

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files

Folder Title: JGR/Nominations for
Unexpired Remainder of Terms

(1 of 2)

Box: 34

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>



OFFICE OF THE
GENERAL COUNSEL

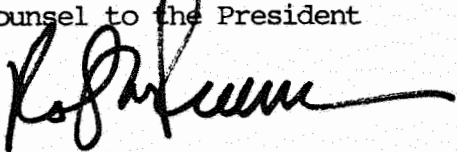
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

MEMORANDUM

March 2, 1981

TO: H. Lawrence Garrett III, Esquire
Office of Legal Counsel to the President

FROM: Ralph C. Ferrara
General Counsel 

RE: Tenure of Commissioners of the Securities and Exchange Commission

You have asked this Office to render its opinion as to whether a commissioner of the Securities and Exchange Commission who is appointed to fill the uncompleted five-year term of his or her predecessor could continue in office past the expiration of that fixed term. It is our opinion, based upon the language of the Commission's enabling act, the intent of Congress and the Commission's consistent and traditional interpretation, that a commissioner appointed to fill a vacant term can continue in office past the expiration of the term under the circumstances set forth in the pertinent statute, Section 4(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d(a). 1/

The Congress provided that the Commission would be a continuing body, with only the term of one of the five Commissioners expiring each year. Moreover, to ensure continuity pending the nomination process, the Congress subsequently provided that commissioners would continue to serve until either a successor was appointed and qualified or the conclusion of the next session of Congress

1/ Section 4(a) of the enabling act of the Securities and Exchange Commission, the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d(a), provides for the tenure of Commissioners as follows:

"Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title."

subsequent to the expiration of the fixed term. 2/ Thus, consistent with both the language of the statute and the intent of Congress, a commissioner appointed to fill an uncompleted term of his or her predecessor may continue in office beyond the expiration of that fixed term.

In this regard, we read the first "except" clause in Section 4(a) 3/ as requiring adherence to the Congressional plan of overlapping five-year terms rather than expressing an intent to prohibit any hold-over tenure for commissioners who fill uncompleted terms. This conclusion is dictated both as a construction that is consistent with the express intent of Congress and by the fact that the hold-over clause 4/ was added to Section 4(a) in 1960, 26 years after the Securities Exchange Act was passed containing the "except" clause noted above. 5/ That 1960 amendment was designed to ensure that the independent regulatory agencies would not forego action for lack of a quorum or otherwise suffer from lack of continuity during the nomination process. 6/ Neither the amendment nor the legislative history distinguished between full-term and part-term appointees in this regard.

The Commission, to our knowledge, has consistently followed this interpretation of its enabling act. Indeed, most recently, Commissioner John Evans, appointed to fill the uncompleted term of Commissioner James Needham, continued in office some months past the expiration of that term before he was reappointed.

Paul Gonson - 272-2471
John P. Sweeney - 272-2454

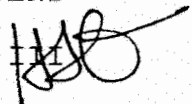
-
- 2/ See H.R. Rep. No. 1917, 86th Cong., 2d Sess. 2-3 (1960) (Report to accompany S. 1965, enacted as P.L. 86-619, amending, inter alia, Section 4(a) of the Securities Exchange Act of 1934).
- 3/ " * * * except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term * * *" (Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a)).
- 4/ " * * * and until his successor is appointed and has qualified, except that he shall not so continue and serve beyond the next session of Congress subsequent to the expiration of said fixed term of office * * *" (Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a)).
- 5/ P.L. 86-619 (July 12, 1960).
- 6/ See H.R. Rep. No. 1917, supra n.2, at 2-3.

THE WHITE HOUSE

WASHINGTON

March 5, 1981

MEMORANDUM FOR FRED F. FIELDING
COUNSEL TO THE PRESIDENT

FROM: H. LAWRENCE GARRETT, 
SUBJECT: Appointment of John S. R. Shad to
Securities and Exchange Commission

In preparation of our 5:00 o'clock appointment with Mr. Shad, I am forwarding the attached memorandum prepared by SEC, General Counsel's office re: the holdover question (the answer you requested).

For your information, Mr. Shad desires your counsel regarding which of the following alternatives for nomination should be followed:

- (1) Appointment to Commissioner Friedman's term which expires June 5, 1981. Under this alternative, Mr. Shad could go through the nomination process now, but would not be commissioned until the position for which nominated was vacant.
- (2) Going into Williams unfilled slot now; and without reconfirmation assuming the Friedman position when vacated. (I have ascertained through SEC that no precedent for this exists).
- (3) Seeking confirmation to Williams unexpired term and the succeeding term simulataneously.

