FOR OVERTIME

Section 201. Overtime pay.—This section provides for compensation for overtime work in excess of 40 hours a week. The method of computing overtime pay is as follows:

For employees receiving basic compensation at a rate less than $2,980 a year, the overtime hourly rate will be computed by dividing the annual rate by 2,080 and multiplying the quotient by 1½. For this group, accordingly, overtime will be computed at true time and one-half rates.

For employees receiving basic compensation of $2,980 or more, a specific schedule of overtime rates based on 416 overtime hours (8 hours a week for 52 weeks) is provided in the bill. This schedule appears below:

Tapering schedule for overtime rates

Revised basic rate	Excess over $2,980	7.6782 percent of excess [1]	Overtime rate per 416 overtime hours	Revised basic rate	Excess over $2,980	7.6782 percent of excess [1]	Overtime rate per 416 overtime hours
$2,980			$894.000	$4,410	$1,430	$109.798	$784.202
$3,090	$110	$8.446	885.554	$4,520	1,540	118.244	775.756
$3,200	220	16.892	877.108	$4,630	1,650	126.690	767.310
$3,310	330	25.338	868.662	$4,740	1,760	135.136	758.864
$3,420	440	33.784	860.216	$4,960	1,980	152.028	741.972
$3,530	550	42.230	851.770	$5,180	2,200	168.920	725.080
$3,640	660	50.676	843.324	$5,390	2,410	185.045	708.955
$3,750	770	59.122	834.878	$5,600	2,620	201.169	692.831
$3,860	880	67.568	826.432	$5,810	2,830	217.293	676.707
$3,970	990	76.014	817.986	$6,020	3,040	233.417	660.583
$4,080	1,100	84.460	809.540	$6,230	3,250	249.542	644.458
$4,190	1,210	92.906	801.094	$6,440 and over [2]	3,460	265.666	628.334
$4,300	1,320	101.352	792.648				

[1] $894.000−$628.333=$265.667; $6,440−$2,980=$3,460; $265.667÷$3,460=.076782, or 7.6782 percent.
[2] The application of this schedule to revised basic rates in excess of $9,275 is subject to the $10,000 ceiling established by sec. 603 (b) of the bill.

The purpose of this schedule is to taper off the true time and one-half overtime rate at $2,980, which is $894 for 416 overtime hours, down to a flat amount of $628.33 at $6,440 and higher salaries. The latter figure, $628.33, is the same amount as is now received for 416 overtime hours by employees in the higher brackets.

Under this schedule the overtime rate may be computed for any number of overtime hours and for any rate of basic compensation that is at a rate of $2,980 a year or more. The overtime rate for 416 hours for each basic rate of compensation is determined by subtracting from $894 (the overtime rate at $2,980) 7.6782 percent of the amount by which such basic rate is in excess of $2,980, with the condition that for rates of $6,440 and over, the overtime rate for 416 hours shall be uniformly $628.33; subject, however, to section 603 (b) of the bill.

The schedule starts with true time and one-half at $2,980 and reduces the premium factor continuously down to straight time at about $4,080. From that point on the employee would receive less than straight time until an overtime rate of slightly less than one-half straight time is reached at $6,440. At that salary and higher salaries existing policy is followed, i. e., the same dollar amount of overtime pay applies, $628.33 for 416 overtime hours.

Section 202. Compensatory time off for irregular or occasional overtime work.—The War Overtime Pay Act now provides that for employment in excess of 48 hours a week the department or agency may elect to grant the employee either overtime pay or compensatory time off. Subsection (a) of section 202 confines compensatory time off to situations in which irregular or occasional overtime is worked in excess of 48 hours a week and requires that unless compensatory time off for such overtime service is requested by the employee, it shall be paid for in money. Subsection (b) permits the Architect of

the Capitol, in his discretion, to grant per annum employees compensatory time off in lieu of overtime compensation for work in excess of 40 hours in any one week.

Section 203. Wage board employees.—This section covers about 150,000 employees whose basic compensation is fixed and adjusted from time to time on a per annum or monthly basis by wage boards or similar administrative authority serving the same purpose. These employees, except in the Government Printing Office and the Tennessee Valley Authority, were specifically included within the War Overtime Pay Act of 1943, because at that time they were not regarded as falling within the act of March 28, 1934, which provides true time and one-half rates for similar employees paid at hourly or daily rates.

Since that time, however, the Supreme Court of the United States, in *U. S.* v. *Townsley* (323 U. S. 557, Jan. 15, 1945) has decided (1) that section 23 of the act of March 28, 1934, insofar as it applies to overtime pay, covers wage-schedule employees whose base pay is fixed on a monthly basis; and (2) that the proper method of computing such overtime compensation for employees paid on a monthly basis is first to multiply the monthly rate by 12 and divide the product by 260, i. e., 52 times 5. This gives the straight-time daily rate, which is multiplied by 1½ to derive the overtime rate for 1 day of 8 hours.

The committee believes it to be sound to treat the monthly and per annum wage-schedule employees in the same way as per diem and hourly wage-schedule employees are treated under the act of March 28, 1934. The fundamental criterion should be the method by which the basic rates are established, and differences in overtime pay treatment should not rest on whether such rates are administratively expressed in terms of an hour, a day, a month, or a year.

Section 203, accordingly, makes monthly and per annum wage-schedule employees, whose basic rates are established by wage boards or similar administrative authority with reference to prevailing rates, subject to the overtime pay provision of section 23 of the act of March 28, 1934, which has always applied to similar hourly and per diem wage-schedule employees. It also spells out the same overtime pay computation method as is approved by the Supreme Court in the Townsley case.

TITLE III—COMPENSATION FOR NIGHT AND HOLIDAY WORK

Section 301. Night pay differential.—This section, which is patterned after a corresponding provision for postal employees enacted in 1928, authorizes a 10-percent increase in pay for work performed between 6 p. m. and 6 a. m., on a regularly scheduled tour of duty. The differential is not to apply to periods when the employee is on authorized leave, nor is it to be included in computing overtime compensation.

A proviso avoids the repeal by implication of the recent act of July 1, 1944, which establishes a 15-percent night-pay differential for clerical-mechanical employees under the Classification Act. These employees are engaged in the Bureau of Engraving and Printing on production operations and are closely associated in hours and work schedules with plate printers and other skilled craftsmen who also receive a 15-percent night-pay differential by administrative or wage-board action.

There are relatively few employees subject to section 301, even in wartime, who work on regular night shifts. It has been estimated that the number is somewhat less than 90,000.

Other groups have already been provided for in this respect, either by statute or administratively. These are (1) per hour and per annum employees of the Government Printing Office; (2) plate printers, craftsmen, and clerical-mechanical employees of the Bureau of Engraving and Printing; (3) employees of the postal service; (4) per diem employees in the field service of the Navy Department, except master mechanics, foremen, and other employees in charge appointed by the Secretary of the Navy; and (5) certain field employees of the War Department who are subject to the jurisdiction of wage boards.

Provisions for night differential pay for industrial workers on regular night shifts are very common. They cover a large proportion of workers.

The objective of providing a night differential is to compensate employees for working at undesirable hours, and in some measure, for the dislocation and disruption of their living habits which result from such work. Night work is performed under abnormal conditions, and is more onerous and tiring than day work. The validity of these and related reasons has been recognized by Congress in the passage of several acts providing pay differentials for night work.

Section 301 extends this general policy to 90,000 salaried employees who at present are paid the same rates for night work as for day work.

Section 302. Compensation for holiday work.—This section provides for extra compensation for working on a holiday when such holiday is not generally a workday in the Federal service. A premium rate of one and one-half times the regular daily rate is established as the holiday rate, and this is to be paid in lieu of the regular rate. In other words, the extra compensation amounts to one-half day's pay. Such additional pay will not apply when the employee is in a leave status and will not be part of basic compensation for overtime pay computation purposes.

The effect of the section is postponed in view of the fact that at present, under direction from the President, all holidays, except Christmas, are regular workdays. It is designed to take effect generally upon the cessation of hostilities in the present war as proclaimed by the President, or at such earlier time as Congress may prescribe by concurrent resolution. As to any given holiday, it could take effect earlier if the President has declared that such holiday shall not be generally a workday in the Federal service. Such a declaration already exists with respect to Christmas.

TITLE IV.—AMENDMENTS TO CLASSIFICATION ACT OF 1923, AS AMENDED

Section 401. Establishment of rates for classes of positions within grades.—The Classification Act contains compensation schedules constructed in the form of grades, or zones of difficulty and responsibility of work. To each such grade there is attached a statutory salary range expressed in annual rates, with the exception of the hourly rates for part-time char forces and for clerical-mechanical positions in the Bureau of Engraving and Printing.

Each of the annual salary scales consists of a number of rates. Below the present $3,800 entrance salary level the salary ranges consist of seven rates of pay, except grades 2 and 3 of the crafts, protective and custodial service which have six rates. Above the present $3,800 level, the salary ranges consist of five rates. The hourly rates for part-time charwomen and head charwomen are flat rates. In the clerical-mechanical service a minimum and a maximum hourly rate are stated.

Each salary range has a minimum rate which is mandatorily the hiring rate for any new appointee to any and all positions falling in the grade. There is also a maximum rate which is the highest rate which can be paid to any employee occupying any position in the grade.

Each grade of the Classification Act includes positions of various types and kinds. For example, within any one grade of the professional and scientific service will be found positions in the field of engineering, law, medicine, and in the wide variety of agricultural and biological sciences found in the Government service. Within any one grade of the clerical, administrative, and fiscal service will be found stenographic and typing positions, office appliance operating positions, statistical and accounting clerical positions, and a wide variety of others. Such differences in subject matter, activity, or occupation require positions to be classified within a grade by classes. That is, in grade CAF–2, stenographic positions would fall in one class and file-clerk positions in another class. Usually, a large number of different classes of positions will be found in the same grade.

Grades do not represent mathematically uniform levels of difficulty and responsibility of work. There are variations in the difficulty, complexity, and responsibility of work belonging within each grade. In any one grade, when all the classes of work in that grade are considered, some classes will represent more difficult and responsible work than other classes, although the difference will not be sufficient to warrant allocation of any of them to the next higher grade. Conversely, some classes of work will be less difficult or less responsible than others, although not sufficiently so to justify allocating them to the next lower grade. The concept of a grade is more in the nature of an inclined plane of values of difficulty and responsibility, rather than an absolute level.

The services and grades of the Classification Act of 1923 were originally constructed 22 years ago. At that time the organization of the Government and its constituent executive departments and agencies was much simpler than it is today. In recent years, the development of organization structure for the administration of new programs and the prosecution of the war has, within many agencies, resulted in finer divisions of activities, greater distribution of functions, wider delegations of responsibilities, and more intermediate levels of authority and administration. At present in many large organizations there are actually more distinct levels of responsibility than can be reflected by using the grades in the classification schedules of the statute. The result is that in the higher as well as in the lower grades there are positions allocated to a single grade among which there are measurable differences in responsibility.

Notwithstanding this situation, existing law fixes the minimum rate of the grade as the minimum or hiring rate for each class of positions in the grade. The one exception to this general rule, authorized in

section 8 of the War Overtime Pay Act of 1943, has been of such limited scope as to result in no change in the general situation.

For example, the Government in effect has said that it will hire employees at $4,600, $5,600, $6,500, or $8,000, but that it will not hire anyone at rates in between, such as $4,000, $5,000, $6,000, or $7,000. A little more flexibility in this respect would save money in the long run and make for smoother recruiting practices.

Section 401 proposes to add a paragraph to section 3 of the Classification Act of 1923, as amended, and makes such paragraph applicable to both the departmental and the field services. Section 3 now authorizes the Commission to subdivide grades into classes of positions according to kind of work. Section 401 would add to this authority the power to establish for any such class a minimum rate higher than the minimum rate of the grade. The new minimum rate, which will apply both to present employees in that class and to new appointees, must be one of the standard rates of the grade, and shall not, except in one type of situation discussed in the next paragraph, exceed the middle rate of the established statutory salary range for the grade. Furthermore, this action is to be taken only upon a finding of the Commission that it is warranted by the nature of the duties and responsibilities of the class of positions in comparison with those of other classes in the same grade. The action also must be in the interests of good administration.

The Commission is to be authorized, under section 401, to utilize any standard rate of the grade as a minimum rate for a class whenever this is necessary in order to eliminate or reduce pay inequities within the same Government organization and at the same location caused by differences in pay levels between Classification Act employees and wage-schedule employees paid prevailing rates. This is an extension and a broadening of similar authority now possessed by the Commission under section 8 of the War Overtime Pay Act of 1943. Present authority, for example, has been used to eliminate or reduce pay inequities at certain War Department installations between Classification Act supervisors and wage-schedule employees whom they supervised.

