

The proposed broadening of availability of agency records to "any person" would, in our judgment, go too far in the direction of opening up Government files for general inspection. The Department has a policy of making its official records available to the public to the maximum extent possible. The major exceptions are instances where, by direction of the President, the Congress, or other authorities, the Department is required to withhold information from the public. These cases fall essentially within the eight specific categories in the proposed subsection (c). There are, however, certain additional categories of records, all set forth in departmental regulations (see 7 CFR 1.4), which the Department has determined must be made available in a manner that will protect the public welfare as well as avoid giving undue advantage to any person or to the representatives of special interests. As we construe the proposed subsection (c), these regulations of the Department would be inconsistent therewith.

There is a serious question whether legislation which would attempt to deny to the Executive branch the right by appropriate published rule to keep certain information confidential in the public interest would not invade the executive power of the President under the Constitution and the separation of powers provided therein. Aside from this question, however, it seems that purely as a matter of good business management and efficiency, it would be undesirable to require, for example, everything reduced to writing other than those memoranda or letters "dealing solely with matters of law or policy" by every agency official to be made available to any person presently or anytime in the future. Such persons would, of course, include private counsel, Government contractors, speculators, the press, or anyone else. One result would be a serious interference with internal exchanges because officials could well become reluctant to reduce many matters to writing. Moreover, much of the Department's research data are voluntarily supplied to the Department on the basis of our assurance that it will not be disclosed except as part of summary tables and figures. Inability to make such a commitment would result in drying up our sources of information and would cause inestimable harm to research programs which are based on confidence built over many years.

The Department receives many informal complaints in regulatory matters on a confidential basis, and reports of possible fraud or other violations of law from individuals who desire their identity to be protected. In addition, frequently interested members of the public furnish information in confidence to the Department which is of aid to the Department in more effectively carrying out the objectives of Department programs. Such information is, of course, not used as a basis for any determination which may adversely affect an individual under our programs. However, it does indicate areas needing investigation to determine facts upon which informed judgments and determinations can be made. General knowledge that the Department could not keep this information confidential would tend to eliminate an important source of information necessary to carrying out the Department's responsibilities under the law.

The Department undertakes programs of broad economic impact with respect to which care must be taken in the timely release of information to the public. Access to the records, as this proposed bill would permit, would result in advance "leaks," before timely public release should be made. In addition, this Department's activities include investigations which may be undertaken for other than strict law enforcement purposes the results of which should be held confidential in the public interest. Furthermore, many matters relating to examination, operating or condition reports are prepared by, on behalf of, or for the use of a number of Department agencies such as the Rural Electrification Administration and the Farmers Home Administration which, although not relating to the regulation or supervision of financial institutions, require secrecy in the public interest.

Section 2 of the bill provides for the repeal of all laws or parts of laws inconsistent with the amendments made by the first section of the bill. This language would create confusion and place in doubt the continued effectiveness of section 3 of the Administrative Procedure Act (5 U.S.C. 1002), which excepts from the publication requirements of that act "(1) any function of the United States requiring secrecy in the public interest of (2) any matter relating solely to the internal management of an agency." For example, the exception in subsection (c) of the bill numbered (1) is limited to matters involving functions of the United States requiring secrecy to protect the "national defense or foreign policy" and the matters must be specifically exempted from disclosure by Execu-