Mr. Shad advised that he prefers Alternative 1. He further advised that he had spoken to Penn James regarding this matter and that Mr. James's preference was Alternative 3.

I recommend that we opt for Alternative 1, in that it is the cleanest; would afford Mr. Shad a period of time after confirmation to wind up his affairs while at the same time affording him a period of time to become well versed in the role he is to assume.

While there is precedent for Alternative 3, the period of time between expiration of term and assumption of a new term was in the neighborhood of three months. I submit that to attempt to simultaneously cover a 15-month period followed by a full 5-year appointment would be viewed as an unreasonable extension of such precedent.

Senate of the United States


IN EXECUTIVE SESSION

April 8, 1981

Resolved, That the Senate advise and consent to the following nomination:

John S. R. Shad, of New York, to be a Member of the Securities and Exchange Commission for the term of five years expiring June 5, 1986.

Attest:



Secretary



The Honorable Jake Garn

Chairman Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington D.C.

Dear Mr. Chairman,

This is to explain and confirm the President's intentions with regard to the nominations of John S R Shad to be a ~~M~~ Member of the Securities and Exchange Commission.

John Shad has been nominated to fill the remainder of the unexpired term of Harold Williams, and on June 5, 1981, to succeed into the term expiring June 5, 1986.

On June 5, 1981, John Shad ~~has agreed to resign~~ ^{has agreed} the term expiring June 5, 1982. It is the President's intention to accept that resignation. At that time, ~~Mr.~~ ^{Mr.} Shad will succeed into the full 5 year term expiring June 5, 1986.

Sincerely

MYRNA SIEGEL

5/25/84

Larry -

Enclosed are the
materials you requested.

Best regards.

Myrna



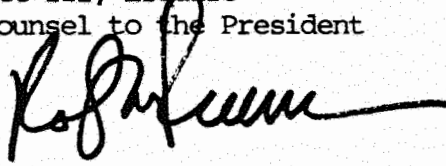
OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

March 2, 1981

TO: H. Lawrence Garrett III, Esquire
Office of Legal Counsel to the President

FROM: Ralph C. Ferrara
General Counsel 

RE: Tenure of Commissioners of the Securities and Exchange Commission

You have asked this Office to render its opinion as to whether a commissioner of the Securities and Exchange Commission who is appointed to fill the uncompleted five-year term of his or her predecessor could continue in office past the expiration of that fixed term. It is our opinion, based upon the language of the Commission's enabling act, the intent of Congress and the Commission's consistent and traditional interpretation, that a commissioner appointed to fill a vacant term can continue in office past the expiration of the term under the circumstances set forth in the pertinent statute, Section 4(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d(a). 1/

The Congress provided that the Commission would be a continuing body, with only the term of one of the five Commissioners expiring each year. Moreover, to ensure continuity pending the nomination process, the Congress subsequently provided that commissioners would continue to serve until either a successor was appointed and qualified or the conclusion of the next session of Congress

1/ Section 4(a) of the enabling act of the Securities and Exchange Commission, the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d(a), provides for the tenure of Commissioners as follows:

"Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title."

subsequent to the expiration of the fixed term. 2/ Thus, consistent with both the language of the statute and the intent of Congress, a commissioner appointed to fill an uncompleted term of his or her predecessor may continue in office beyond the expiration of that fixed term.

In this regard, we read the first "except" clause in Section 4(a) 3/ as requiring adherence to the Congressional plan of overlapping five-year terms rather than expressing an intent to prohibit any hold-over tenure for commissioners who fill uncompleted terms. This conclusion is dictated both as a construction that is consistent with the express intent of Congress and by the fact that the hold-over clause 4/ was added to Section 4(a) in 1960, 26 years after the Securities Exchange Act was passed containing the "except" clause noted above. 5/ That 1960 amendment was designed to ensure that the independent regulatory agencies would not forego action for lack of a quorum or otherwise suffer from lack of continuity during the nomination process. 6/ Neither the amendment nor the legislative history distinguished between full-term and part-term appointees in this regard.

The Commission, to our knowledge, has consistently followed this interpretation of its enabling act. Indeed, most recently, Commissioner John Evans, appointed to fill the uncompleted term of Commissioner James Needham, continued in office some months past the expiration of that term before he was reappointed.

Paul Gonson - 272-2471

John P. Sweeney - 272-2454

2/ See H.R. Rep. No. 1917, 86th Cong., 2d Sess. 2-3 (1960) (Report to accompany S. 1965, enacted as P.L. 86-619, amending, inter alia, Section 4(a) of the Securities Exchange Act of 1934).