All actions under section 401 are to have the force and effect of law and are to be reported annually to Congress.

Section 402. Periodic within-grade salary advancements.—This section modifies the existing within-grade salary advancement plan in several respects. It shortens the present waiting periods from 18 and 30 months to 12 and 18 months, respectively. It provides that after all the statutory conditions of eligibility have been met, the employee shall receive the within-grade salary advancement at the beginning of the following month, rather than at the beginning of the next quarter, as specified in present law.

It also would permit an employee with a "Good," or fully satisfactory, efficiency rating to advance periodically to the maximum rate of his grade. Under present law, a rating higher than "Good," or fully satisfactory, is required to advance beyond the middle rate of his grade.

The section also corrects an awkward administrative situation with respect to employees who, before existing law required them to receive efficiency ratings (as in the field service prior to August 1941), left their positions to enter the armed forces or the merchant marine, or to

accept a war transfer ordered by the Civil Service Commission. Such employees have reemployment rights. When they return, the question of computing their salary, including the within-grade salary advancements they would have received in the meantime, is complicated by the fact that there may be no efficiency rating or certificate of satisfactory conduct on record with respect to their former civilian position. Section 7 (b) (4) of the Classification Act of 1923, as amended by section 402, would cure this situation.

The same paragraph (sec. 7 (b) (4)) is also designed to change the effect of existing law with respect to the right to within-grade salary advancements, upon restoration to a civilian position, of a war-service appointee who left his position to enter the armed forces or the merchant marine. A war-service appointee who remains in the civilian service continues to be entitled to within-grade salary advancements. However, if he leaves his position to enter the armed forces or the merchant marine he is not entitled to count his military or merchant marine service toward within-grade salary advancements when he returns. The reason for this is that war-service appointees do not hold "other than temporary" positions within the meaning of the mandatory restoration laws, such as the Selective Training and Service Act. Consequently, they are not entitled to restoration without loss of rights dependent on length of service. Section 7 (b) (4), as amended by section 402, would cure this situation.

Such amended paragraph would also make sure that when a veteran, after having left his position to enter the armed forces, is reemployed under any applicable authority of law or civil-service regulation, he will receive credit under the within-grade salary-advancement law for his military service, and he will not lose any within-grade salary advancements because of his absence in the military service. The same plan will apply to those who have served in the merchant marine or on war transfer as defined by the Civil Service Commission.

Sections 403 and 404. Rewards for superior accomplishment.—These sections further amend the existing within-grade salary advancement law in a manner designed to improve its value as an incentive.

Present law permits, within any one waiting period, one additional within-grade salary advancement for "especially meritorious" service. There is no method of rewarding sustained superior performance unless it is so outstandingly distinctive as to be classed as "especially meritorious." Of the approximately 1,220,000 employees involved, only 950 received such within-grade salary advancements in the fiscal year 1942; only 1,575 in the fiscal year 1943; and only 808 in the fiscal year 1944.

Section 403 proposes to replace this restrictive provision by authorizing one within-grade salary advancement, additional to any periodic increase, within any one waiting period, for superior accomplishment, under standards to be promulgated by the Civil Service Commission. The authority of prior approval will be vested in the Commission, but the Commission will be expressly empowered in section 404 to delegate to the head of a department or agency, or his designated representative, the authority to act initially under the standards, subject to post-audit by the Commission for compliance with such standards. The Commission's responsibility will be to insure that any within-grade salary increases additional to periodic increases will be made only on the basis of definite evidence of superior accomplishment, and that they

will, in fact, constitute a reward for superior performance. In case the Commission's standards are not observed, the Commission will be authorized to withdraw the delegated authority from the department or agency.

Section 405. Increase in basic rates of compensation.—This section provides that each of the existing basic rates of compensation set forth in section 13 of the Classification Act of 1923, as amended, shall be increased to form a new basic rate by the application of the following plan: Add to each such rate 20 percent of that part thereof which is not in excess of $1,200 a year. To this sum, add 10 percent of that part of the existing basic rate which is in excess of $1,200 a year but not in excess of $4,600 a year. To this sum, add 5 percent of that part of the existing basic rate which is in excess of $4,600 a year.

For example, to a rate of $2,000 a year would be added $240 (20 percent of $1,200), plus $80 (10 percent of the amount by which $2,000 exceeds $1,200). The present rate of $2,000 a year would thus become $2,320 a year.

Similarly, to a rate of $5,000 a year would be added $240 (20 percent of $1,200), plus $340 (10 percent of the difference between $1,200 and $4,600), plus $20 (5 percent of the excess over $4,600). The present rate of $5,000 a year would thus be increased to $5,600 a year.

The resulting schedule would be as follows:

Proposed schedule of annual salary rates for Federal civilian employees in positions classified under the Classification Act of 1923 and amendments

Present base rates	Proposed increase		Proposed base rates	Present base rates	Proposed increase		Proposed base rates
	Amount	Percent			Amount	Percent	
$720	$144.00	20.0	$864.00	$3,100	430.00	13.9	3,530.00
$780	156.00	20.0	936.00	$3,200	440.00	13.8	3,640.00
$840	168.00	20.0	1,008.00	$3,300	450.00	13.6	3,750.00
$900	180.00	20.0	1,080.00	$3,400	460.00	13.5	3,860.00
$960	192.00	20.0	1,152.00	$3,500	470.00	13.4	3,970.00
$1,200	240.00	20.0	1,440.00	$3,600	480.00	13.3	4,080.00
$1,260	246.00	19.5	1,506.00	$3,700	490.00	13.2	4,190.00
$1,320	252.00	19.1	1,572.00	$3,800	500.00	13.2	4,300.00
$1,380	258.00	18.7	1,638.00	$3,900	510.00	13.1	4,410.00
$1,440	264.00	18.3	1,704.00	$4,000	520.00	13.0	4,520.00
$1,500	270.00	18.0	1,770.00	$4,100	530.00	12.9	4,630.00
$1,560	276.00	17.7	1,836.00	$4,200	540.00	12.9	4,740.00
$1,620	282.00	17.4	1,902.00	$4,400	560.00	12.7	4,960.00
$1,680	288.00	17.1	1,968.00	$4,600	580.00	12.6	5,180.00
$1,740	294.00	16.9	2,034.00	$4,800	590.00	12.3	5,390.00
$1,800	300.00	16.7	2,100.00	$5,000	600.00	12.0	5,600.00
$1,860	306.00	16.5	2,166.00	$5,200	610.00	11.7	5,810.00
$1,920	312.00	16.3	2,232.00	$5,400	620.00	11.5	6,020.00
$1,980	318.00	16.1	2,298.00	$5,600	630.00	11.3	6,230.00
$2,000	320.00	16.0	2,320.00	$5,800	640.00	11.0	6,440.00
$2,040	324.00	15.9	2,364.00	$6,000	650.00	10.8	6,650.00
$2,100	330.00	15.7	2,430.00	$6,200	660.00	10.6	6,860.00
$2,160	336.00	15.6	2,496.00	$6,400	670.00	10.5	7,070.00
$2,200	340.00	15.5	2,540.00	$6,500	675.00	10.4	7,175.00
$2,220	342.00	15.4	2,562.00	$6,750	687.50	10.2	7,437.50
$2,300	350.00	15.2	2,650.00	$7,000	700.00	10.0	7,700.00
$2,400	360.00	15.0	2,760.00	$7,250	712.50	9.8	7,962.50
$2,500	370.00	14.8	2,870.00	$7,500	725.00	9.7	8,225.00
$2,600	380.00	14.6	2,980.00	$8,000	750.00	9.4	8,750.00
$2,700	390.00	14.4	3,090.00	$8,250	762.50	9.2	9,012.50
$2,800	400.00	14.3	3,200.00	$8,500	775.00	9.1	9,275.00
$2,900	410.00	14.1	3,310.00	$8,750	787.50	9.0	9,537.50
$3,000	420.00	14.0	3,420.00	$9,000	800.00	8.9	9,800.00

In the case of part-time char forces and clerical-mechanical employees, whose rates under the Classification Act are expressed in cents an hour, subsection (b) of section 405 specifies increased hourly rates which are in accordance with the formula provided for annual rates.

Subsection (c) stipulates that the increase in existing rates of compensation provided by section 405 shall not be considered an "equivalent increase" in compensation under section 7 (b) (1) of the Classification Act of 1923, as amended. The effect of receiving an "equivalent increase" is to cancel out the effect of an employee's prior service insofar as the waiting periods of that section are concerned, and a new waiting period would begin. It is the purpose of subsection (c) to make sure that that part of an employee's waiting period completed immediately prior to July 1, 1945, will be counted for purposes of within-grade salary advancement on and after that date.

It will be observed from the table given above that employees in the lower brackets will receive a higher proportion of increase than those in the higher brackets. Up to and including $1,200, the increase is 20 percent; at $1,500 it is 18 percent; at $2,400, 15 percent; at $4,000, 13 percent; at $5,000, 12 percent; at $7,000, 10 percent; and at $9,000, 8.9 percent.

The over-all average increase is about 15.9 percent.

This plan of basic salary increase is in conformity with the Government's salary and wage stabilization policies. After examining the plan, George W. Taylor, Chairman of the National War Labor Board, has stated that these adjustments are wholly within the limits of the wage-stabilization program.

The application of section 405 as well as all other provisions of the bill is subject to the limitations stated in section 603.

TITLE V—EMPLOYEES OF LEGISLATIVE AND JUDICIAL BRANCHES

PART I—EMPLOYEES OF THE LEGISLATIVE BRANCH

Section 501. Increase in rates of compensation.—This section applies to legislative employees not under the Classification Act of 1923, as amended, the same pay-increase formula as is provided in section 405 for employees under such act, as amended. There is a difference in its operation, however, in that while under section 405 the granting of the additional compensation has the effect of establishing new rates of basic compensation, the legislative employees affected by this section will continue to receive, or be appointed at, a "basic" rate of compensation upon the basis of which this additional compensation will be computed. Consistently with this, it is provided that neither the additional compensation provided for by this section, nor the temporary additional compensation provided for by section 502, is to be taken into account in determining whether any amount expended for clerk hire, or the compensation paid to an officer or employee, is within any limit now prescribed by law. To avoid any uncertainty as to the status, under the Civil Service Retirement Act of May 29, 1930, as amended, of the additional compensation provided for by this section, it is specifically provided that for the purposes of that act it is to constitute basic compensation.

Section 502. Temporary additional compensation in lieu of overtime.—This section provides for additional compensation in lieu of

overtime pay at the rate of 10 percent of (a) the employee's basic rate plus the increase authorized in section 501, or (b) $2,900 per annum, whichever is the smaller amount. This section will expire June 30, 1947.

PART II—EMPLOYEES OF THE JUDICIAL BRANCH

Section 521. Increase in basic rates of compensation.—This section applies to judicial employees not under the Classification Act of 1923, as amended, the same pay-increase formula as is provided by section 405 for employees under such act, as amended, and by section 501 for employees of the legislative branch.

The Judiciary Appropriation Act, 1946, approved May 21, 1945 (Public Law 61, 79th Cong., title IV), establishes limitations ($6,500 and $7,500 per annum) on the aggregate salaries of secretaries and law clerks appointed by one judge, "exclusive of any temporary additional compensation."

The quoted clause covers the temporary additional compensation in lieu of overtime authorized in section 522. However, since the basic pay increases provided by section 521 are not temporary, it was necessary for the committee to stipulate in the bill that the limitations in the Judiciary Appropriation Act, 1946, above referred to, shall be increased by the amounts necessary to pay these basic pay increases.

The appropriation act provision above mentioned provides for fixing certain salaries on the basis of Classification Act salaries and grades. In order to avoid duplication of increases, it is made clear in this section that the changes in rates of basic compensation in the Classification Act of 1923 made by section 405 of the bill are not to be taken into account in fixing such salaries.

Section 522. Temporary additional compensation in lieu of overtime.—This section, applicable to employees in the judicial branch, has the same effect as section 502 for employees in the legislative branch.

TITLE VI—MISCELLANEOUS PROVISIONS

Section 601. Effect on existing laws affecting certain inspectional groups.—This section preserves the effect of certain special legislation applicable to customs inspectors and other customs officers and employees, immigration inspectors, meat inspectors, marine inspectors, and ship radio inspectors, who perform night overtime, Sunday, or holiday service which is compensated at premium rates of pay. The extra cost of this service is frequently assessed against the private enterprise or transportation facility for whom the unusual service is rendered.

