

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 2, 1963.

HON. EDWARD V. LONG,
*Chairman, Subcommittee on Administrative Practice and Procedure, Committee
on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR LONG: At the recent hearings on S. 1664 great interest was shown in the coverage of that bill as related to the coverage of the Administrative Procedure Act.

In general, our approach in drafting S. 1664 was to keep its coverage consistent with those sections of the Administrative Procedure Act which deal with administrative operations, as opposed to those which deal with public information and judicial review. Where there are differences in coverage, S. 1664 is broader. However, since the coverage of each section of the Administrative Procedure Act is determined almost exclusively by its own internal provisions, this is an exceedingly complicated subject.

Accordingly, I have requested the staff to prepare a comprehensive analysis of the coverage of S. 1664 as related to the coverage of the several sections of the Administrative Procedure Act. I also requested them to provide specific examples of matters excluded from the coverage of S. 1664 and sections 4 and 5 of the APA and an explanation of the philosophy back of the exclusions.

A copy of the staff paper is enclosed. I hope this information will be useful to you and to the other members of your committee in your further consideration of S. 1664.

Sincerely,

ELMER B. STAATS, *Acting Director.*

JUNE 27, 1963.

COMPARISON OF S. 1664 AND THE ADMINISTRATIVE PROCEDURE ACT WITH RESPECT
TO COVERAGE

1. *Basis for determining coverage*

a. *S. 1664.*—The coverage of S. 1664 is determined by the definitions included in section 3 of the bill, as follows:

"DEFINITIONS

"SEC. 3. As used in this Act—

"(a) 'Administrative program' includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through 'rule making' or 'adjudication' as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

"(1) Any function or matter specified in section 4(1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decision-making required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

"(2) Any matter specified in section 5(1), (3), (5), and (6) of the Act.

"(b) 'Administrative agency' includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

"(c) 'Administrative procedure' means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion."

b. *Administrative Procedure Act.*—Respecting S. 7, which became the Administrative Procedure Act (APA), the Senate report said:

"The definitions in section 2 are important, *but they do not indicate the scope of the bill* since the subsequent provisions make many functional distinctions and exceptions." [Emphasis added.]