Office Memorandum • UNITED STATES GOVERNMENT

TO: The Commission

FROM: L. A. Mayer
Executive Director and Chief Examiner

SUBJECT: Statement for discussion purposes of problems encountered in operating the loyalty program.

1. Should the standard for eligibility or ineligibility as set forth in Executive Order 9835 be amended?

Executive Order 9835 provides that "The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States."

The Loyalty Review Board has interpreted this standard as meaning that reasonable grounds must exist for belief that the person involved is at present disloyal to the Government of the United States. The Board has, therefore, recommended that the Order be amended to provide that a different standard be applied to applicants. The reasons for the Board's recommendation are that applicants who are potentially disloyal (or who are bad security risks) may be found eligible insofar as loyalty is concerned.

The Loyalty Review Board further contends that the standard contained in the Order specifically applies to both incumbents and applicants.

There seems to be a consensus of opinion that applicants should not be rated eligible for appointment if there is a reasonable doubt as to their loyalty to the Government of the United States. The question to be decided is whether an amendment to the Order is necessary to accomplish this purpose and, if so, whether one standard should be applied to incumbents and another standard to applicants.

Mr. Richardson has tentatively recommended the double standard. I suggest that consideration be given to applying the reasonable doubt standard to incumbents as well as to applicants. This is a fair standard and would eliminate some of the administrative difficulties in applying a double standard. A single standard would also create less serious public relations problems that would be encountered in explaining why one standard was applied to applicants and another standard to incumbents.

252 xed 4/15/52.
2. Chairman Richardson of the Loyalty Review Board has suggested other changes in the Order. They are substantially as follows:

   A. Amendment of Section 1-a. of Part III of the Order to delete that part of Section 1-a. indicated below.

      a. The Board shall have authority to review cases involving persons recommended for dismissal on grounds relating to loyalty by the loyalty board of any department or agency and to make advisory recommendations thereon to the head of the employing department or agency. Such cases may be referred to the Board either by the employing department or agency or by the officer or employees concerned.

   This amendment is suggested by Mr. Richardson so that an agency head might not refer to the Loyalty Review Board for an advisory opinion cases involving loyalty of employees who have been recommended for dismissal by the agency's loyalty board. It is difficult for the Loyalty Review Board to function as an appeal board if it is to render advisory opinions to the head of an agency in individual cases prior to decisions made by agency heads. In other words, if the Loyalty Review Board renders an advisory opinion that an employee should be dismissed and the Board's advice is followed, the employee involved would feel that it would be useless to appeal to the Loyalty Review Board.

   B. Mr. Richardson also suggested that Section 3 of Part III of the Order, which applies to persons seeking to deny another constitutional rights by force and violence, be deleted from the Order. Section 3 of Part III which Mr. Richardson would delete is quoted as follows:

      3. The Loyalty Review Board shall currently be furnished by the Department of Justice the case of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.
If Section 3 of Part III is deleted from the Order, it would also be necessary to amend Section 2-e of Part V as indicated below.

2-e. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group, or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or—having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

There is, I believe, unanimous agreement on the part of the Commission that Section 3 of Part III of the Order and Section 2-e of Part V should not be amended.

As a matter of fact, Mr. Richardson in his memorandum indicated that there had been some disagreement between the Attorney General and himself with respect to this part of the Order. According to Mr. Richardson, the Attorney General thinks that a violation of the type indicated is sufficient disloyalty to warrant action by the Loyalty Review Board.

Mr. Richardson pointed out in his memorandum to the Commission that the Loyalty Review Board had no cases yet raising the point involved but that in the near future cases arising out of Ku Klux Klan activities might come before the Board. Mr. Richardson felt that attention to such cases by the Loyalty Review Board is entirely foreign to the spirit and purpose of the loyalty program. As heretofore stated, however, I believe that there is agreement on the part of the Commission that these particular changes tentatively suggested by Mr. Richardson should not be made.

Mr. Richardson also suggested other changes in the Order to bring it in harmony with the way the work has developed. These changes are indicated in the attached draft of the Order. They are all of a minor nature and would indicate what everyone already knows—that loyalty investigations are made by the Federal Bureau of Investigation and not by the Commission.
Mr. Richardson also suggested that the Loyalty Review Board should be given the power of subpoenas. This, however, would require legislation and need not be discussed at this time.

3. The Loyalty Review Board's policy with respect to post audits of actions taken by agency loyalty boards.

In debatable or borderline cases, it is the Loyalty Review Board's policy to post audit cases decided by agency loyalty boards to determine compliance with procedures. The Loyalty Review Board does not go into the merits of a decision unless there is quite clearly insufficient evidence to support the action taken by the agency board. In other words, if correct procedures were followed by the agency board and there is evidence to support the action taken, such action will be regarded as final even though the Loyalty Review Board would have rendered a different decision on the merits of the case had it instead of the agency board adjudicated the case.

This policy is in conflict with testimony given by a representative of the Commission to the Civil Service Committee of the House of Representatives and to the Subcommittee on Appropriations of the House of Representatives. Commissioner Fleming testified in effect that the Loyalty Review Board would post audit favorable decisions of agency loyalty boards to ascertain whether or not the standards of the Loyalty Review Board were being followed. He indicated quite clearly that if standards were not being followed, the matter would be taken up with agency heads and with the President, if necessary.

The same policy with respect to post audits is being followed by the Loyalty Review Board in post auditing actions taken by the regional loyalty boards of the Civil Service Commission. It is clear to me that unless the Loyalty Review Board in post auditing favorable actions taken by the Commission's regional loyalty boards actually go into the merits of cases the Commission is placed in the position of approving erroneous decisions. In other words, the Commission's own regional loyalty boards who act on the cases of applicants and persons entering the service take action for and in the name of the Commission. Likewise, the Loyalty Review Board in post auditing favorable decisions of the Commission's regional loyalty boards are acting under authority delegated by the Commission.
Office Memorandum • UNITED STATES GOVERNMENT

TO : 
FROM : 
DATE : 

SUBJECT: They act for and in the name of the Commission. It is essential, therefore, that in post auditing decisions made by the Commission's regional loyalty boards the Loyalty Review Board actually go into the merits of the decisions. In no other way can the Commission be assured that its own boards in the field who are passing on cases of applicants are following proper standards.