These statutes and the services to which they are applicable are as follows: Acts of February 13, 1911, as amended, and June 17, 1930, as amended, customs service; act of July 24, 1919, meat inspectors; act of March 2, 1931, immigration inspectors; act of May 27, 1936, as amended, marine inspectors; act of March 23, 1941, ship radio inspectors, Federal Communications Commission.

The premium rate established in most of these statutes for night overtime is fixed at one-half day's additional pay for each 2 hours or fraction thereof of at least 1 hour that overtime extends beyond 5 p. m. until 8 a. m. Most of these statutes also establish a premium rate of 2 additional days' pay for duty on a Sunday or a holiday. Night

overtime pay cannot exceed 2½ days' pay for the full period from 5 p. m. to 8 a. m.

Section 602. Increase in basic statutory rates of compensation not under Classification Act of 1923, as amended.—In statutes other than the Classification Act, Congress has from time to time specifically prescribed rates of compensation applicable to certain employees. In some cases precise schedules of rates are provided, as in the case of customs (Bacharach Act) clerks in the act of May 29, 1928 (19 U. S. C. 6a); immigrant inspectors in the Reed-Jenkins Act of the same date (8 U. S. C. 109); and administrative officers and assistants and clerks in the foreign service in the act of May 3, 1945 (Public Law 48, 79th Cong.). In other instances a specific salary rate is fixed for an individual position, frequently but not always higher than $9,000 a year (the present ceiling of the Classification Act). For example, district locomotive boiler inspectors' salaries are fixed at $4,000 in the act of June 27, 1930 (45 U. S. C. 26); and the salary of the secretary of the Territory of Alaska is fixed at $7,500 in the act of April 3, 1944 (Public Law 282, 78th Cong.). Sometimes, a specific rate is prescribed as a maximum rate, as for example in the act of February 24, 1919, as amended May 29, 1928 (26 U. S. C. 3944 (b)), which provides that no collector of internal revenue "shall receive a salary in excess of $7,500 a year."

Also, as another example, the act of August 26, 1937 (U. S. C., 1934 ed., Supp. V, title 33, sec. 745), has had the effect of establishing the rates for civilian lighthouse keepers at the then existing schedules outside of the Classification Act.

It is not within the authority of any executive agency to change such rates or pay scales. Since they are prescribed by statute, they are under congressional control.

Section 602 has the effect of raising such existing statutory rates by the same amount that they would be raised if they were under the Classification Act, and section 405 of the bill were applicable.

Section 603. Limitations on reductions and increases in compensation.—Subsection (a) has reference to a "floor." It guards against reducing below a specified rate for any pay period the aggregate June 30, 1945, rate of compensation of employees in the lower brackets who are subject to the bill.

Certain low-salaried employees are not in a position to earn much overtime pay, either because of their small basic rate, or the small number of overtime hours worked, or because (as in the case of customs storekeepers or certain classes of inspectors) their work schedule must conform to a nonovertime schedule established by a private concern where their post of duty is located. Under section 3 of the War Overtime Pay Act of 1943, which expires June 30, 1945, such employees were guaranteed, for any pay period, additional compensation in lieu of overtime pay, at the rate of $300 a year or 25 percent of their basic compensation (whichever was the smaller amount), if their working conditions did not permit them to earn that much in overtime. If such employees, on July 1, 1945, should receive only the basic pay adjustment provided in section 405 of the bill, they would suffer a reduction of income ranging from $60 a year at a base salary of $1,200 to $6 a year at a base salary of $1,740. Messenger boys and girls whose base salaries range from $720 to $960 might also be subject to reductions of from $36 to $48.

The purpose of section 603 (a) is to prevent these low-salaried employees from suffering a reduction in aggregate compensation in any pay period by reason of the expiration of the $300 or 25 percent guaranty provided in the War Overtime Pay Act. The employees involved would be employees, working little or no overtime, whose salaries range from $720 to $1,740 a year. At $1,800 and above, the basic pay increases provided by the bill amount to $300 or more, and section 603 (a) would not then be applicable.

Section 3 of the War Overtime Pay Act, as amended by the act of September 30, 1944, provided a higher rate of additional compensation in lieu of overtime compensation (15 percent on the first $2,900 of salary) for other employees in somewhat higher brackets who did not work overtime. The reduction under the bill in such cases will vary from $5 a year to $25 a year in a group whose basic salaries range from $2,500 to $3,100. This group would not benefit by section 603 (a) because under the bill their basic salaries would be increased by amounts ranging from $370 to $430 a year.

Subsection (b) of section 603 fixes a $10,000 ceiling, by providing that the aggregate compensation of any employee subject to the bill shall not, by reason of any of its provisions, be in excess of the rate of $10,000 per annum for any pay period. This provision is to govern in the interpretation and application of all the provisions of the bill providing for increases in compensation.

Section 604. Establishment of basic workweek; pay-computation methods.—This section is designed to extend the present general policy that the basic workweek shall be 40 hours in length.

Heads of departments and agencies are directed to establish in their respective organizations a basic administrative workweek of 40 hours, as of July 1, 1945. Beginning not later than October 1, 1945, the employees concerned are to be paid biweekly, rather than semimonthly as at present.

Subsection (c) of section 604 repeals three existing laws that would prevent the carrying out of this direction.

Subsection (d), for pay-computation purposes, associates each per annum rate of compensation with 52 basic workweeks of 40 hours each.

In lieu of the method now prescribed by the act of June 30, 1906, for converting monthly or annual rates to daily or hourly rates, new rules are set forth in paragraph (2) of subsection (d). These rules are based on the premise that the number of regular working hours for which an annual rate is paid a full-time employee is 40 a week, or 2,080 a year.

Section 605. Regulations.—The Civil Service Commission is authorized to issue such regulations, subject to the approval of the President, as may be necessary for the administration of the foregoing provisions of the bill, insofar as they affect employees in or under the executive branch, or those employees not in the executive branch who are subject to the Classification Act of 1923, as amended.

Section 606. Vessel employees.—This section provides that certain vessel employees of the Transportation Corps of the Army, of the Coast and Geodetic Survey, and of the Panama Railroad Company, who are not subject to any of the pay provisions of the bill, may be compensated in accordance with the wage practices of the maritime industry. The War Overtime Pay Act contains a similar provision with respect to vessel employees of the Transportation Corps of the Army and of the Coast and Geodetic Survey.

Section 607. Personnel ceilings.—Subsection (a) is a declaration by the Congress that in the interest of economy and efficiency the heads of departments and agencies shall terminate excess personnel.

Subsection (b) requires the heads of departments and agencies to furnish the Director of the Bureau of the Budget with information which will enable him to determine, in his judgment and at least quarterly, the employment required for the proper and efficient performance of the functions of the departments and agencies; and to release or terminate any personnel in excess of the Director's determinations. It also requires a quarterly report to the Congress by the Director, showing his determinations and any employment paid in violation of his orders, and furnishing a statement of the net increase or decrease in employment compared with his previous quarterly report, together with any suggestions he may have for economy and efficiency in the use of Government personnel.

Subsection (c) provides that the Director may in his discretion make his determinations by such appropriation units or organization units as he may deem appropriate.

Subsection (d) requires the Director to study continuously all appropriations and contract authorizations relating to the employment of personnel; and, under policies prescribed by the President, to reserve from expenditure any savings which he determines to be possible as a result of reduced personnel requirements. It also provides that reserves may be released by the Director only on a satisfactory showing of necessity.

Subsection (e) permits the Director to exclude from his determinations intermittent employees paid on a "when actually employed" basis; persons who are hired without compensation, or for nominal compensation, such as $1 a year or $1 a month; or casual employees, as defined by the Civil Service Commission. Such casual employees are hired for short intervals, to cope with fire, flood, or other emergency or unpredictable situations. The subsection would also permit the Director to exclude other employees or employment from his determinations when it is impracticable to include them.

Subsection (f) has the effect of postponing the application of the section to certain groups in the War and Navy Departments and in or under the War Shipping Administration. Those referred to in the War and Navy Departments are wage-schedule employees, consisting of mechanical crafts, trades, and labor groups. Those referred to under the War Shipping Administration are at extraterritorial locations, or are members or trainees in the merchant marine. These groups are not to become subject to section 607 until the cessation of hostilities in the present war as proclaimed by the President.

Section 608. Exemption for purposes of veterans laws and regulations.—The War Overtime Pay Act of 1943 exempts overtime compensation and additional compensation in lieu of overtime from an individual's annual income or annual rate of compensation for the purposes of paragraph II (a) of part III of Veterans Regulation No. I (a), as amended, or section 212 of the Economy Act of June 30, 1932.

Section 608 continues this exemption insofar as overtime compensation is concerned, but provides that increases in basic rates of compensation under sections 405, 501, 521, and 602 shall not be so exempted.

The Veterans regulation referred to provides for the payment of non-service-connected benefits to persons who served in the armed forces during the Spanish-American War, the Boxer Rebellion, the Philippine Insurrection, World War I, or World War II.

With a minor exception, paragraph II (a) of part III prohibits the payment of any such pension to any person whose annual income exceeds $1,000, if single, or $2,500 if married or if the person has minor children.

Section 212 of the act of June 30, 1932, restricts the amount of retired pay that may be received by a retired commissioned officer (with certain exceptions) holding a civilian office or position if the combined rate of retired pay and the annual rate of compensation of the civilian employment exceeds $3,000. This restriction does not apply to certain situations, e. g., where the commissioned officer is retired for disability incurred in combat with an enemy of the United States, or incurred by reason of the explosion of an instrumentality of war.

Under section 608, only increases in basic pay rates authorized by the bill would be used in computing a person's annual income or annual rate of compensation for the purposes of the cited regulation and statute. The amount of pay authorized by the bill for overtime and for night and holiday work, or as temporary additional compensation, would be excluded in determining such annual income or annual rate of compensation.

Section 609. Appropriation authorized.—This is the usual clause authorizing the appropriation of funds to carry out the provisions of the bill.

Section 610. Effective date.—The effective date of the bill is made July 1, 1945, in order that its pay provisions may supersede those of the War Overtime Pay Act of 1943, without interruption.

ESTIMATED COST OF THE BILL

The total annual expenditures for personal services of all civilian employees of the executive branch of the Federal Government amounted to $7,000,000,000 for the entire year 1944. Approximately three billion of this total represents the pay-roll costs for those employees covered by this bill.

At the present time the aggregate basic salaries of the 1,221,000 employees of the executive branch of the Government subject to the Classification Act of 1923, as amended, amount to $2,464,400,000 per annum. An additional $611,400,000 of annual overtime compensation is payable under the provisions of Public Law 49, the War Overtime Pay Act of 1943, to these employees and to other salaried workers covered by this act who now are employed on the present standard work schedule of 48 hours per week.

Enactment of this bill would increase the present total annual pay-roll costs by an estimated $736,000,000. Of this increase, $718,600,000 is for additional basic pay and overtime compensation—i. e. $392,200,000 results from an average increase of 15.9 percent in basic rates of compensation and $326,400,000 is attributable largely to overtime payments on these augmented basic rates at "true" overtime rates (1½ times or 30 percent additional for 416 overtime hours on basic

rates to $2,980 per annum) for employees in executive departments and agencies. Approximately $2,400,000 as additional basic compensation for employees of the legislative and judicial branches in classified positions, plus a small increase for overtime payments to these employees, is estimated. The 10-percent night pay differential for about 90,000 employees now on night shifts amounts to about $15,000,000 on an annual basis.

Increase in basic pay.—On the basis of the present number of employees, total basic salary costs are raised to $2,856,600,000 per year ($392.2 million increase) for salaried workers in the executive branch of the Federal Government and to $17,500,000 ($2.4 million increase) for the 8,032 employees in the legislative and judicial branches of the Government whose compensation is fixed in accordance with the Classification Act of 1923. Because of the fact that a large proportion of all Federal employees affected by section 405 of this bill are in the lowest classification grades, about 58 percent of the total additional costs per year under these new basic pay rates will benefit employees in the salary groups below $2,000. Only 1 percent of the added costs are chargeable to the salary classes above $6,000.