3/ " * * * except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term * * *" (Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a)).

4/ " * * * and until his successor is appointed and has qualified, except that he shall not so continue and serve beyond the next session of Congress subsequent to the expiration of said fixed term of office * * *" (Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78d(a)).

5/ P.L. 86-619 (July 12, 1960).

6/ See H.R. Rep. No. 1917, supra n.2, at 2-3.



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

March 4, 1981

Mr. John S. R. Shad
Vice Chairman
E. F. Hutton & Company, Inc.
One Battery Park Plaza
New York, New York 10004

Dear Mr. Shad:

You have asked this Office for an opinion as to whether an individual can be nominated and confirmed to complete the unexpired term of his or her predecessor and to fill a full term beginning at a date in the future. It is our view that such a procedure is entirely appropriate and, indeed, has been followed in the past.

Former Chairman Harold M. Williams was confirmed in April of 1977, and received, on the same day, two separate commissions: one for the remainder of the unexpired term of his predecessor, Chairman Roderick Hills, and a reappointment for a full term to commence in June of 1977. As the attached excerpts from the Congressional Record indicate, on March 30, 1977, Chairman Williams was nominated to fill both the unexpired and full terms (Exhibit B). On April 6, both nominations were reported favorably (Exhibit C). And, on April 7, 1977, Chairman Williams was confirmed to fill both terms (Exhibit D). It is that latter five-year term to which you have been nominated to complete. That term expires in June of 1982. Likewise, Commissioner Richard B. Smith was nominated and confirmed simultaneously to the remainder of his predecessor's term and to the following full term (Exhibit E).

Similarly, we believe that it would be entirely appropriate and consistent with the language of the provisions of the Commission's enabling act governing appointment of commissioners, Section 4(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d(a) (text attached as Exhibit A), */ the manifest intent of Congress therein and

*/ Section 4(a) provides, in pertinent part, that: "Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office * * *." That provision, however, is qualified with a proviso that "any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term * * *." Id. It is our view that

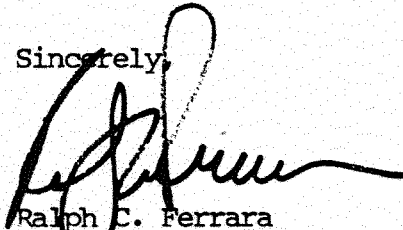
(footnote continued)

Mr. John S. R. Shad
Page Two

historical precedent for you to be nominated and confirmed simultaneously for the remainder of Chairman Williams' term and for a full term to commence at a future date. In that regard, we see two alternatives with respect to a possible appointment to a full term, in addition to the remainder of Chairman Williams' term. You could be nominated and confirmed to the full term commencing June 1982 at the expiration of Chairman Williams' unexpired term, or, as you suggested, you could be nominated and confirmed to the full term commencing June 1981 at the expiration of Commissioner Stephen J. Friedman's term. Of the two, the former is consistent with past practices and seems most practicable. While there is a substantial portion remaining in Chairman Williams' unexpired term, the term expires during the tenure of both the present Administration which has nominated you and the Senators who would confirm your nomination. The second alternative, also would involve the future nomination and confirmation of an individual (Section 4(a) would require a Democrat) to fill the remaining portion of Chairman Williams' term (June 1981 through June 1982), whether by reappointment of Commissioner Friedman or appointment of someone else.

If we can be of any other assistance in this matter, please do not hesitate to contact me.

Sincerely,



Ralph C. Ferrara
General Counsel

Attachments

cc: Irwin Schneiderman, Esq.
Cahill, Gordon & Reindel

*/ (continued)

that proviso ensures the maintenance of the Congressional scheme embodied in Section 4(a) to preserve the continuity of the Commission through the expiration each year of only one term of the five commissioners. This proviso does not prohibit an individual from being simultaneously nominated and confirmed to complete the uncompleted term of his or her predecessor and to fill a new term to commence at a future date.

Exhibit A

Section 4(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C.

78d(a), provides:

"There is hereby established a Securities and Exchange Commission (hereinafter referred to as the 'Commission') to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934."

April 6, 1977

S 5621

EC-1075. A letter from the Chairman of the District of Columbia Law Revision Commission transmitting, pursuant to law, the second annual report of the District of Columbia Law Review Commission (with an accompanying report); to the Committee on Governmental Affairs.

