



**National Federation of Federal Employees**  
**Local 1309**  
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March 12, 2003

P. Lynn Scarlett  
Assistant Secretary- Policy, Management and Budget  
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Re: Appeal of USGS 2/19/03 decision on 2002 Fair Inventory Challenge

This letter is to appeal the U.S. Geological Survey (USGS) decision dated February 19, 2003, on AFGE Local 1309's challenge to the USGS Fair Act Inventory for FY 2002. The union received this decision through the interoffice mail on March 4, 2003. The Union challenged the inclusion of all FTE classified as G104 in the USGS Library in Reston, Virginia, including the USGS Geologist-Historian, as commercial.

1. As the first issues in its appeal:
  - a. The union maintains that the USGS's 2002 Fair Inventory is in violation of the FAIR Act; and
  - b. the union seeks clarification from the Department of Interior concerning which 2002 Fair Inventory (USGS internal website vs. Interior public website) is considered correct.

There are differences between the two 2002 Fair Inventories in the coding of function G104 FTE in Reston as commercial. The USGS 2002 Fair Inventory has coded an additional 14 FTE in the G104 function in Reston, Virginia, as commercial than are coded commercial on Interior's published 2002 Fair Inventory for USGS in Reston. These 14 FTE, coded differently on the two 2002 FAIR inventories, encompass seven employees in the 1410 librarian series, two employees in the computer specialist series, a secretary, and the USGS Geologist-Historian. The Interior 2002 FAIR Inventory matches the interim FAIR inventory listing provided to the Union, in accordance with our collective bargaining agreement, at the time USGS submitted its inventory to the Department.

The USGS 2002 inventory violates the FAIR Act because it is published on the USGS internal website that is not made available to the public nor is it referenced in the Federal Register. The FAIR ACT requires that inventories be made available to the public with notice of availability in the Federal Register. The Interior Department's Fair Inventory for 2002, including USGS FTE, is made available to the public. The union maintains that the 2002 Fair Inventory on the Interior Department's website should be considered the correct

version as it is made available to the public, in accordance with the FAIR Act. The USGS should revise its 2002 Fair Inventory to match Interior's version.

2. Geologist-Historian Decision Appeal. The union is appealing the USGS designation as the USGS historian position as commercial on the USGS inventory. This position is designated as inherently governmental on the DOI inventory. Thus, if the Department decides in favor of the union on issue one above, the USGS historian position would be coded inherently governmental and further appeal not necessary.

In its appeal, the union incorporates the attached statement dated March 12, 2003, from Clifford Nelson regarding the Geologist-Historian, titled "Appeal of Items 3 and 4 in the Geologist-Historian Challenge Response."

The USGS Historian position, by its very nature, meets USGS Guidelines 1, 4, 5, and 7. One can reasonably assume that the research and analysis performed by the USGS historian will accurately interpret and document USGS's historical positions and policies and will, thus, be relied upon by present and future generations for decision making and the interpretation of past precedents. In addition, other research positions in the USGS with less responsibility and consequence are coded as inherently governmental.

3. As the union's third issue, the USGS decision did not fully consider the specific work examples given for considering FTE coded G104 in the Reston Library as inherently governmental. Instead the USGS based its decisions on the definitions for the G104 function in general and the other USGS guidelines, excluding Guideline 7.

In part, the union challenged the coding of the specific G104 FTE in the USGS Reston Library as commercial based on their work:

- a. requiring the interpretation and execution of laws of the United States;
- b. consisting of management, procurement, and contracting functions;
- c. having access to procurement or competition sensitive documentation; and
- d. having access to personal information.

The union provided specific examples of activities performed by FTE in the USGS Reston library as they related to the reasons enumerated above. The above reasons are consistent with those outlined in OFPP Policy Letter 92-1 to the Heads of Executive Agencies and Department dated September 23, 1992, regarding inherently governmental functions (USGS Guideline 7).

The union was not challenging the G104 function in general. The Union was challenging all FTE coded as commercial in the USGS Reston Library. The union did not provide an exact number of FTE in the Reston library in its challenge because the union was confused due to differences in the USGS and DOI FAIR Inventories. There are 30.5 FTE coded as commercial on the USGS FAIR Inventory and 16.5 coded as commercial on the Interior FAIR Inventory. USGS incorrectly erred in not fully considering the union's reasons and examples with respect to FTE in the USGS Reston library. The union requests the Department to revisit the specific work examples for those FTEs in the USGS Reston Library coded as G104 for the reasons enumerated above in a. through d. above.

While the US Geological Survey Library is not officially classified as a "National Library" as

is the Library of Congress or the National Library of Medicine, it is frequently consulted as a de facto national library for the earth sciences. The USGS library does exceptional work of national importance. The general guidelines for the initial A-76 studies mostly referred to recreational libraries such as US Army base libraries, and are recognized in the general description of G104B. Most research libraries, especially those with national importance or specific research collections (such as US Army Laboratory Libraries), are not included in these studies.

Indeed, as stated in the Office of Federal Procurement (OFPP) Policy Letter 92-1 (See: <http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL92-1.html>):

**“Libraries.** Several persons questioned the inclusion of library operations as a ministerial function that should be contracted out in subsection 7(a) of the December version of the policy letter. The fact that employees render professional services in performing a function does not mean that the function in question is necessarily inherently governmental. In fact, the Government frequently seeks out contract services precisely because of the level of sophistication required to perform a particular function. On the other hand, agencies may determine that aspects of their library operations, such as handling certain types of information in certain circumstances, involve performance of an inherently government function. Therefore, we have removed the reference to libraries.”

The fact that the library is mentioned in the Organic Act that formed the US Geological Survey and in several succeeding legislation, also indicates that the US Congress had the intention that this special library was to be an inherent governmental function for the increase and diffusion of knowledge.

In closing, the union looks forward to your reviewing the USGS decision on the above grounds.

Sincerely,

Libby Chandler  
President

Enclosures:

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## Appeal of Items 3 and 4 in the Geologist-Historian Challenge Response

I believe that the short- and long-term scholarly research, writing, presenting, and publishing that I perform as a GS-1350 Geologist for USGS managers, scientists, and engineers, elsewhere in the Federal Government, and the public, should continue to be considered inherently governmental. Twenty-seven years' service with the USGS has given me expertise as a scientist-historian that cannot be duplicated adequately or quickly by the contracting process. While limited contracting out in recent years has yielded products related to specific topics or intervals of time, such as the last three books in the multi-volume history of the USGS Water Resources Division, the vagaries and discontinuities associated with contracting cannot provide the continuous institutional memory required for the informed scholarly work which yields honest and useful knowledge and advice to the entire agency and others.

As I turned 65 last November, intend to retire after completing Volume 4 (1939-1979) of USGS history, and plan to continue thereafter my scholarly work under other auspices, I make this appeal for what I believe are principally the best interests of the USGS and the public service. I hope that the USGS Geologist-Historian's position will be retained as inherently governmental and that the USGS will fill the post after I retire.

Clifford M. Nelson  
March 12, 2003