Increase due to changes in overtime compensation.—The total annual cost of overtime, based upon current levels of employment (about 1,480,000 employees subject to Public Law 49) and upon present work schedules of 8 additional hours per week (416 overtime hours for 52 weeks), will amount to $937,800,000 under the provisions of this bill, as compared with $688,600,000 under S. 807, as passed by the Senate, and with $611,400,000 under the present law which expires June 30, 1945. This represents therefore an increase of $326,400,000 above present costs. This is largely due to a shift from an overtime rate of 21.67 percent additional pay for 20 percent additional time worked to a rate of 30 percent (i. e., 1½ times the straight-time hourly rate) on salaries up to $2,980, as computed on the new basic rates of pay. A small additional amount must also be included to account for increases in overtime compensation of judicial and legislative employees subject to the Classification Act.

Estimates of the cost of overtime under reduced schedules of work indicate that a reduction of weekly hours of work to 44 hours in the Federal establishments in noncritical labor market areas (i. e., outside of War Manpower Commission groups I and II) will result in a saving in overtime compensation costs of approximately $187,600,000. A cut-back to 40 hours per week for these establishments would reduce costs by $375,100,000. Or, if all Federal establishments were placed on a 44-hour week, annual savings of $468,900,000 would result.

These cost estimates are computed on the basis of present employment which now stands at a higher level than may be anticipated both during the next fiscal year and after cessation of hostilities and, therefore, may be greater than the amounts which may be expended in any future 12-month period.

LETTER FROM THE PRESIDENT

The letter from the President, referred to in the General Statement, is as follows:

THE WHITE HOUSE,
Washington, June 1, 1945.

Hon. ROBERT RAMSPECK,
Chairman, Civil Service Committee,
House of Representatives, Washington, D. C.

DEAR MR. RAMSPECK: It is my understanding that your committee, in connection with the overtime pay provisions of H. R. 2497, has expressed an interest in learning about the plans of the executive branch for reductions in hours of work.

Within the near future I intend to advise the heads of the departments and agencies that whenever they have offices which are located in labor market areas classified in groups II, III, and IV by the War Manpower Commission they may reduce the hours of work from 48 per week.

Very sincerely yours,

HARRY S. TRUMAN.

LETTERS AND TABLE FROM BUREAU OF THE BUDGET

In connection with cost estimates, the following letters and table from the Bureau of the Budget have been received:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington. D. C., May 31, 1945.

Hon. HENRY M. JACKSON,
Chairman, House Subcommittee on the Civil Service,
House of Representatives, Washington, D. C.

DEAR MR. JACKSON: You have requested estimates of costs in connection with certain provisions of the salary legislation recommended to the Congress by the Civil Service Commission and now pending before your committee as H. R. 2497 and H. R. 2703.

Overtime pay.—Two alternative plans are presented covering positions in the Executive Branch of the Government:

1. Accepting as the basis for overtime calculations the proposed base salary as passed by the Senate under S. 807 and applying the true time-and-one-half formula under section 201 of H. R. 2497, assuming a continuation of the same number of employees in the Federal service as on December 31, 1944, it is estimated that the annual cost of overtime for a 48-hour week would be increased by $370,800,000.

Assuming that a cut-back from a 48-hour week to a 44-hour week were to occur in those areas termed by the War Manpower Commission as "noncritical area" (other than groups 1 and 2 areas), it is estimated that under this formula annual overtime costs could be reduced by $196,400,000.

2. Accepting as in (1) above the salary scales as passed by the Senate under S. 807 and applying thereto true time-and-one-half overtime rates of pay up to a base salary of $2,980 and tapering off the overtime rates of pay thereafter to the base salary of $6,440 before a constant amount is reached, the annual cost of overtime for a 48-hour week would be increased by $326,400,000.

Assuming that a cut-back from a 48-hour week to a 44-hour week were to occur in those areas termed by the War Manpower Commission as "noncritical area" (other than groups 1 and 2 areas), it is estimated that under this formula annual overtime costs could be reduced by $187,600,000.

The above estimates are based on data supplied by the Civil Service Commission.

Reduction in force.—If it is assumed that there will be continued progress in the war, a gradual curtailment of the functions of some departments and agencies, and an average reduction approximating 20,000 persons per month in the Federal civilian "paid" employment within the 48 States and the District of Columbia, of which 60 percent fall under the salary groups subject to the provisions of H. R. 2497 and H. R. 2703, $217,400,000 is computed as the savings in the amount paid to employees, of which $46,600,000 would be represented in overtime.

Very truly yours,

F. J. LAWTON, *Administrative Assistant.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., June 2, 1945.

Hon. HENRY M. JACKSON,
Chairman, House Subcommittee on the Civil Service,
House of Representatives, Washington, D. C.

DEAR MR. JACKSON: For the use of your committee we have prepared the enclosed revised table showing the costs of the pay legislation now under consideration.

The basis used for the computation of costs is indicated for each group of employees covered by the legislation, as we now understand it.

Very truly yours,

F. J. LAWTON, *Administrative Assistant.*

Bureau of the Budget estimate of cost of various sections of H. R. 2497 and 2708 on revised basis as proposed by the subcommittee

	Number of employees Dec. 31, 1944	Present cost	Proposed cost	Increase
		Millions of dol.	*Millions of dol.*	*Millions of dol.*
Increase in Classification Act pay scales: [1]				
Executive branch	1,221,272	2,464.4	2,856.6	392.2
Judicial and legislative branches and District of Columbia government	8,032	15.1	17.5	2.4
Total	1,229,304	2,479.5	2,784.1	394.6
Overtime compensation, 48-hour week: [2]				
Executive branch	1,481,144	611.4	937.8	326.4
Judicial and legislative branches and District of Columbia government	8,032	2.6	2.9	.3
Total	1,489,176	614.0	940.7	326.7
Overtime compensation (44-hour week) in other than WMC critical areas 1 and 2:				
Executive branch	1,481,144	611.4	750.2	138.8
Judicial and legislative branches and District of Columbia government	8,032	2.6	2.9	.3
Total	1,489,176	614.0	753.1	139.1
Night pay differential (10 percent)	88,452	----------	----------	15.0
Total increased cost, 48-hour week	----------	----------	----------	736.3
Total increased cost, 44-hour week	----------	----------	----------	548.7
Legislative and judicial branches (employees not under the Classification Act rates of pay): Proposed cost based on salary increase formula under S. 807 with 10 percent overtime compensation up to $2,980 and a constant amount thereafter added thereto	5,270	15.3	16.7	1.4

[1] Proposed cost based on amended rates of pay as passed by the Senate, S. 807.

[2] Proposed costs calculated at true time and one-half to and including new base pay rate of $2,980, with a sliding scale thereafter to the new base pay rate of $6,440 and a constant amount thereafter of $628.33 per annum per employee. (District of Columbia government on 44-hour week.)

Prepared June 1, 1945.

NOTE.—The figure 1,481,144, used in the computation of overtime pay costs, includes 259,872 more employees than are covered by the figure of 1,221,272 used in the computation of basic pay increase costs. Of these 259,872 employees, 173,333 (consisting of 144,816 War Department wage-schedule per annum or monthly employees, 6,140 other wage-schedule per annum or monthly employees, and 22,377 U. S. Employment Service employees paid at State rates) are not subject to the basic pay increase provisions of the bill. If the basic pay of the remainder, 86,539 employees, is increased by administrative action in line with the provisions of the bill, the additional cost is estimated at $27,800,000.

EXHIBIT

Basic rates and annual overtime rates proposed in the bill

Present basic rates under the Classification Act of 1923, as amended	Proposed basic rates under sec. 405	Proposed annual rates of overtime pay		Present basic rates under the Classification Act of 1923, as amended	Proposed basic rates under sec. 405	Proposed annual rates of overtime pay	
		48-hour week (416 overtime hours)	44-hour week (208 overtime hours)			48-hour week (416 overtime hours)	44-hour week (208 overtime hours)
$720	$864.00	$259.20	$129.60	$3,100	3,530.00	851.77	425.89
$780	936.00	280.80	140.40	$3,200	3,640.00	843.32	421.66
$840	1,008.00	302.40	151.20	$3,300	3,750.00	834.88	417.44
$900	1,080.00	324.00	162.00	$3,400	3,860.00	826.43	413.22
$960	1,152.00	345.60	172.80	$3,500	3,970.00	817.99	409.00
$1,200	1,440.00	432.00	216.00	$3,600	4,080.00	809.54	404.77
$1,260	1,506.00	451.80	225.90	$3,700	4,190.00	801.09	400.55
$1,320	1,572.00	471.60	235.80	$3,800	4,300.00	792.65	396.33
$1,380	1,638.00	491.40	245.70	$3,900	4,410.00	784.20	392.10
$1,440	1,704.00	511.20	255.60	$4,000	4,520.00	775.76	387.88
$1,500	1,770.00	531.00	265.50	$4,100	4,630.00	767.31	383.66
$1,560	1,836.00	550.80	275.40	$4,200	4,740.00	758.86	379.43
$1,620	1,902.00	570.60	285.30	$4,400	4,960.00	741.97	370.99
$1,680	1,968.00	590.40	295.20	$4,600	5,180.00	725.08	362.54
$1,740	2,034.00	610.20	305.10	$4,800	5,390.00	708.96	354.48
$1,800	2,100.00	630.00	315.00	$5,000	5,600.00	692.83	346.42
$1,860	2,166.00	649.80	324.90	$5,200	5,810.00	676.71	338.36
$1,920	2,232.00	669.60	334.80	$5,400	6,020.00	660.58	330.29
$1,980	2,298.00	689.40	344.70	$5,600	6,230.00	644.46	322.23
$2,000	2,320.00	696.00	348.00	$5,800	6,440.00	628.33	314.17
$2,040	2,364.00	709.20	354.60	$6,000	6,650.00	628.33	314.17
$2,100	2,430.00	729.00	364.50	$6,200	6,860.00	628.33	314.17
$2,160	2,496.00	748.80	374.40	$6,400	7,070.00	628.33	314.17
$2,200	2,540.00	762.00	381.00	$6,500	7,175.00	628.33	314.17
$2,220	2,562.00	768.60	384.30	$6,750	7,437.50	628.33	314.17
$2,300	2,650.00	795.00	397.50	$7,000	7,700.00	628.33	314.17
$2,400	2,760.00	828.00	414.00	$7,250	7,962.50	628.33	314.17
$2,500	2,870.00	861.00	430.50	$7,500	8,225.00	628.33	314.17
$2,600	2,980.00	894.00	447.00	$8,000	8,750.00	628.33	314.17
$2,700	3,090.00	885.55	442.78	$8,250	9,012.50	628.33	314.17
$2,800	3,200.00	877.11	438.56	$8,500	9,275.00	628.33	314.17
$2,900	3,310.00	868.66	434.33	$8,750	9,537.50	[1] 462.50	314.17
$3,000	3,420.00	860.22	430.11	$9,000	9,800.00	[1] 200.00	[1] 200.00

[1] Section 603 (b) establishes a $10,000 ceiling governing the application of all pay provisions of the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CLASSIFICATION ACT OF 1923, AS AMENDED

SEC. 3. The Commission shall make all necessary rules and regulations not inconsistent with the provisions of this act and provide such subdivisions of the grades contained in section 13 hereof and such titles and definitions as it may deem necessary according to the kind and difficulty of the work. Its regulations shall provide for ascertaining and recording the duties of positions and the qualifications required of incumbents, and it shall prepare and publish an adequate statement giving (1) the duties and responsibilities involved in the classes to be established within the several grades, illustrated where necessary by examples of typical tasks, (2) the minimum qualifications required for the satisfactory performance of such duties and tasks, and (3) the titles given to said classes. In performing the foregoing duties, the Commission shall follow as nearly as practicable the classification made pursuant to the Executive order of October 24, 1921. The Commission may from time to time designate additional classes within the several grades and may combine, divide, alter, or abolish existing

classes. Department heads shall promptly report the duties and responsibilities of new positions to the Commission. The Commission shall make necessary adjustments in compensation for positions carrying maintenance and for positions requiring only part-time service.

In subdividing any grade into classes of positions, as provided in the foregoing paragraph, the Civil Service Commission, whenever it deems such action warranted by the nature of the duties and responsibilities of a class of positions in comparison with other classes in the same grade, and in the interests of good administration, is authorized to establish for any such class a minimum rate, which shall be one of the pay rates, but not in excess of the middle rate, of that grade as set forth in section 13 of this Act, as amended. Whenever the Commission shall find that within the same Government organization and at the same location gross inequities exist between basic per annum rates of pay fixed for any class of positions under this Act and the compensation of employees whose basic rates of pay are fixed by wage boards or similar administrative authority serving the same purpose, the Commission is hereby empowered, in order to correct or reduce such inequities, to establish as the minimum rate of pay for such class of positions any rate within the range of pay fixed by this Act for the grade to which such class of positions is allocated. For the purposes of this section the fourth rate of a six-rate grade shall be considered to be the middle rate of that grade. Minimum rates established under this paragraph shall be duly published by regulation and, subject to the foregoing provisions, may be revised from time to time by the Commission. The Commission shall make a report of such actions or revisions with the reasons therefor to Congress at the end of each fiscal year. Actions by the Civil Service Commission under this paragraph shall apply to both the departmental and field services and shall have the force and effect of law.