EC-1076. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "The Status and Problems in Constructing the National Visitor Center" (with an accompanying report); to the Committee on Governmental Affairs.

EC-1077. A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, a report on a new system of records entitled "Library Authorized Patron File", in accordance with the Privacy Act (with an accompanying report); to the Committee on Governmental Affairs.

EC-1078. A letter from the Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to regulate activities involving recombinant deoxyribonucleic acid (with accompanying papers); to the Committee on Human Resources.

EC-1079. A letter from the Secretary of Labor transmitting a draft of proposed legislation to provide employment and training opportunities for youth (with accompanying papers); to the Committee on Human Resources.

EC-1080. A letter from the Director of the Selective Service System transmitting, pursuant to law, a report on the administration of the Freedom of Information Act during the calendar year 1976 (with an accompanying report); to the Committee on the Judiciary.

EC-1081. A letter from the Director of the Administrative Office of the U.S. Courts transmitting a draft of proposed legislation to provide for the defense of judges and judicial officers sued in their official capacities (with accompanying papers); to the Committee on the Judiciary.

EC-1082. A letter from the Director of the Administrative Office of the U.S. Courts transmitting a draft of proposed legislation to amend section 1332(a)(1) of title 28, United States Code, relating to the jurisdiction of the U.S. district courts in suits between citizens of different states (with accompanying papers); to the Committee on the Judiciary.

EC-1083. A letter from the Acting Deputy Attorney General transmitting, pursuant to law, a report on the administration of the Freedom of Information Act during the calendar year 1976 (with an accompanying report); to the Committee on the Judiciary.

EC-1084. A letter from the Commissioner of the U.S. Department of Justice Immigration and Naturalization Service transmitting, pursuant to law, copies of orders suspending deportation (with an accompanying report); to the Committee on the Judiciary.

EC-1085. A letter from the Commissioner of the U.S. Department of Justice Immigration and Naturalization Service transmitting, pursuant to law, a copy of the order suspending deportation in the case of Sun Hung Moy (with an accompanying report); to the Committee on the Judiciary.

EC-1086. A letter from the Director of the Administrative Office of the U.S. Courts transmitting a draft of proposed legislation to amend title 28, United States Code, to provide in civil cases for juries of six persons, to amend the Jury Selection and Service Act of 1968, as amended, with respect to the selection and qualification of jurors, and to extend the coverage of the Federal Employees Compensation Act to all jurors in U.S. district courts (with accompanying papers); to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

A report entitled "Report of the Committee on the Judiciary, United States Senate, made by its Subcommittee on National Penitentiaries" (Rept. No. 95-86).

Without amendment:

S. 682. A bill to provide for holding terms of the District Court of the United States for the Eastern Division of the Northern District of Mississippi in Corinth, Mississippi (Rept. No. 95-87).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Thomas E. Lydon, Jr., of South Carolina, to be U.S. attorney for the District of South Carolina.

Howard W. Hjort, of the District of Columbia, to be a member of the Board of Directors of the Commodity Credit Corporation.

John C. White, of Texas, to be a member of the Board of Directors of the Commodity Credit Corporation.

Alex P. Mercure, of New Mexico, to be an Assistant Secretary of Agriculture.

Robert Haldeman Meyer, of California, to be an Assistant Secretary of Agriculture.

Robert Haldeman Meyer, of California, to be a member of the Board of Directors of the Commodity Credit Corporation.

Dale Ernest Hathaway, of the District of Columbia, to be an Assistant Secretary of Agriculture.

Dale Ernest Hathaway, of the District of Columbia, to be a member of the Board of Directors of the Commodity Credit Corporation.

Malcolm Rupert Cutler, of Michigan, to be an Assistant Secretary of Agriculture.

Malcolm Rupert Cutler, of Michigan, to be a member of the Board of Directors of the Commodity Credit Corporation.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Harold Marvin Williams, of California, to be a member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1977, vice Roderick M. Hills, resigning.

Harold Marvin Williams, of California, to be a member of the Securities and Exchange Commission for the term expiring June 5, 1982 (reappointment).

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred as indicated:

H.R. 3189. An act to amend the Federal Water Pollution Control Act to provide for additional authorizations, and for other

purposes; to the Committee on Environment and Public Works.

H.R. 5294. An act to amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors; to the Committee on Banking, Housing, and Urban Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated.

