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FROM: Jack Lew

DATE: Office of National Service 6/10/93 ^{AM} 9:05

NUMBER OF PAGES (including cover sheet): 16

COMMENTS: _____

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6/10/93

To: Jim King ^{fax} (676-4489)
(606-1000)

From: Jack Lew

Attached are the relevant sections on personnel. In the Senate, we have worked with the Governmental Affairs Committee to make clear that except for (1) tenure; (2) classification and (3) pay levels all of title II protections (i.e. Hatch Act + MSPB) apply.

1 of Education necessary to carry out the pro-
2 grams of the Corporation; and

3 “(E) direct, manage, and provide policy
4 guidance and oversight of the financial manage-
5 ment personnel, activities, and operations of the
6 Corporation.

7 **“SEC. 195. EMPLOYEES, CONSULTANTS, AND OTHER PER-**
8 **SONNEL.**

9 “(a) EMPLOYEES.—

10 “(1) IN GENERAL.—The Chairperson may ap-
11 point and determine the compensation of such em-
12 ployees as the Chairperson determines to be nec-
13 essary to carry out the duties of the Corporation.

14 “(2) TERMS.—

15 “(A) INITIAL TERM.—

16 “(i) LENGTH OF TERM.—Such an em-
17 ployee shall be appointed for an initial
18 term that shall not exceed 5 years.

19 “(ii) PROBATION PERIOD.—The
20 Chairperson shall take such action, includ-
21 ing the issuance of rules, regulations, and
22 directives, as shall provide, as nearly as
23 conditions of good administration warrant,
24 for a 1-year period of probation before
25 such an appointment becomes final.

1 “(B) APPOINTMENT EXTENSIONS.—The
2 appointment of an employee may be extended if
3 the Chairperson determines that such an exten-
4 sion is necessary to ensure the continuity of
5 functions under this Act.

6 “(C) APPOINTMENT IN THE COMPETITIVE
7 SERVICE AFTER EMPLOYMENT IN THE COR-
8 PORATION.—

9 “(i) EMPLOYEES WITH NOT LESS
10 THAN 3 YEARS OF EMPLOYMENT.—If an
11 employee, other than a representative de-
12 scribed in section 195(b), is separated
13 from the Corporation (other than by re-
14 moval for cause), and has been continu-
15 ously employed by the Corporation for a
16 period of not less than 3 years, such period
17 shall be treated as a period of service in
18 the competitive service for purposes of
19 chapter 33 of title 5, United States Code.

20 “(ii) EMPLOYEES WITH NOT LESS
21 THAN 1 BUT LESS THAN 3 YEARS OF EM-
22 PLOYMENT.—If an employee, other than a
23 representative described in section 195(b),
24 is separated from the Corporation (other
25 than by removal for cause), and has been

1 continuously employed by the Corporation
2 for a period of not less than 1 year, but
3 less than 3 years, such period shall be
4 treated as a period of service in the com-
5 petitive service for purposes of chapter 33
6 of title 5, United States Code, until the
7 date that is 3 years after the date of sepa-
8 ration.

9 “(iii) DEFINITION.—As used in this
10 subparagraph, the term ‘competitive serv-
11 ice’ has the meaning given the term in sec-
12 tion 2102 of title 5, United States Code.

13 “(3) APPOINTMENT AND COMPENSATION.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraphs (B)(iv) and (C)(ii), the Chair-
16 person may appoint and determine the com-
17 pensation of employees under this subsection
18 without regard to the provisions of title 5, Unit-
19 ed States Code, governing appointments in the
20 competitive service, and without regard to the
21 provisions of chapter 51 and subchapter III of
22 chapter 53 of such title relating to classification
23 and General Schedule pay rates.

24 “(B) CORPORATION SELECTION AND COM-
25 PENSATION SYSTEMS.—

1 “(i) ESTABLISHMENT OF SYSTEM.—

2 The Chairperson, after consultation with
3 the Director of the Office of Personnel
4 Management and after reviewing the rec-
5 ommendations of the Board under section
6 192A(h)(3), shall issue regulations estab-
7 lishing selection and compensation systems
8 for the Corporation. In issuing such regu-
9 lations, the Chairperson shall take into
10 consideration the need for flexibility in
11 such a system.