* * * * * * *

SEC. 7. * * *

(b) All employees compensated on a per annum basis, and occupying permanent positions within the scope of the compensation schedules fixed by this Act, who have not attained the maximum rate of compensation for the grade in which their positions are respectively allocated, shall be advanced in compensation successively to the next higher rate within the grade at the beginning of the next [quarter,] *month* following the completion of[:] (1) each [eighteen] *twelve* months of service if such employees are in grades in which the compensation increments are [$60 or $100] *less than $200*, or (2) each [thirty] *eighteen* months of service if such employees are in grades in which the compensation increments are $200 or [$250] *more*, subject to the following conditions:

(1) That no equivalent increase in compensation from any cause was received during such period, except increase made pursuant to subsection (f) of this section;

[(2) That an employee whose rate of compensation is below the middle rate of the grade shall not be advanced unless his current efficiency is good or better than good;

[(3) That an employee whose rate of compensation is at or above the middle rate of the grade shall not be advanced unless his current efficiency is better than good;]

(2) That an employee shall not be advanced unless his current efficiency is "good" or better than "good";

[(4)] (3) That the service and conduct of such employee are certified by the head of the department or agency or such official as he may designate as being otherwise satisfactory[.] *; and*

(4) That any employee, (A) who, while serving under permanent, war service, temporary, or any other type of appointment, has left his position to enter the armed forces or the merchant marine, or to comply with a war transfer as defined by the Civil Service Commission, (B) who has been separated under honorable conditions from active duty in the armed forces, or has received a certificate of satisfactory service in the merchant marine, or has a satisfactory record on war transfer, and (C) who, under regulations of the Civil Service Commission or the provisions of any law providing for restoration or reemployment, is restored, reemployed, or reinstated in any position subject to this section, shall upon his return to duty be entitled to within-grade salary advancements without regard to paragraphs (2) and (3) of this subsection, and to credit such service in the armed forces, in the merchant marine, and on war transfer, toward such within-grade salary advancements. As used in this paragraph the term "service in the merchant marine" shall have the same meaning as when used in the Act entitled "An Act to provide reemployment rights for persons who leave their

positions to serve in the merchant marine, and for other purposes," approved June 23, 1943 (U. S. C., 1940 edition, Supp. IV, title 50 App., secs. 1471 to 1475, inclusive).

* * * * * * *

(f) Within the limit of available appropriations, [and in recognition of especially meritorious services,] *as a reward for superior accomplishment, under standards to be promulgated by the Civil Service Commission, and subject to prior approval by the Civil Service Commission, or delegation of authority as provided in subsection (g)*, the head of any department or agency is authorized to make additional within-grade compensation advancements, but any such additional advancements shall not exceed one step and no employee shall be eligible for more than one additional advancement hereunder within each of the time periods specified in subsection (b). All actions under this subsection and the reasons therefor shall be reported to the Civil Service Commission. The Commission shall present an annual consolidated report to the Congress covering the numbers and types of actions taken under this subsection.

* * * * * * *

[(g) The President is hereby authorized to issue such regulations as may be necessary for the administration of this section.]

(g) The Civil Service Commission is hereby authorized to issue such regulations as may be necessary for the administration of this section. In such regulations the Commission is hereby empowered, in its discretion, to delegate to the head of any department or agency, or his designated representative, the authority to approve additional within-grade compensation advancements provided for in subsection (f), without prior approval in individual cases by the Commission. The Commission is also authorized to withdraw or suspend such authority from time to time, whenever post-audit of such actions by the Commission indicates that standards promulgated by the Commission have not been observed.

* * * * * * *

SEC. 13. That the compensation schedules be as follows:

PROFESSIONAL AND SCIENTIFIC SERVICE

The professional and scientific service shall include all classes of positions the duties of which are to perform routine, advisory, administrative, or research work which is based upon the established principles of a profession or science, and which requires professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing.

Grade 1 in this service, which may be referred to as the junior professional grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, simple and elementary work requiring professional, scientific, or technical training as herein specified but little or no experience.

The annual rates of compensation for positions in this grade shall be [$2,000] *$2,320*, [$2,100] *$2,430*, [$2,200] *$2,540*, [$2,300] *$2,650*, [$2,400] *$2,760*, [$2,500] *$2,870*, and [$2,600] *$2,980*.

Grade 2 in this service, which may be referred to as the assistant professional grade, shall include all classes of positions the duties of which are to perform, under immediate or general supervision, individually or with a small number of subordinates, work requiring professional, scientific, or technical training as herein specified, previous experience, and, to a limited extent, the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be [$2,600] *$2,980*, [$2,700] *$3,090*, [$2,800] *$3,200*, [$2,900] *$3,310*, [$3,000] *$3,420*, [$3,100] *$3,530*, and [$3,200] *$3,640*.

Grade 3 in this service, which may be referred to as the associate professional grade, shall include all classes of positions the duties of which are to perform, individually or with a small number of trained assistants, under general supervision but with considerable latitude for the exercise of independent judgment, responsible work requiring extended professional, scientific, or technical training and considerable previous experience.

The annual rates of compensation for positions in this grade shall be [$3,200] *$3,640*, [$3,300] *$3,750*, [$3,400] *$3,860*, [$3,500] *$3,970*, [$3,600] *$4,080*, [$3,700] *$4,190*, and [$3,800] *$4,300*.

Grade 4 in this service, which may be referred to as the full professional grade, shall include all classes of positions the duties of which are to perform, under

general supervision, difficult and responsible work requiring considerable professional, scientific, or technical training and experience, and the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be [$3,800] *$4,300*, [$4,000] *$4,520*, [$4.200] *$4,740*, [$4,400] *$4,960*, and [$4,600] *$5,180*.

Grade 5 in this service, which may be referred to as the senior professional grade, shall include all classes of positions the duties of which are to perform, under general administrative supervision, important specialized work requiring extended professional, scientific, or technical training and experience, the exercise of independent judgment, and the assumption of responsibility for results, or for the administration of a small scientific or technical organization.

The annual rates of compensation for positions in this grade shall be [$4,600] *$5,180*, [$4,800] *$5,390*, [$5,000] *$5,600*, [$5,200] *$5,810*, and [$5,400] *$6,020*, unless a higher rate is specifically authorized by law.

Grade 6 in this service, which may be referred to as the principal professional grade, shall include all classes of positions the duties of which are to act as assistant head of a major professional or scientific organization, or to act as administrative head of a major subdivision of such an organization, or to act as head of a small professional or scientific organization, or to serve as consulting specialist, or independently to plan, organize, and conduct investigations in original research or development work in a professional, scientific, or technical field.

The annual rates of compensation for positions in this grade shall be [$5,600] *$6,230*, [$5,800] *$6,440*, [$6,000] *$6,650*, [$6,200] *$6,860*, and [$6,400] *$7,070*, unless a higher rate is specifically authorized by law.

Grade 7 in this service, which may be referred to as the head professional grade, shall include all classes of positions the duties of which are to act as assistant head of one of the largest and most important professional or scientific bureaus, or to act as the scientific and administrative head of a major professional or scientific bureau, or to act as professional consultant to a department head or a commission or board dealing with professional, scientific, or technical problems, or to perform professional or scientific work of equal importance, difficulty, and responsibility.

The annual rates of compensation for positions in this grade shall be [$6,500] *$7,175*, [$6,750] *$7,437.50*, [$7,000] *$7,700*, [$7,250] *$7,962.50*, and [$7,500] *$8,225*, unless a higher rate is specifically authorized by law.

Grade 8 in this service, which may be referred to as the chief professional grade, shall include all classes of positions the duties of which are to act as the administrative head of one of the largest and most important professional or scientific bureaus, or to perform professional or scientific work of equal importance, difficulty, and responsibility.

The annual rates of compensation for positions in this grade shall be [$8,000] *$8,750*, [8,250] *$9,012.50*, [$8,500] *$9,275*, [$8,750] *$9.537.50*, and [$9,000] *$9,800*, unless a higher rate is specifically authorized by law.

Grade 9 in this service, which may be referred to as the special professional grade, shall include all positions which are or may be specifically authorized or appropriated for at annual rates of compensation in excess of [$9,000] *$9,800*.

SUBPROFESSIONAL SERVICE

The subprofessional service shall include all classes of positions the duties of which are to perform work which is incident, subordinate, or preparatory to the work required of employees holding positions in the professional and scientific service, and which requires or involves professional, scientific, or technical training of any degree inferior to that represented by graduation from a college or university of recognized standing.

Grade 1 in this service, which may be referred to as the minor subprofessional grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, the simplest routine work in a professional, scientific, or technical organization.

The annual rates of compensation for positions in this grade shall be [$1,200] *$1,440*, [$1,260] *$1,506*, [$1,320] *$1,572*, [$1.380] *$1,638*, [$1,440] *$1,704*, [$1,500] *$1,770*, and [$1,560] *$1,836*.

Grade 2 in this service, which may be referred to as the under-subprofessional grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, assigned subordinate work of a professional, scientific, or technical character, requiring limited training or experience, but not the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be [$1,320] *$1,672*, [$1,380] *$1,638*, [$1,440] *$1,704*, [$1,500] *$1,770*, [$1,560] *$1,836*, [$1,620] *$1,902*, and [$1,680] *$1,968*.

Grade 3 in this service, which may be referred to as the junior subprofessional grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, subordinate work of a professional, scientific, or technical character, requiring considerable training or experience, but not the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be [$1,440] *$1,704*, [$1,500] *$1,770*, [$1,560] *$1,836*, [$1,620] *$1,902*, [$1,680] *$1,968*, [$1,740] *$2,034*, and [$1,800] *$2,100*.

Grade 4 in this service, which may be referred to as the assistant subprofessional grade, shall include all classes of positions the duties of which are to perform under immediate supervision, subordinate work of a professional, scientific, or technical character, requiring considerable training or experience, and, to a limited extent, the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be [$1,620] *1,902*, [$1,680] *$1,968*, [$1,740] *$2,034*, [$1,800] *$2,100*, [$1,860] *$2,166*, [$1,920] *$2,232*, and [$1,980] *$2,298*.

Grade 5 in this service, which may be referred to as the main subprofessional grade, shall include all classes of positions the duties of which are to perform, under immediate or general supervision, subordinate work of a professional, scientific, or technical character, requiring a thorough knowledge of a limited field of professional, scientific, or technical work, and the exercise of independent judgment, or to supervise the work of a small number of employees performing duties of an inferior grade in the subprofessional service.

The annual rates of compensation for positions in this grade shall be [$1,800] *$2,100*, [$1,860] *$2,166*, [$1,920] *$2,232*, [$1,980] *$2,298*, [$2,040] *$2,364*, [$2,100] *$2,430*, and [$2,160] *$2,496*.

Grade 6 in this service, which may be referred to as the senior subprofessional grade, shall include all classes of positions the duties of which are to perform, under immediate or general supervision, subordinate but difficult and responsible work of a professional, scientific or technical character, requiring a thorough knowledge of a limited field of professional, scientific, or technical work, and the exercise of independent judgment, or to supervise the work of a small number of employees holding positions in grade 5 of this service.

The annual rates of compensation for positions in this grade shall be [$2,000] *$2,320*, [$2,100] *$2,430*, [$2,200] *$2,540*, [$2,300] *$2,650*, [$2,400] *$2,760*, [$2,500] *$2,870*, and [$2,600] *$2,980*.

Grade 7 in this service, which may be referred to as the principal subprofessional grade, shall include all classes of positions the duties of which are to perform, under general supervision, subordinate but responsible work of a professional, scientific, or technical character, requiring a working knowledge of the principles of the profession, art, or science involved, and the exercise of independent judgment, or to supervise the work of a small number of employees holding positions in grade 6 of this service.

The annual rates of compensation for positions in this grade shall be [$2,300] *$2,650*, [$2,400] *$2,760*, [$2,500] *$2,870*, [$2,600] *$2,980*, [$2,700] *$3,090*, [$2,800] *$3,200*, and [$2,900] *$3,310*.