By Mr. NELSON (for himself, Mr. JAVITS, Mr. WILLIAMS, Mr. CRANSTON, Mr. HUMPHREY, Mr. JACKSON, Mr. KENNEDY, Mr. RANDOLPH, and Mr. STAFFORD):

S. 1242. A bill to provide employment and training opportunities for youth; to the Committee on Human Resources.

By Mr. CHURCH (for himself, Mr. DOMENICI, and Mr. WILLIAMS):

S. 1243. A bill to amend title II of the Social Security Act to revise the provisions relating to automatic cost-of-living increases in benefits, and for other purposes; to the Committee on Finance.

By Mr. BIDEN:

S. 1244. A bill to limit the period of authorization of new budget authority provided in appropriations Act, to require analysis, appraisal and evaluation of existing programs for which continued new budget authority is proposed to be authorized by committees of the Congress, and for other purposes; to the Committee on Rules and Administration.

By Mr. GRIFFIN:

S. 1245. A bill to improve the criminal justice system by eliminating and improving overcrowded and unsafe conditions in State, county, and local prisons through the provision of grants to assist in the construction, acquisition and renovation of such facilities; to the Committee on the Judiciary.

By Mr. PROXMIRE:

S. 1246. A bill to amend the Housing and Community Development Act of 1974 to provide a more equitable allocation of funds; to authorize a fuller range of community development activities, to establish an urban development action grant program for severely distressed cities; to amend section 312 of the Housing Act of 1964, as amended; to amend section 701 of the Housing Act of 1964, as amended; and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUMPERS:

S. 1247. A bill for the relief of Kurt Perwolf, his wife Elida Perwolf, and his son Christian Perwolf; to the Committee on the Judiciary.

By Mr. METCALP (for himself and Mr. JACKSON):

S. 1248. A bill to provide for the exploration and development of federally owned minerals, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MATHIAS:

S. 1249. A bill to amend title 5, United States Code, to provide for grade retention benefits for certain Federal employees whose positions are reduced in grade, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MAGNUSON (by request):

S. 1250. A bill to authorize appropriations for the Coast Guard for fiscal years 1978 and 1979 and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HUMPHREY:

S. 1251. A bill to establish a universal food service program for children; to the Committee on Agriculture, Nutrition, and Forestry.



Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, FIRST SESSION

Vol. 123

WASHINGTON, THURSDAY, APRIL 7, 1977

No. 62

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, April 18, 1977, at 12 o'clock noon.

Senate

THURSDAY, APRIL 7, 1977

(Legislative day of Monday, February 21, 1977)

The Senate met at 2 p.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God, our Father, bless all who serve in and with this body. Be with us in our work, in our homes, in our worship, in our travels, in our dealings with our colleagues, and in our dealings with ourselves. Be with us in our coming in and in our going out. Wherever we are, whatever we do, may we never forget Thee. And if we should forget Thee do not forget us, for in Thee we live and move and have our being. When this day is done and we depart, we pray Thee to bring us back strengthened to do Thy will.

In the Redeemer's name we pray. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of yesterday, Wednesday, April 6, 1977, be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are various nominations on the Executive Calendar, I believe all of which have been cleared on both sides of the aisle.

I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The second assistant legislative clerk read the nomination of Harry K. Schwartz, of Pennsylvania, to be an Assistant Secretary of Housing and Urban Development.

Mr. BAKER addressed the Chair.

The ACTING PRESIDENT pro tempore. Without objection—

Mr. BAKER. No, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. BAKER. Mr. President, I sought recognition a moment ago to say that the majority leader is correct in announcing that all of these nominations on the Executive Calendar today have been cleared on both sides. I am referring to three nominations for the Department of Housing and Urban Development, and two nominations for the Securities and Exchange Commission.

There is no objection to their confirmation on this side of the aisle.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all nominations on the Executive Calendar be considered and confirmed en bloc.

The second assistant legislative clerk read the nomination of Donna Edna Shalala, of New York, to be an Assistant Secretary of Housing and Urban Development; and Geno Charles Baroni, of the District of Columbia, to be an Assistant Secretary of Housing and Urban Development.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

SECURITIES AND EXCHANGE COMMISSION

The second assistant legislative clerk read the nomination of Harold Marvin Williams, of California, to be a member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1977; and for the term expiring June 5, 1982.

The ACTING PRESIDENT pro tempore. The nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominations were confirmed en bloc.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask that the President be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AUTHORIZING DISTRICT COURT TO BE HELD AT CORINTH, MISS.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 68 which has been cleared on both sides of the aisle.