12 “(ii) APPLICATION.—The Chairperson
13 shall appoint and determine the compensa-
14 tion of employees referred to in paragraph
15 (1), other than representatives described in
16 section 195(b), in accordance with the se-
17 lection and compensation systems referred
18 to in clause (i).

19 “(iii) SELECTION SYSTEM.—The se-
20 lection system shall provide for the selec-
21 tion of such an employee for such a
22 position—

23 “(I) through a competitive proc-
24 ess; and

1 “(II) on the basis of the quali-
2 fications of applicants and the re-
3 quirements of the position.

4 “(iv) COMPENSATION SYSTEM.—The
5 compensation system shall include a
6 scheme for the classification of positions in
7 the Corporation. The system shall require
8 that the compensation of such an employee
9 be determined based in part on the job
10 performance of the employee, and in a
11 manner consistent with the principles de-
12 scribed in section 5301 of title 5, United
13 States Code. The rate of compensation for
14 each employee compensated through the
15 system shall not exceed the annual rate of
16 basic pay payable for level IV of the Exec-
17 utive Schedule under section 5315 of title
18 5, United States Code.

19 “(C) SELECTION AND COMPENSATION OF
20 CORPORATION REPRESENTATIVES.—

21 “(i) IN GENERAL.—The Chairperson
22 may appoint and determine the compensa-
23 tion of representatives described in section
24 195(b) without regard to the selection and

1 compensation systems described in sub-
2 paragraph (B).

3 “(ii) LIMITATION ON COMPENSA-
4 TION.—The rate of compensation for each
5 representative described in section 195(b)
6 shall not exceed the maximum rate of basic
7 pay payable for GS-15 of the General
8 Schedule under section 5332 of title 5,
9 United States Code.

10 “(b) CORPORATION REPRESENTATIVE IN EACH
11 STATE.—

12 “(1) DESIGNATION OF REPRESENTATIVE.—The
13 Corporation shall designate 1 employee of the Cor-
14 poration for each State or group of States to serve
15 as the representative of the Corporation in the State
16 or States and to assist the Corporation in carrying
17 out the activities described in this Act in the State
18 or States.

19 “(2) DUTIES.—The representative designated
20 under this subsection for a State or group of States
21 shall serve as the liaison between—

22 “(A) the Corporation and the State Com-
23 mission that is established in the State or
24 States; and

1 “(B) the Corporation and any subdivision
2 of a State, Indian tribe, public or private non-
3 profit organization, or institution of higher edu-
4 cation, in the State or States, that is awarded
5 a grant under section 121 directly from the
6 Corporation.

7 “(3) MEMBER OF STATE COMMISSION.—The
8 representative designated under this subsection for a
9 State or group of States shall also serve as a voting
10 member of the State Commission established in the
11 State or States.

12 “(c) CONSULTANTS.—The Chairperson may procure
13 the temporary and intermittent services of experts and
14 consultants and compensate the experts and consultants
15 in accordance with section 3109(b) of title 5, United
16 States Code.

17 “(d) DETAILS OF PERSONNEL.—The head of any
18 Federal department or agency may detail on a reimburs-
19 able basis, or on a nonreimbursable basis for not to exceed
20 180 calendar days during any fiscal year, as agreed upon
21 by the Chairperson and the head of the Federal agency,
22 any of the personnel of that department or agency to the
23 Corporation to assist the Corporation in carrying out the
24 duties of the Corporation under this Act. Any detail shall

1 not interrupt or otherwise affect the civil service status
2 or privileges of the Federal employee.

3 “(e) ADVISORY COMMITTEES.—

4 “(1) ESTABLISHMENT.—The Chairperson, act-
5 ing upon the recommendation of the Board, may es-
6 tablish advisory committees in the Corporation to
7 advise the Board with respect to national service is-
8 sues, such as the type of programs to be established
9 or assisted under the national service laws, priorities
10 and criteria for such programs, and methods of con-
11 ducting outreach for, and evaluation of, such pro-
12 grams.

13 “(2) COMPOSITION.—Such an advisory commit-
14 tee shall be composed of members appointed by the
15 Chairperson, with such qualifications as the Chair-
16 person may specify.