Grade 8 in this service, which may be referred to as the chief subprofessional grade, shall include all classes of positions the duties of which are to perform, under general supervision, subordinate but difficult and responsible work of a professional, scientific, or technical character, requiring a thorough working knowledge of the principles of the profession, art, or science involved, and the exercise of independent judgment, or to supervise the work of a small number of employees holding positions in grade 7 of this service.

The annual rates of compensation for positions in this grade shall be [$2,600] *$2,980*, [$2,700] *$3,090*, [$2,800] *$3,200*, [$2,900] *$3,310*, [$3,000] *$3,420*, [$3,100] *$3,530*, and [$3,200] *$3,640*.

CLERICAL, ADMINISTRATIVE, AND FISCAL SERVICE

The clerical, administrative, and fiscal service shall include all classes of positions the duties of which are to perform clerical, administrative, or accounting work, or any other work, commonly associated with office, business, or fiscal administration.

Grade 1 in this service, which may be referred to as the underclerical grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, the simplest routine office work.

The annual rates of compensation for positions in this grade shall be **$1,260]** *$1,506*, **[$1,320]** *$1,572*, **[$1,380]** *$1,638*, **[$1,440]** *$1,704*, **[$1,500]** *$1,770*, **[$1,560]** *$1,836*, and **[$1,620]** *$1,902*.

Grade 2 in this service, which may be referred to as the junior clerical grade, shall include all classes of positions the duties of which are to perform under immediate supervision, assigned office work requiring training or experience but not the exercise of independent judgment.

The annual rates of compensation for positions in this grade shall be **[$1,440]** *$1,704*, **[$1,500]** *$1,770*, **[$1,560]** *$1,836*, **[$1,620]** *$1,902*, **[$1,680]** *$1,968*, **[$1,740]** *$2,034*, and **[$1,800]** *$2,100*.

Grade 3 in this service, which may be referred to as the assistant clerical grade, shall include all classes of positions the duties of which are to perform, under immediate or general supervision, assigned office work requiring training and experience and knowledge of a specialized subject matter or the exercise of independent judgment, or to supervise a small section performing simple clerical operations.

The annual rates of compensation for positions in this grade shall be **[$1,620]** *$1,902*, **[$1,680]** *$1,968*, **[$1,740]** *$2,034*, **[$1,800]** *$2,100*, **[$1,860]** *$2,166*, **[$1,920]** *$2,232*, and **[$1,980]** *$2,298*.

Grade 4 in this service, which may be referred to as the main clerical grade, shall include all classes of positions the duties of which are to perform, under immediate or general supervision responsible office work requiring training and experience, the exercise of independent judgment or knowledge of a specialized subject matter or both, and an acquaintance with office procedure and practice, or to supervise a small stenographic section or a small section performing clerical operations of corresponding difficulty.

The annual rates of compensation for positions in this grade shall be **[$1,800]** *$2,100*, **[$1,860]** *$2,166*, **[$1,920]** *$2,232*, **[$1,980]** *$2,298*, **[$2,040]** *$2,364*, **[$2,100]** *$2,430*, and **[$2,160]** *$2,496*.

Grade 5 in this service, which may be referred to as the senior clerical grade, shall include all classes of positions the duties of which are to perform, under general supervision, difficult and responsible office work requiring considerable training and experience, the exercise of independent judgment or knowledge of a specialized subject matter or both, and a thorough knowledge of office procedure and practice, or to supervise a large stenographic section or any large section performing simple clerical operations, or to supervise a small section engaged in difficult but routine office work.

The annual rates of compensation for positions in this grade shall be **[2,000]** *$2,320*, **[$2,100]** *$2,430*, **[$2,200]** *$2,540*, **[$2,300]** *$2,650*, **[$2,400]** *$2,760*, **[$2,500]** *$2,870*, and **[$2,600]** *$2,980*.

Grade 6 in this service, which may be referred to as the principal clerical grade, shall include all classes of positions the duties of which are to perform, under general supervision, exceptionally difficult and responsible office work requiring extended training and experience, the exercise of independent judgment or knowledge of a specialized and complex subject matter, or both, and a thorough knowledge of office procedure and practice, or to serve as the recognized authority or adviser in matters requiring long experience and an exceptional knowledge of the most difficult and complicated procedure or of a very difficult and complex subject, or to supervise a large or important office organization engaged in difficult or varied work.

The annual rates of compensation for positions in this grade shall be **[$2,300]** *$2,650*, **[$2,400]** *$2,760*, **[$2,500]** *$2,870*, **[$2,600]** *$2,980*, **[$2,700]** *$3,090*, **[$2,800]** *$3,200*, and **[$2,900]** *$3,310*.

Grade 7 in this service, which may be referred to as the assistant administrative grade, shall include all classes of positions the duties of which are to perform, under general supervision, responsible office work along specialized and technical lines requiring specialized training and experience and the exercise of independent judgment, or as chief clerk to supervise the general business operations of a small, independent establishment or a minor bureau or division of an executive department, or to supervise a large or important office organization engaged in difficult and specialized work.

The annual rates of compensation for positions in this grade shall be **[$2,600]** *$2,980*, **[$2,700]** *$3,090*, **[$2,800]** *$3,200*, **[$2,900]** *$3,310*, **[$3,000]** *$3,420*, **[$3,100]** *$3,530*, and **[$3,200]** *$3,640*.

Grade 8 in this service, which may be referred to as the associate administrative grade, shall include all classes of positions the duties of which are to perform, under general supervision, difficult and responsible office work along specialized and technical lines requiring specialized training and experience and the exercise of independent judgment, or to supervise a large or important office organization engaged in work involving specialized training on the part of the employees.

The annual rates of compensation for positions in this grade shall be [$2,900] *$3,310*, [$3,000] *$3,420*, [$3,100] *$3,530*, [$3,200] *$3,640*, [$3,300] *$3,750*, [$3,400] *$3,860*, and [$3,500] *$3,970*.

Grade 9 in this service, which may be referred to as the full administrative grade, shall include all classes of positions the duties of which are to perform, under general supervision, exceptionally difficult and responsible office work along specialized and technical lines, requiring considerable specialized training and experience and the exercise of independent judgment, or as chief clerk to supervise the general business operations of a large independent establishment or a major bureau or division of an executive department, or to supervise a large or important office organization engaged in work involving technical training on the part of the employees.

The annual rates of compensation for positions in this grade shall be [$3,200] *$3,640*, [$3,300] *$3,750*, [$3,400] *$3,860*, [$3,500] *$3,970*, [$3,600] *$4,080*, [$3,700] *$4,190* and [$3,800] *$4,300*.

Grade 10 in this service, which may be referred to as the senior administrative grade, shall include all classes of positions the duties of which are to perform, under general supervision, the most difficult and responsible office work along specialized and technical lines, requiring extended training, considerable experience, and the exercise of independent judgment, or to supervise a large or important office organization engaged in work involving considerable technical training and experience on the part of the employees.

The annual rates of compensation for positions in this grade shall be [$3,500] *$3,970*, [$3,600] *$4,080*, [$3,700] *$4,190*, [$3,800] *$4,300*, [$3,900] *$4,410*, [$4,000] *$4,520*, and [$4,100] *$4,630*.

Grade 11 in this service, which may be referred to as the principal administrative grade, shall include all classes of positions the duties of which are to perform the most difficult and responsible office work along specialized and technical lines requiring extended training and experience, and the exercise of independent judgment, or to supervise a large or important office organization engaged in work involving extended training and considerable experience on the part of the employees.

The annual rates of compensation for positions in this grade shall be [$3,800] *$4,300*, [$4,000] *$4,520*, [$4,200] *$4,740*, [$4,400] *$4,960*, and [$4,600] *$5,180*.

Grade 12 in this service, which may be referred to as the head administrative grade, shall include all classes of positions the duties of which are to perform the most difficult and responsible office work along specialized and technical lines requiring extended training and experience, the exercise of independent judgment, and the assumption of full responsibility for results, or to supervise a large and important office organization engaged in work involving extended training and experience on the part of the employees.

The annual rates of compensation for positions in this grade shall be [$4,600] *$5,180*, [$4,800] *$5,390*, [$5,000] *$5,600*, [$5,200] *$5,810*, and [$5,400] *$6,020*, unless a higher rate is specifically authorized by law.

Grade 13 in this service, which may be referred to as the chief administrative grade, shall include all classes of positions the duties of which are to act as assistant head of a major bureau, or to act as administrative head of a major subdivision of such a bureau, or to act as head of a small bureau, in case professional or scientific training is not required, or to supervise the design and installation of office systems, methods, and procedures, or to perform work of similar importance, difficulty, and responsibility.

The annual rates of compensation for positions in this grade shall be [$5,600] *$6,230*, [$5,800] *$6,440*, [$6,000] *$6,650*, [$6,200] *$6,860*, and [$6,400] *$7,070*, unless a higher rate is specifically authorized by law.

Grade 14 in this service, which may be referred to as the executive grade, shall include all classes of positions the duties of which are to act as assistant head of one of the largest and most important bureaus, or to act as head of a major bureau, in case professional or scientific training is not required, or to supervise the design of systems of accounts for use by private corporations subject to regulation by the United States, or to act as the technical consultant to a depart-

ment head or a commission or board in connection with technical or fiscal matters, or to perform work of similar importance, difficulty, and responsibility.

The annual rates of compensation for positions in this grade shall be [$6,500] *$7,175*, [$6,750] *$7,437.50*, [$7,000] *$7,700*, [$7,250] *$7,962.50*, and [$7,500] *$8,225*, unless a higher rate is specifically authorized by law.

Grade 15 in this service, which may be referred to as the senior executive grade, shall include all classes of positions the duties of which are to act as the head of one of the largest and most important bureaus, in case professional or scientific training is not required, or to perform work of similar importance, difficulty, and responsibility.

The annual rates of compensation for positions in this grade shall be [$8,000] *$8,750*, [$8,250] *$9,012.50*, [$8,500] *$9,275*, [$8,750] *$9,537.50*, and [$9,000] *$9,800*, unless a higher rate is specifically authorized by law.

Grade 16 in this service, which may be referred to as the special executive grade, shall include all positions which are or may be specifically authorized or appropriated for at annual rates of compensation in excess of [$9,000] *$9,800*.

CRAFTS, PROTECTIVE, AND CUSTODIAL SERVICE

The crafts, protective, and custodial service shall include all classes of positions the duties of which are to supervise or perform the work of an apprentice, helper, or journeyman in a recognized trade or craft, or other skilled mechanical craft, or the work of an unskilled or skilled laborer, or police or fire-protection work, or domestic or other manual or mechanical work involved in the protection, operation, or maintenance of public buildings, premises, and equipment; the transportation of public officers, employees, and property; the transmission of official papers; the guarding of persons in the custody of the Government, and caring for their domestic needs and those of persons in the employ or care of the Government.

Grade 1 in this service, which may be referred to as the junior messenger grade, shall include all classes of positions, the duties of which are to run errands, to check parcels, or to perform other light manual or mechanical tasks with little or no responsibility.

The annual rates of compensation for positions in this grade shall be [$720] *$864*, [$780] *$936*, [$840] *$1,008*, [$900] *$1,080*, and [$960] *$1,152*.

Grade 2 in this service, which may be referred to as the office-laborer grade, shall include all classes of positions the duties of which are to handle desks, mail sacks, and other heavy objects, and to perform similar work ordinarily required of unskilled laborers; to operate elevators; to clean office rooms; or to perform other work of similar character.

The annual rates of compensation for positions in this grade shall be [$1,200] *$1,440*, [$1,260] *$1,506*, [$1,320] *$1,572*, [$1,380] *$1,638*, [$1,440] *$1,704*, and [$1,500] *$1,770*: *Provided*, That charwomen working part time be paid at the rate of [65 cents] *78 cents* an hour and head charwomen at the rate of [70 cents] *83 cents* an hour.

Grade 3 in this service, which may be referred to as the minor crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to perform, under immediate supervision, custodial, or manual office work with some degree of responsibility, such as operating paper-cutting, canceling, envelope-opening, or envelope-sealing machines; firing and keeping up steam in boilers used for heating purposes in office buildings, cleaning boilers, and oiling machinery and related apparatus; operating passenger or freight automobiles; packing goods for shipment; supervising a large group of charwomen; running errands and doing light manual or mechanical tasks with some responsibility; carrying important documents from one office to another; or attending the door and private office of a department head or other public officer.