Mr. BAKER. Mr. President, there is no

Richard L. Wilson, of Iowa.
 Frank G. Wisner II, of Maryland.
 Edward C. Woltman, Jr., of Indiana.
 Miss Hanna W. H. Woods, of Arkansas.
 Donald R. Woodward, of California.
 Robert G. Wright, of Illinois.
 Roderick M. Wright, of California.
 Michael G. Wygant, of New York.

Foreign Service officers of class 6

James A. Allitto, of California.
 Miss Elizabeth A. Bean, of Connecticut.
 Joseph F. Becelia, of New York.
 David G. Brown, of Pennsylvania.
 Stephen J. Hayden, of Oregon.
 H. Kenneth Hill, of California.
 Herbert J. Horowitz, of Michigan.
 John J. Hurley, Jr., of Massachusetts.
 Walter J. Kearns, of Montana.
 John H. Kelly, of Virginia.
 David T. Kenney, of the District of Columbia.

John C. Kornblum, of Michigan.
 James Hamilton McNaughton, of New York.
 James DeW. Perry, of Connecticut.
 Gary S. Posz, of California.
 Randolph Reed, of the District of Columbia.

Peter G. Smith, of Michigan.
 Charles H. Twining, Jr., of Maryland.

Foreign Service officers of class 6 and consular officers of the United States of America

Richard C. Alvarado, of Texas.
 Charles A. Anderson, of California.
 Laurence Desaix Anderson, Jr., of Mississippi.
 Edwin L. Barber III, of Virginia.
 Adrian Anthony Basora, of New York.
 William A. Bell, Jr., of the District of Columbia.

Lynn Darrell Bender, of California.
 Kenneth W. Bleakley, of New York.
 Richard W. Bogosian, of Massachusetts.
 Richard Thomas Booth, of Michigan.
 Charles F. Brown, of Nevada.
 Thomas J. Burke, of New York.
 Duane C. Butcher, of Oklahoma.
 Walter M. Cadette, of New York.
 James H. Cheatham, of Tennessee.
 David P. N. Christensen, of Nevada.
 John H. Christensen, of Iowa.
 Malcolm H. Churchill, of Iowa.
 Peter Collins, of New York.

Gordon A. Cornell, of Massachusetts.
 V. Raymond Dickey, of South Dakota.
 Edward P. Djerejian, of New York.
 Harold H. Dorland, of Washington.
 Mark M. Easton, of Pennsylvania.
 E. Bliss Eldridge, of Louisiana.
 Ralph Estling, of California.
 David J. Fischer, of Texas.

Miss Yvonne P. Fonvielle, of Illinois.
 Townsend B. Friedman, Jr., of Illinois.
 Samuel C. Fromowitz, of New Jersey.
 David W. Guthrie, of Ohio.
 Francis S. Hall, of New York.
 William B. Harris, of California.
 Miss Ange Belle Hassinger, of Louisiana.
 John H. Hawes, of New Jersey.
 James M. Hawley III, of West Virginia.
 Robert Y. Hayashida, of Hawaii.
 Donald Furse Herr, of Ohio.

Robert Onan Homme, of Minnesota.
 George R. Hoover, of California.
 William Edwin Humphrey, of Oklahoma.
 Gordon G. Kaplan, of Illinois.
 Peter R. Keller, of Connecticut.
 Miss Gail A. Kelts, of New York.
 Bruce Kinsey, of Illinois.

Brian S. Kirkpatrick, of Virginia.
 Charles E. Lahiguera, of Rhode Island.
 Joseph Edward Lake, of Texas.
 Raymond B. Lombardi, of Rhode Island.
 Peter J. Lydon, of Massachusetts.
 Lewis R. Macfarlane, of Washington.
 Arturo S. Macias, of Wisconsin.
 James H. Madden, of California.
 Joel Evan Marsh, of New York.
 George R. Martens, of New York.
 Thomas G. Martin, of Alabama.
 Miss Lois Jean Matteson, of Virginia.

Shirli F. McArthur, of Washington.
 Joseph D. McLaughlin, of Kansas.
 Paul M. Meeo, of Massachusetts.
 Roger B. Merrick, of Colorado.
 Michael A. G. Michaud, of California.
 Robert P. Myers, Jr., of California.
 Thomas M. T. Niles, of Kentucky.
 Robert F. Ober, Jr., of Illinois.
 Richard M. Ogden, of Connecticut.
 Allan W. Otto, of Illinois.
 Charles T. Owens, of California.
 Robie M. H. Palmer, of Vermont.
 Samuel R. Peale, of New York.
 Vernon D. Penner, Jr., of Maryland.
 Phillip E. Penninger, of North Carolina.
 Irwin Pernick, of New York.
 Miss Charlotte W. Peters, of Indiana.
 William B. Pogue, of California.
 Gordon R. Powers, of Idaho.
 Joseph A. Presel, of Rhode Island.
 James W. Reeves, of California.
 Karl S. Richardson, of Nebraska.
 Jonathan B. Rickert, of Michigan.
 William E. Ryerson, of Pennsylvania.
 Richard D. Scarfo, of Massachusetts.
 Miss Ruth M. Schimel, of New York.
 Thomas A. Schlenker, of California.
 David H. Shinn, of Washington.
 Leonard G. Shurtleff, of Massachusetts.
 Thomas W. Simons, Jr., of the District of Columbia.