17 “(3) EXPENSES.—Members of such an advisory
18 committee may be allowed travel expenses as de-
19 scribed in section 192A(e).

20 “(4) STAFF.—The Chairperson is authorized to
21 appoint and fix the compensation of such staff as
22 the Chairperson determines to be necessary to carry
23 out the functions of the advisory committee, in ac-
24 cordance with subsection (a)(3)(A), and without re-
25 gard to the selection and compensation systems de-

1 scribed in subsection (a)(3)(B). Such compensation
2 shall not exceed the rate described in subsection
3 (a)(3)(C)(ii).

4 **“SEC. 196. ADMINISTRATION.**

5 “(a) DONATIONS.—

6 “(1) SERVICES.—

7 “(A) VOLUNTEERS.—Notwithstanding sec-
8 tion 1342 of title 31, United States Code, the
9 Corporation may solicit and accept the vol-
10 untary services of individuals to assist the Cor-
11 poration in carrying out the duties of the Cor-
12 poration under this Act, and may provide to
13 such individuals the travel expenses described in
14 section 192A(e).

15 “(B) LIMITATION.—Such a volunteer shall
16 not be considered to be a Federal employee and
17 shall not be subject to the provisions of law re-
18 lating to Federal employment, including those
19 relating to hours of work, rates of compensa-
20 tion, leave, unemployment compensation, and
21 Federal employee benefits, except that—

22 “(i) for the purposes of the tort
23 claims provisions of chapter 171 of title
24 28, United States Code, a volunteer under

1 section, the Board of Directors of the Corpora-
2 tion has not been confirmed.

3 (d) CONTINUING PERFORMANCE OF CERTAIN FUNC-
4 TIONS.—The individuals who, on the day before the date
5 of enactment of this Act, are performing any of the func-
6 tions required by section 190 of the National and Commu-
7 nity Service Act of 1990 (42 U.S.C. 12651), as in effect
8 on such date, to be performed by the members of the
9 Board of Directors of the Commission on National and
10 Community Service may, subject to section 193A of the
11 National and Community Service Act of 1990, as added
12 by subsection (a) of this section, continue to perform such
13 functions until the date on the Board of Directors of the
14 Corporation for National Service conducts the first meet-
15 ing of the Board. The service of such individuals as mem-
16 bers of the Board of Directors of such Commission, and
17 the employment of such individuals as special government
18 employees, shall terminate on such date.

19 (e) JOB SEARCH ASSISTANCE.—The Chairperson
20 shall establish a program to provide, or shall seek to enter
21 into a memorandum of understanding with the Director
22 of the Office of Personnel Management to provide, job
23 search and related assistance to employees of the ACTION
24 agency who are not transferred to the Corporation for Na-
25 tional Service under section 203(c).

1 (D) the term "function" means any duty,
2 obligation, power, authority, responsibility,
3 right, privilege, activity, or program; and

4 (E) the term "office" includes any office,
5 administration, agency, institute, unit, organi-
6 zational entity, or component thereof.

7 (2) TRANSFER OF FUNCTIONS.—There are
8 transferred to the Corporation such functions as the
9 President determines to be appropriate that the Di-
10 rector of the ACTION Agency exercised before the
11 effective date of this subsection (including all related
12 functions of any officer or employee of the ACTION
13 Agency).

14 (3) DETERMINATIONS OF CERTAIN FUNCTIONS
15 BY THE OFFICE OF MANAGEMENT AND BUDGET.—
16 If necessary, the Office of Management and Budget
17 shall make any determination of the functions that
18 are transferred under paragraph (2).

19 (4) REORGANIZATION.—The Chairperson is au-
20 thorized to allocate or reallocate any function trans-
21 ferred under paragraph (2) among the officers of the
22 Corporation.

23 (5) TRANSFER AND ALLOCATIONS OF APPRO-
24 PRIATIONS AND PERSONNEL.—Except as otherwise
25 provided in this subsection, the personnel employed

1 in connection with, and the assets, liabilities, con-
2 tracts, property, records, and unexpended balances
3 of appropriations, authorizations, allocations, and
4 other funds employed, used, held, arising from,
5 available to, or to be made available in connection
6 with the functions transferred by this subsection,
7 subject to section 1531 of title 31, United States
8 Code, shall be transferred to the Corporation. Unex-
9 pended funds transferred pursuant to this paragraph
10 shall be used only for the purposes for which the
11 funds were originally authorized and appropriated.