The annual rates of compensation for positions in this grade shall be [$1,320] *$1,572*, [$1,380] *$1,638*, [$1,440] *$1,704*, [$1,500] *$1,770*, [$1,560] *$1,836*, and [$1,620] *$1,902*.

Grade 4 in this service which may be referred to as the under crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to perform, under general supervision, custodial work of a responsible character, such as guarding office or storage buildings; supervising a small force of unskilled laborers; firing and keeping up steam in heating apparatus and operating the boilers and other equipment used for heating purposes; or performing general, semimechanical, new, or repair work requiring some skill with hand tools.

The annual rates of compensation for positions in this grade shall be [$1,500] *$1,770*, [$1,560] *$1,836*, [$1,620] *$1,902*, [$1,680] *$1,968*, [$1,740] *$2,034*, [$1,800] *$2,100*, and [$1,860] *$2,166*.

Grade 5 in this service, which may be referred to as the junior crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to directly supervise a small detachment of watchmen or building guards; to supervise the operation and maintenance of a small heating plant and its auxiliary equipment; or to perform other work of similar character.

The annual rates of compensation for positions in this grade shall be [$1,680] *$1,968*, [$1,740] *$2,034*, [$1,800] *$2,100*, [$1,860] *$2,166*, [$1,920] *$2,232*, [$1,980] *$2,298*, and [$2,040] *$2,364*.

Grade 6 in this service, which may be referred to as the assistant crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to have general supervision over a small force of watchmen or building guards, or to have direction of a considerable detachment of such employees; to supervise a large force of unskilled laborers; to repair office appliances; or to perform other work of similar character.

The annual rates of compensation for positions in this grade shall be [$1,860] *$2,166*, [$1,920] *$2,232*, [$1,980] *$2,298*, [$2,040] *$2,364*, [$2,100] *$2,430*, [$2,160] *$2,496*, and [$2,220] *$2,562*.

Grade 7 in this service, which may be referred to as the main crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to supervise the work of skilled mechanics; to supervise the operation and maintenance of a large heating, lighting, and power plant and all auxiliary mechanical and electrical devices and equipment; to assist in the supervision of large forces of watchmen and building guards, or to have general supervision over smaller forces; or to perform other work of similar character.

The annual rates of compensation for positions in this grade shall be [$2,040] *$2,364*, [$2,100] *$2,430*, [$2,160] *$2,496*, [$2,220] *$2,562*, [$2,300] *$2,650*, [$2,400] *$2,760*, and [$2,500] *$2,870*.

Grade 8 in this service, which may be referred to as the senior crafts, protective, and custodial grade, shall include all classes of positions the duties of which are to direct supervisory and office assistants, mechanics, watchmen, elevator conductors, laborers, janitors, messengers, and other employees engaged in the custody, maintenance, and protection of a small building, or to assist in the direction of such employees when engaged in similar duties in a large building; to have general supervision over large forces of watchmen and building guards; or to perform other work of equal difficulty and responsibility.

The annual rates of compensation for positions in this grade shall be [$2,200] *$2,540*, [$2,300] *$2,650*, [$2,400] *$2,760*, [$2,500] *$2,870*, [$2,600] *$2,980*, [$2,700] *$3,090*, and [$2,800] *$3,200*.

Grade 9 in this service, which may be referred to as the principal custodial grade, shall include all classes of positions, the duties of which are to direct supervisory and office assistants, mechanics, watchmen, elevator conductors, laborers, janitors, messengers, and other employees engaged in the custody, maintenance, and protection of a large building, or to assist in the direction of such employees when engaged in similar duties in a group of buildings; or to perform other custodial work of equal difficulty and responsibility.

The annual rates of compensation for positions in this grade shall be [$2,300] *$2,650*, [$2,400] *$2,760*, [$2,500] *$2,870*, [$2,600] *$2,980*, [$2,700] *$3,090*, [$2,800] *$3,200*, and [$2,900] *$3,310*.

Grade 10 in this service, which may be referred to as the chief custodial grade, shall include all classes of positions the duties of which are to direct supervisory and office assistants, mechanics, watchmen, elevator conductors, laborers, janitors, messengers, and other employees engaged in the custody, maintenance, and protection of a group of buildings, or to perform other custodial work of equal difficulty and responsibility.

The annual rates of compensation for positions in this grade shall be [$2,600] *$2,980*, [$2,700] *$3,090*, [$2,800] *$3,200*, [$2,900] *$3,310*, [$3,000] *$3,420*, [$3,100] *$3,530*, and [$3,200] *$3,640*.

CLERICAL-MECHANICAL SERVICE

The clerical-mechanical service shall include all classes of positions which are not in a recognized trade or craft and which are located in the Bureau of Engraving and Printing, the mail equipment shop, the duties of which are to perform or to direct manual or machine operations requiring special skill or experience, or

to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations.

Grade 1 shall include all classes of positions in this service the duties of which are to perform the simpler operations or processes requiring special skill and experience.

The rates of compensation for classes of positions in this grade shall be [55 to 60 cents] *78 to 85 cents* an hour.

Grade 2 shall include all classes of positions in this service the duties of which are to operate simple machines or to perform operations or processes requiring a higher degree of skill than those in grade 1.

The rates of compensation for classes of positions in this grade shall be [65 to 70 cents] *91 to 98 cents* an hour.

Grade 3 shall include all classes of positions in this service the duties of which are to operate machines or to perform operations or processes requiring the highest degree of skill, or supervise a small number of subordinates.

The rates of compensation for classes of positions in this grade shall be [75 to 80 cents] *$1.05 to $1.11* an hour.

Grade 4 shall include all classes of positions in this service the duties of which are to perform supervisory work over a large unit of subordinates.

The rates of compensation for classes of positions in this grade shall be [85 to 95 cents] *$1.18 to $1.31* an hour.

NOTE.—The act of June 26, 1936 (U. S. C., 1940 ed., title 5, sec. 673c), had the effect of authorizing a 20-percent increase in each of the hourly rates for positions in each grade of the clerical-mechanical service. The present rates are thus actually as follows: Grade 1, 66 to 72 cents an hour; grade 2, 78 to 84 cents an hour; grade 3, 90 to 96 cents an hour; and grade 4, $1.02 to $1.14 an hour.

BACHARACH ACT OF MAY 29, 1928, AS AMENDED

SECTION 1. The following annual rates of compensation are hereby established for the employees in the Customs Service hereinafter specified:

(c) Clerks, entrance salary, [$1,700] *$1,990*; clerks having one year's satisfactory service, [$1,800] *$2,100*; clerks having two years' satisfactory service, [$1,900] *$2,210*; clerks having three years' satisfactory service, [$2,000] *$2,320*; clerks having four years' satisfactory service, [$2,100] *$2,430*; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law.

IMMIGRATION ACT OF 1917

SEC. 24. * * *

Immigrant inspectors shall be divided into five classes, as follows: Grade 1, salary [$2,100] *$2,430*; grade 2, salary [$2,300] *$2,650*; grade 3, salary [$2,500] *$2,870*; grade 4, salary [$2,700] *$3,090*; grade 5, salary [$3,000] *$3,420*; and, hereafter, inspectors shall be promoted successively to grades 2 and 3 at the beginning of the next quarter following one year's satisfactory service (determined by a standard of efficiency which is to be defined by the Commissioner of Immigration and Naturalization, with the approval of the Attorney General) in the next lower grade; and to grades 4 and 5 for meritorious service after no less than one year's service in grades 3 and 4, respectively: *Provided further*, That when officers, inspectors, or other employees of the Immigration and Naturalization Service are ordered to perform duty in a foreign country, or transferred from one station to another, in the United States or in a foreign country, they shall be allowed their traveling expenses in accordance with such regulations as the Attorney General may deem advisable, and they may also be allowed, within the discretion and under written orders of the Attorney General, the expenses incurred for the transfer of their wives and dependent minor children; their household effects and other personal property, including the expenses for packing, crating, freight, and drayage thereof in accordance with the Act of October 10, 1940 (54 Stat. 1105; U. S. C., title 5, sec. 73c–1). The expense of transporting the remains of such officers, inspectors, or other employees who die while in, or in transit to,

a foreign country in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses of such interment and preparation for shipment at their posts of duty or at home, are hereby authorized to be paid on the written order of the Attorney General; *Provided further*, That the appropriation of such sum as may be necessary for the enforcement of this Act is hereby authorized.

SATURDAY HALF-HOLIDAY LAW OF MARCH 3, 1931

[That on and after the effective date of this Act four hours, exclusive of time for luncheon, shall constitute a day's work on Saturdays throughout the year, with pay or earnings for the day the same as on other days when full time is worked, for all civil employees of the Federal Government and the District of Columbia, exclusive of employees of the Postal Service, employees of the Panama Canal on the Isthmus, and employees of the Interior Department in the field, whether on the hourly, per diem, per annum, piecework, or other basis: *Provided*, That in all cases where for special public reasons, to be determined by the head of the department or establishment having supervision or control of such employees, the services of such employees cannot be spared, such employees shall be entitled to an equal shortening of the workday on some other day: *Provided further*, That the provisions of this Act, shall not deprive employees of any leave or holidays with pay to which they may now be entitled under existing laws.]

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION ACT FOR THE FISCAL YEAR ENDED JUNE 30, 1894, AS AMENDED

SEC. 5. [Hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend the hours of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation:]

SUNDRY CIVIL EXPENSES APPROPRIATION ACT FOR THE FISCAL YEAR ENDED JUNE 30, 1907

[SEC. 6. Hereafter, where the compensation of any person in the service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established: Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one-thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the thirtieth day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited.]

Calendar No. 262

79TH CONGRESS, 1st Session | SENATE | REPORT No. 265

PAY INCREASES FOR GOVERNMENT EMPLOYEES

MAY 12, 1945.—Ordered to be printed

Mr. DOWNEY, from the Committee on Civil Service, submitted the following

REPORT

[To accompany S. 807]

The Committee on Civil Service, to whom was referred the bill (S. 807) to improve salary and wage administration in the Federal service; to provide pay for overtime and for night and holiday work; to amend the Classification Act of 1923, as amended, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

GENERAL STATEMENT

To provide a permanent law embodying certain basic pay-scale adjustments and a basis for permanent overtime compensation for Government employees is the major purpose of this bill.

In the Seventy-sixth, Seventy-seventh, and Seventy-eighth Congresses, successive temporary legislation was enacted setting up overtime compensation for extra time worked and additional compensation in lieu of overtime to accommodate Government employees to increase wartime living costs. Public Law 49, Seventy-eighth Congress, expires June 30, 1945. This bill if enacted will take its place as permanent rather than temporary legislation.

The full Senate Civil Service Committee has met and considered carefully the issues presented by the measure. In extensive hearings numerous witnesses including employee groups and representatives of the Civil Service Commission, War and Navy Departments, and other agencies of the Government were heard and interrogated. On the basis of its investigation and discussion the committee favorably reports this bill with certain changes to be noted below.

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COMMENT

With minor exceptions there has been no change in the pay scales of the Classification Act since the Brookhart Act of 1930. Evidence presented at the hearings showed that since 1930 and particularly since 1941 the cost of living has greatly increased. Competent witnesses testified that the cost of living since January 1941 had gone up 26 percent with a further hidden increase in the cost of living of as much as 4 percent due to quality deterioration, disappearance of cheaper goods, decrease of special sales and in under-reporting of prices actually charged. The Bureau of Labor Statistics submitted further evidence that where total take-home pay wages in manufacturing industries had increased by 78 percent, the total take-home pay of the Federal worker had increased a fraction of that amount.

Congress in the Stabilization Act of October 2, 1942, attempted to stabilize, so far as practicable, wages and prices on levels existing on September 15, 1942. As an exception to the denial of wage increases, the Little Steel formula was established. Generally speaking, this formula permits a raise of 15 percent in basic wages over those of January 1, 1941. Testimony of various witnesses indicated that employees of the executive branch of the Government were the only sizable group of employees who had not received the benefit of the Little Steel adjustment on basic pay. Of the approximately 3,000,000 Federal employees currently on the Federal payroll, this measure will provide basic pay increases for about 1,225,000 employees.

The Navy Department prepared for the committee an extensive study of comparative rates between employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards, and employees whose wages are fixed in accordance with the Classification Act. Wage board employees, making up a sizable proportion of the 3,000,000, are employed in navy yards, arsenals, and other field services and have received wage adjustments in accord with the Little Steel formula. The Navy Department pointed out that this discrepancy in wage rates between the two systems created a serious personnel problem in recruitment and turn-over. This conclusion was reaffirmed by a representative of the War Department.