Alexander K. Slight, of Connecticut.
 Murray C. Smith, of the District of Columbia.

Rufus Grant Smith, of New Jersey.
 Thomas W. Sonandres, of Michigan.
 Gilbert J. Sperling, of Pennsylvania.
 John Todd Stewart, of California.
 Miss Elizabeth A. Swift, of the District of Columbia.

Paul Daniel Taylor, of New York.
 Patrick N. Theros, of the District of Columbia.

John N. Thomas, of California.
 Miss Susan L. Travis, of Pennsylvania.
 Miss Judith D. Trunzo, of Virginia.
 Miss Theresa A. Tull, of New Jersey.
 Alexander F. Watson, of Massachusetts.
 James W. Wheatley, of Tennessee.
 James C. Whitlock, Jr., of North Carolina.
 Leonard F. Willems, of Wyoming.
 John M. Yates, of Washington.

GOVERNOR OF GUAM

Manuel F. L. Guerrero, of Guam, to be Governor of Guam for a term of 4 years (re-appointment).

CONFIRMATION

Executive nominations confirmed by the Senate March 22, 1967:

SECURITIES AND EXCHANGE COMMISSION
 Richard B. Smith, of New York, to be a member of the Securities and Exchange Commission for the remainder of the term of 5 years expiring June 5, 1967.

Richard B. Smith, of New York, to be a member of the Securities and Exchange Commission for the term of 5 years expiring June 5, 1972.

HOUSE OF REPRESENTATIVES

WEDNESDAY, MARCH 22, 1967

The House met at 12 o'clock noon.
 The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Let your light so shine before men, that they may see your good works, and glorify your Father who is in heaven.— Matthew 5: 16.

Eternal Father of our spirits, in this sacred moment of quiet prayer, we turn our thoughts to Thee and open our hearts

to Thy spirit that we may be wise in our decisions, understanding in our relationships, and faithful in our devotion to Thee and to our country.

Let not this period of prayer be the only time we think of Thee this day, but as the hours pass may we continue to be mindful of Thy presence and ready to do Thy will.

Bless the people of our Nation with Thy continued favor. May we be great enough in spirit and good enough in heart to be the channel for peace and justice in our world and among men everywhere. To this end, help us this day, and lead us in Thy way—through Jesus Christ our Lord. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 280. Concurrent resolution expressing the sense of the Congress on the occasion of the centennial of the confederation of Canada.

The message also announced that the Senate had passed, with amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2536. An act to terminate the Indian Claims Commission, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 666. An act to authorize appropriations during the fiscal year 1968 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and research, development, test, and evaluation for the Armed Forces, and for other purposes; and

S. 1161. An act to establish the John Fitzgerald Kennedy National Historic Site in the Commonwealth of Massachusetts.

DR. RUFUS PEARSON APPOINTED ADMIRAL

Mr. BOGGS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BOGGS. Mr. Speaker, I should like to take this moment to commend our distinguished Capitol physician, Dr. Rufus J. Pearson, Jr., who this week was promoted to the rank of rear admiral. On yesterday the promotion was confirmed by the other body.

Mr. Speaker, I got to know Dr. Pearson before I came here, and I must say that I have been immensely impressed with him as a person, as a physician, and one who is tremendously interested in the welfare of all of us. There are many Members here, and there are many staff

THE WHITE HOUSE

WASHINGTON

May 2, 1981

Dear Mr. Shad:

This letter confirms the discussion we had on Friday, May 1, 1981 regarding the anticipated sequence of events relative to your assuming duties as Chairman of the Securities and Exchange Commission.