12 (6) INCIDENTAL TRANSFER.—The Director of
13 the Office of Management and Budget, at such time
14 or times as the Director shall provide, is authorized
15 to make such determinations as may be necessary
16 with regard to the functions transferred by this sub-
17 section, and to make such additional incidental dis-
18 positions of personnel, assets, liabilities, grants, con-
19 tracts, property, records, and unexpended balances
20 of appropriations, authorizations, allocations, and
21 other funds held, used, arising from, available to, or
22 to be made available in connection with such func-
23 tions, as may be necessary to carry out the provi-
24 sions of this subsection. The Director of the Office
25 of Management and Budget shall provide for the ter-

1 mination of the affairs of all entities terminated by
2 this subsection and for such further measures and
3 dispositions as may be necessary to effectuate the
4 purposes of this subsection.

5 (7) EFFECT ON PERSONNEL.—

6 (A) IN GENERAL.—Except as otherwise
7 provided by this subsection, the transfer pursu-
8 ant to this subsection of full-time personnel (ex-
9 cept special Government employees) and part-
10 time personnel holding permanent positions
11 shall not cause any such employee to be sepa-
12 rated or reduced in grade or compensation, or
13 to have the benefits of the employee reduced,
14 for 1 year after the date of transfer of such em-
15 ployee under this subsection.

16 (B) EXECUTIVE SCHEDULE POSITIONS.—

17 Except as otherwise provided in this subsection,
18 any person who, on the day preceding the effec-
19 tive date of this subsection, held a position com-
20 pensated in accordance with the Executive
21 Schedule prescribed in chapter 53 of title 5,
22 United States Code, and who, without a break
23 in service, is appointed in the Corporation to a
24 position having duties comparable to the duties
25 performed immediately preceding such appoint-

1 ment shall continue to be compensated in such
2 new position at not less than the rate provided
3 for such previous position, for the duration of
4 the service of such person in such new position.

5 (C) TERMINATION OF CERTAIN POSI-
6 TIONS.—Positions whose incumbents are ap-
7 pointed by the President, by and with the ad-
8 vice and consent of the Senate, the functions of
9 which are transferred by this subsection, shall
10 terminate on the effective date of this sub-
11 section.

12 (8) SAVINGS PROVISIONS.—

13 (A) CONTINUING EFFECT OF LEGAL DOCU-
14 MENTS.—All orders, determinations, rules, reg-
15 ulations, permits, agreements, grants, contracts,
16 certificates, licenses, registrations, privileges,
17 and other administrative actions—

18 (i) that have been issued, made,
19 granted, or allowed to become effective by
20 the President, any Federal agency or offi-
21 cial thereof, or by a court of competent ju-
22 risdiction, in the performance of functions
23 that are transferred under this subsection;
24 and

SUMMARY OF RETIREMENT ELIGIBLES

SEPTEMBER 30, 1994

<u>EARLY RETIREMENT</u>	<u>PERMANENT EMPLOYEES (5/93)</u>	<u>% ELIGIBLE</u>
49 HEADQUARTERS	154	31.8
64 FIELD	251	25.4
113 TOTAL	405	27.9
 <u>OPTIONAL RETIREMENT</u>		
27 HEADQUARTERS	154	17.5
36 FIELD	251	14.3
63 TOTAL	405	15.5
 <u>COMBINED</u>		
76 HEADQUARTERS	154	49.4
100 FIELD	251	39.4
176 TOTAL	405	43.5

Number of separations (retirements, resignations, transfers, and other) as of October 31, of each of the last four years:

	10/89	10/90	10/91	10/92
RETIREMENTS	6	19	6	8
RESIGNATIONS	13	11	9	15
TRANSFERS	16	31	17	15
OTHER SEPARATIONS*	14	11	2	4
TOTAL	49	72	34	42

* Other separations include involuntary terminations, expiration of appointments, etc.