Further testimony to the same effect was presented by the Civil Service Commission and employee groups.

Witnesses urged the establishment of a minimum wage or floor of $1,500 on Federal salaries, and a proportionate salary increase of 25 percent to accommodate increased living costs which was contended would be comparable with private industry rates. The committee carefully weighed these considerations. It rejected setting up a floor or minimum annual wage of $1,500 inasmuch as evidence showed that in the lower brackets Federal salaries were higher than comparable salaries in private industry. It rejected an over-all increase of 25 percent as being inconsistent with the Little Steel formula.

The bill as originally written provided for a straight 15-percent increase allocated proportionately from the bottom to the top grades, thus providing the higher income groups with a considerably greater increase. The bill as formerly written was endorsed by the President and found by Economic Stabilization Director William Davis to be in accord with the Little Steel formula.

The committee was particularly impressed with testimony presented showing the sharp increase in the cost of living for persons in the lower income brackets and accordingly wished to make an adjusted increase, which as an over-all increase would be within the Little Steel formula. In place of the 15 percent straight increase, a new formula was worked out giving 20 percent on salaries up to $1,200 which make a floor of $1,440 for all adult workers, 10 percent additional compensation between $1,200 and $4,600 and 5 percent on that portion of salaries in excess of $4,600. Thus a person making less than $2,400 would receive more than a 15 percent increase. At $2,400 exactly 15 percent; over $2,400 and up to $7,000, the increase would be more than 10 percent. Over $7,000, the increase would be less than 10 percent but always more than 5 percent. Increases are to be made on an employee's basic salary received, such basic salary to include within-grade promotions.

The new schedule, designed primarily to compensate for the rise in the cost of living and to maintain proper relationships among existing rates of Federal employees, is endorsed by the War Labor Board. Notwithstanding the fact that the graduated increase figured out to be a little over a 16-percent increase of straight time annual salary averages as of January 1, 1941, the War Labor Board found it within its formula as stated in a letter to the committee chairman:

> It is clear that adjustments up to 15 percent are permissible under the Board's Little Steel formula. Since the additional adjustments, averaging only slightly in excess of 1 percent are necessary, in the judgment of the committee, for the establishment of proper rate relationships both within the Federal service and in relation to rates in private industry, it is my opinion that the proposed adjustments are wholly within the limits of the wage stabilization program.

Deciding that it was good policy to raise the lower-income brackets to provide adequate income in lower levels, the committee found it necessary to cut the higher brackets to a lower percentage.

That the Federal worker has certain benefits above and beyond those in private industry was brought out and emphasized by members of the committee who looked toward the retirement and annual-leave provisions of the civil-service law as comparatively advantageous.

The overtime provisions of Public Law 49, Seventy-eighth Congress, are substantially continued. These provide, in the case of per-annum employees, for pay at time and one-twelfth on the basis of actual hours worked or 21.6 percent of basic pay up to $2,900 for a 48-hour week. This overtime is computed by dividing the annual rate by 360, and further by 8, to determine the straight-time hourly rate. This figure is then multiplied by 1½, to achieve the overtime hourly rate.

The committee in rejecting the proposed modification of the method of computing overtime felt that it was dealing with an issue of rapidly decreasing significance since committee members looked toward a post-war period of little or no overtime.

The committee changed the additional compensation for legislative and judicial employees from 15 percent of the first $2,900 of salary or $300, whichever is greater, to 23 percent of the first $2,900 of salary, or $360. In so providing the committee broke down the amounts to establish a basic increase of 15 percent over present basic salary rates and an amount of 8 percent or one-twelfth of an employee's basic salary as compensation to be paid in lieu of overtime. This section has an expiration date of June 30, 1947.

The committee further subscribed to the policy of establishing a night differential of 10 percent. Accordingly it approved a section so providing with the exception that persons presently employed and receiving a greater differential should not be reduced. It was felt that the Government should adopt the policy followed by private industry, and in other parts of the Government service, of increasing night pay as some compensation for the proportionate derangement of normal living habits.

The committee made further changes in the Classification Act for the purpose of making the present salary-advancement law operate more effectively as a work incentive.

EXPLANATION OF PROVISIONS

Section 401 specifically excludes from provisions of the bill elected officials, judges, heads of departments, independent establishments and agencies, and further, except as to personnel ceiling provisions in section 406, the bill does not apply to officers and employees in the field service of the Post Office Department, employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose, employees outside the continental limits of the United States or in Alaska who are paid in accordance with local native wage rates, employees of the Inland Waterways Corporation, employees under the jurisdiction of the War Shipping Administration, of the Transportation Corps of the Army, and vessel employees of the Coast and Geodetic Survey.

Section 101 provides that the overtime-pay provisions of the bill shall apply to all civilian officers and employees under the executive branch of the United States Government including Government-owned or controlled corporations, civilian employees of the Library of Congress, and the Botanic Gardens, and, with certain exceptions, to those in the office of the Architect of the Capitol. Excepted from the overtime provisions but included in another part of the bill (sec. 202 (c)) are per annum employees of the office of the Architect of the Capitol not compensated under the Classification Act of 1923, as amended, and intermittent elevator operators paid at per hour rates. These employees will be paid additional compensation in accordance with section 202.

Section 201 provides for special coverage and salary increase of legislative and judicial officers and employees, whose compensation is not fixed in accord with the Classification Act, and to the official reporters of proceedings and debates in the Senate.

Section 301 providing for amendments to the Classification Act to improve its administration, covers all officers and employees in or under the United States Government including Government-owned or controlled corporations, or of the municipal government of the District of Columbia who occupy positions subject to the Classification Act.

Section 102 provides for maintenance of the present overtime pay formula established originally in the act of June 28, 1940, Public Law 671, Seventy-sixth Congress, continued in subsequent legislation including the present Overtime Pay Act of 1943. This formula provides for computation of overtime pay at the rate of 21.6 percent

of annual rates up to $2,900 for a 48-hour workweek. This further provides a maximum overtime annual rate of $628.33.

Section 103 permits, in lieu of overtime compensation, compensatory time off for time spent on duty after 48 hours in one workweek at the discretion of the employee. Persons working in excess of 48 hours will accordingly have a choice between payment for such time or a corresponding amount of time off.

Section 104 provides for an additional 10-percent night differential over basic compensation for any work performed as part of an employee's regular schedule between the hours of 6 p. m. and 6 a. m. This differential is not to be included in the computation of overtime, nor will this provision serve to decrease the compensation of any employee who, because of other authorization is entitled to greater compensation for night work.

Section 105 grants to officers and employees assigned to duty on holidays extra pay to be computed on the same basis as overtime pay is computed in section 102 with the exception that section 105 contains no $2,900 ceiling. However, this section is to take effect on the termination of the war or when Congress or the President in the future shall see fit to so provide.

Title II of the bill applies to officers and employees of the judicial and legislative branches of the Government whose compensation is not fixed in accordance with the Classification Act. Such employees will be paid additional compensation at the rate of 23 percent of their earned basic compensation up to $2,900. If their basic compensation is not more than $1,565 per year they will receive $360. However, no such employee shall receive additional compensation amounting to more than 25 percent of his earned basic income.

Title III contains certain amendments to the Classification Act of 1923 as amended. Authorization is given to the Civil Service Commission to establish in the interest of good personnel administration minimum pay rates for subdivisions or classes of positions in the same grade. However, these minimum standard rates for any class of positions in a grade shall not exceed the rate fixed by the Classification Act for the middle of that grade. The Commission is further empowered to make similar adjustments in pay rates of positions subject to the Classification Act of 1923 when it finds within the same Government organization and at the same location gross inequality exists between Classification Act rates and wage-board rates.

Rates established under this section shall be published by the Commission and may be changed and revised. All such actions must be reported to Congress at the close of each fiscal year.

Section 303 lessens the time periods between periodic within-grade salary advancements from 18 months to 12 months and from 30 months to 18 months, and conforms the language of the within-grade salary advancement law to the increased rates established by the proposed bill. Also by another amendment contained in this section, an employee is enabled to advance beyond the middle of his grade on an efficiency rating of good or better than good. Prior to this amendment an employee could advance beyond the middle of his grade only upon an efficiency rating of better than good.

Sections 304 and 305 are designed to improve the administration of provisions of existing law under which heads of departments and

agencies are empowered to grant one additional within-grade salary advancement within each waiting period.

Section 306 (a) changes the Classification Act of 1923, as amended, by granting an increase of 20 percent of all basic salaries up to and including $1,200 per annum. Over $1,200, persons under the Classification Act receiving up to $4,600 will receive a 10-percent increase on that portion of their basic salary between $1,200 and $4,600, retaining the 20-percent increase on the portion up to $1,200. Persons receiving over $4,600 will receive a 5-percent increase on all compensation over $4,600, retaining the 20 percent and 10 percent increases, respectively, on the amounts below $4,600.

Subsection (b) amends the Classification Act so as to apply to per hour rates, increases corresponding to the formula applied to per annum rates. Title IV contains general provisions including exemptions to coverage in section 401. Section 402 continues as a matter of policy the provisions of existing law with respect to certain overtime services of designated inspectional groups.

Under section 403, custom clerks and immigration inspectors, not covered under the Classification Act, as amended, are given an increase in an amount corresponding to the increased Classification Act scale provided in section 306.

Section 404 establishes a basic administrative workweek of 40 hours, which hours are required to be performed within a period of not more than 6 out of 7 consecutive days. Thus, an employee is assured at least 1 day off during the week or, in the alternative, overtime pay.

Where the 40-hour basic workweek is applicable, the Saturday half-holiday law is no longer effective. And under this section the law requiring a 7-hour day for days other than Saturday is repealed.

Authority to issue regulations on the foregoing points insofar as the executive branch is concerned is given to the Commission, subject to the approval of the President, under section 405.

It was the feeling of the committee that the interests of efficiency and economy could best be served by a policy of reduction of force in many Government agencies. By this proposal, authority of the Director of the Bureau of the Budget to fix personnel ceilings for agencies within the executive branch is extended to all employees of executive agencies, including the Postal Service, Wage Board employees as well as employees subject to the Classification Act. However, expressly excluded are employees of the War and Navy Departments outside the continental limits of the United States and in Alaska.

The Bureau of the Budget will be required to continue its quarterly reports to Congress and to include therein data relating to any violations of orders of the Director fixing personnel ceilings. The Director is further authorized to reserve from expenditures all savings in salaries and to release such savings only on a showing of necessity. The Director will also be required to show in such reports the net reduction of personnel in each agency.

Section 407 authorizes an appropriation of any sums necessary to carry out the provisions of the bill.

According to section 408 overtime compensation and extra pay for night and holiday work shall not be computed as income or additional

compensation to prevent certain veterans and their dependents from receiving benefits under certain veterans' laws.

The act would become affective on July 1, 1945.

COST OF S. 807

The enactment of section 306 would increase the cost of basic compensation of employees in the executive branch of the Government by $392,200,000. This represents a total cost figure of $2,856,600,000, compared with the present cost of $2,464,400,000 with respect to the employees in the executive branch who are subject to the provisions of this section.

The cost of basic salaries of the 8,032 employees in the judicial and legislative branches of the Government, whose compensation is fixed in accordance with the Classification Act, is approximately $15,100,000. The proposed increase of $2,400,000 will bring that figure up to $17,500,000.

The total increase in cost of section 306, which raises permanently basic compensation rates, amounts to approximately $394,600,000.

Figured on these basic rates, the cost of overtime compensation for employees of the executive branch will be $688,600,000. This represents an increase of $77,200,000 over the cost of overtime compensation under existing rates. An additional $100,000 must be included to account for increases in the overtime compensation of judicial and legislative employees subject to the Classification Act.

The proposed night-pay differential would cost the Government $15,000,000, and would affect an estimated 88,452 employees.

The Bureau of the Budget, which compiled the above figures for submission to the Civil Service Committee, estimates that the total cost of the increase given judicial and legislative employees not subject to the Classification Act will not exceed $900,000.

Thus, on the basis of the number of persons employed by the Federal Government at the present time, the total annual cost of the increases provided in the bill would amount to $487,800,000.

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CERTIFICATE OF COMPLIANCE
PURSUANT TO FED. R. APP. P. 32(g)(1)

This brief complies with the type-volume limitation of Federal Circuit Rule 32(b)(1). This brief contains 13,650 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2).

The brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond.

July 7, 2025

/s/ Matthew J. Carhart
MATTHEW J. CARHART