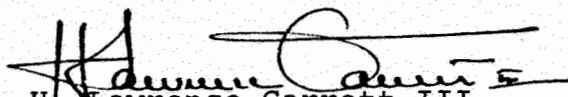
It is my understanding that you were commissioned on April 14, 1981 as a member of the Securities Exchange Commission to fill the remainder of the term expiring June 5, 1982. That commission has been delivered to you. Upon taking the oath of office on May 6, 1981, you will serve until resigning effective June 5, 1981. On June 6, 1981, you will again be commissioned a member for the term of five years expiring June 5, 1986. You will be required to take a second oath of office subsequent to the latter commissioning.

For your information, I have ascertained that both the follow-on commission and chairmanship order have been prepared and only require the signature of the President. To have them signed at this time would have the legal effect of your filling two terms simultaneously, a situation which, as you can appreciate, should be avoided.

I have enclosed for your retention copies of the Senate resolutions confirming you for both positions.

I trust that the foregoing allays any concern you might have. If you have any questions, however, please do not hesitate to call me.

Sincerely,


H. Lawrence Garrett III
Assistant Counsel

Mr. John S. R. Shad
Securities and Exchange Commission
500 North Capital Street
Washington, D.C. 20549

Senate of the United States


IN EXECUTIVE SESSION

April 8, 1981

Resolved, That the Senate advise and consent to the following nomination:

John S. R. Shad, of New York, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1982.

Attest:



Secretary





SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

June 1, 1981

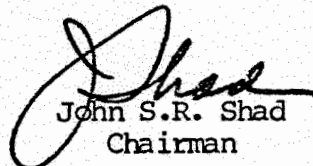
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As you know, on April 14, 1981, I was commissioned as a member of the Securities and Exchange Commission to fill the remainder of the term expiring June 5, 1982. Concurrent Senate resolutions dated April 8, 1981 (copies which are enclosed), provide that after, taking the oath of office on May 6, 1981, I serve until resigning that commission, effective June 5, 1981. These Senate resolutions further provide that, on June 6, 1981, I be recommissioned a member of the Securities and Exchange Commission for the five year term of office expiring June 5, 1986.

In accordance with those resolutions, I am hereby tendering my resignation from my present commission as a member of the Securities and Exchange Commission to become effective at the close of business on June 5, 1981. This will, of course, require that a new commission be executed appointing me as a member of the Securities and Exchange Commission for the five-year term commencing June 5, 1981 and expiring June 5, 1986.

Sincerely,


John S.R. Shad
Chairman

Enclosures

A Special Appointment For S.E.C. Reported Set

NYT 9/30 3/21/81

The Reagan Administration is seeking a highly unusual five-year appointment to the Securities and Exchange Commission for John S. R. Shad, the New York investment banker whom the White House intends to nominate as the agency's next chairman, Congressional and industry sources say.

Under the arrangement, Mr. Shad would be simultaneously confirmed to serve for part of the 14 months remaining in the term of the former chairman, Harold M. Williams, and then, in June, to take a full five-year appointment for the seat currently occupied by Commissioner Stephen Friedman, who is not expected to be reappointed.

According to Senate sources, confirmation of nominees to serve for slightly more than a five-year term is not unusual. They note that Mr. Williams, in fact, received just such a "piggyback" appointment when in the spring of 1977 he was confirmed to serve for the remaining few months left in the term of his predecessor, Roderick Hills, and also for a full five-year term. What is unusual about Mr. Shad's situation, they say, is that he would technically be confirmed at one time for two different commission seats.

Financial Considerations Cited

The effort to secure a five-year term, sources say, was prompted by Mr. Shad's reluctance to make a big financial sacrifice to go to Washington for only a short tenure, after which he again would have to face Senate confirmation in 1982 in what could be a politically risky atmosphere.

Chief among the sacrifices would be more than \$2.5 million in capital gains taxes he reportedly would have to pay on the sale of his stock in E.F. Hutton, the brokerage firm where he is vice chairman.

The only vacancy on the S.E.C. is for

the 14 months left in Mr. Williams's term. Mr. Friedman's term expires in June.

The Administration proposal to secure a longer appointment for Mr. Shad — which has received initial favorable reaction from key Republicans on the Senate Banking Committee — follows Senate opposition in recent weeks to earlier White House approaches. One such approach — opposed by both Senate Democrats and Republicans — would have had Mr. Shad confirmed simultaneously this spring for the 14-month term and then for a five-year term beginning in 1982; a six-year appointment in all.

The alternative of delaying the appointment of Mr. Shad to the S.E.C. until Mr. Friedman's term expires in June was opposed by key senators who wanted a new chairman in place before that time. A formal White House nomination of Mr. Shad to the S.E.C. is expected in "a matter of days," Senate sources said.

*File
John Shad*