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PRESIDENTIAL AND EXECUTIVE OFFICE FINANCIAL ACCOUNTABILITY ACT OF 1997 AND SPECIAL GOVERNMENT EMPLOYEE ACT OF 1997

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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PRESIDENTIAL AND EXECUTIVE OFFICE FINANCIAL ACCOUNTABILITY ACT OF 1997 AND SPECIAL GOVERNMENT EMPLOYEE ACT OF 1997

THURSDAY, MAY 1, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 311, Cannon House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Sessions, Davis of Virginia, Sununu, and Maloney.

Staff present: J. Russell George, staff director and counsel; Anna Miller and John Hynes, professional staff members; Andrea Miller, clerk; and David McMillian and Mark Stephenson, minority professional staff members.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

Today, the subcommittee reviews two pieces of legislation that would bring increased accountability to the Executive Office of the President. Both bills were part of the original Presidential and Executive Office Accountability Act of 1996, which passed the House by an overwhelming margin of 410 to 5 last September. I was a cosponsor of that bill, which was authored by Mr. Mica, who will be a witness today.

Unfortunately, time was short at that point and several provisions of the House-passed bill, including those we are considering today, were removed prior to the passage in the Senate.

[The House bills follow:]

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HORN introduced the following bill; which was referred to the Committee on _____

A BILL

To provide for the appointment of a Chief Financial Officer and Deputy Chief Financial Officer in the Executive Office of the President.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Presidential and Exec-
5 utive Office Financial Accountability Act of 1997".

1 **SEC. 2. FINANCIAL OFFICERS WITHIN THE EXECUTIVE OF-**
2 **FICE OF THE PRESIDENT.**

3 (a) CHIEF FINANCIAL OFFICER.—Section 901 of
4 title 31, United States Code, is amended by adding at the
5 end the following:

6 "(c)(1) There shall be within the Executive Office of
7 the President a Chief Financial Officer, who shall be ap-
8 pointed by the President from among individuals meeting
9 the standards described in subsection (a)(3).

10 "(2) The Chief Financial Officer under this sub-
11 section shall have the same authority and shall perform
12 the same functions as apply in the case of a Chief Finan-
13 cial Officer under section 902.

14 "(3) The Director of the Office of Management and
15 Budget shall prescribe any regulations which may be nec-
16 essary to ensure that, for purposes of implementing para-
17 graph (2), the Executive Office of the President shall, to
18 the extent practicable and appropriate, be treated (includ-
19 ing for purposes of financial statements under section
20 3515) in the same way as an agency described in sub-
21 section (b).

22 "(4) The President shall designate an employee of the
23 Executive Office of the President (other than the Chief
24 Financial Officer or Deputy Chief Financial Officer), who
25 shall be deemed "the head of the agency" for purposes

1 of carrying out section 902, with respect to the Executive
2 Office of the President.".

3 (b) DEPUTY CHIEF FINANCIAL OFFICER.—Section
4 903 of title 31, United States Code, is amended by adding
5 at the end the following:

6 "(c)(1) There shall be within the Executive Office of
7 the President a Deputy Chief Financial Officer, who, not-
8 withstanding any provision of subsection (b), shall be ap-
9 pointed by the President from among individuals meeting
10 the standards described in section 901(a)(3).

11 "(2) The Deputy Chief Financial Officer under this
12 subsection shall have the same authority and shall perform
13 the same functions as apply in the case of the Deputy
14 Chief Financial Officer of an agency described in sub-
15 section (b).".

16 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 503(a) of title 31, United States Code, is amend-
18 ed—

19 (1) in paragraph (7) by striking "respectively."
20 and inserting "respectively (excluding any officer ap-
21 pointed under section 901(c) or 903(c)).''; and

22 (2) in paragraph (8) by striking "Officers." and
23 inserting "Officers (excluding any officer appointed
24 under section 901(c) or 903(c)).".

1 (d) EFFECTIVE DATE.—This Act shall take effect on
2 October 1, 1997.

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HORN introduced the following bill; which was referred to the Committee on _____

A BILL

To expand the definition of "special Government employee" under title 18, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Special Government
5 Employee Act of 1997".

1 **SEC. 2. AMENDMENT TO DEFINITION OF "SPECIAL GOV-**
2 **ERNMENT EMPLOYEE".**

3 (a) AMENDMENT TO SECTION 202(a).—Subsection
4 (a) of section 202 of title 18, United States Code, is
5 amended to read as follows:

6 "(a) For the purpose of sections 203, 205, 207, 208,
7 and 209 of this title the term 'special Government em-
8 ployee' shall mean—

9 "(1) an officer or employee as defined in sub-
10 section (c) who is retained, designated, appointed, or
11 employed in the legislative or executive branch of the
12 United States Government, in any independent
13 agency of the United States, or in the government
14 of the District of Columbia, and who, at the time of
15 retention, designation, appointment or employment,
16 is expected to perform temporary duties on a full-
17 time or intermittent basis for not to exceed one hun-
18 dred and thirty days during any period of three hun-
19 dred and sixty five consecutive days;

20 "(2) a part-time United States commissioner;

21 "(3) a part-time United States magistrate;

22 "(4) an independent counsel appointed under
23 chapter 40 of title 28 and any person appointed by
24 that independent counsel under section 594(c) of
25 title 28;

"(5) a person serving as a part-time local representative of a Member of Congress in the Member's home district or State; and

"(6) a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, who is not otherwise an officer or employee as defined in subsection (c) who is—

"(A) on active duty solely for training (notwithstanding section 2105(d) of title 5);

"(B) serving voluntarily for not to exceed one hundred and thirty days during any period of three hundred and sixty five consecutive days; or

"(C) serving involuntarily.".

(b) AMENDMENT TO SECTION 202(c).—Subsection (c) of 202 of title 18, United States Code, is amended to read as follows:

"(c) The terms 'officer' and 'employee' in sections 203, 205, 207 through 209, and 218 of this title shall include—

"(1) an individual who is retained, designated, appointed or employed in the United States Government or in the government of the District of Columbia, to perform, with or without compensation and subject to the supervision of the President, the Vice

1 President, a Member of Congress, a Federal judge
2 or an officer or employee of the United States or of
3 the government of the District of Columbia, a Fed-
4 eral or District of Columbia function under author-
5 ity of law or an Executive act. As used in this sec-
6 tion, a Federal or District of Columbia function
7 shall include, but not be limited to—
8 "(A) supervising, managing, directing or
9 overseeing a Federal or District of Columbia of-
10 ficer or employee in the performance of such of-
11 ficer's or employee's official duties;
12 "(B) providing regular advice, counsel, or
13 recommendations to the President, the Vice
14 President, a Member of Congress, or any Fed-
15 eral or District of Columbia officer or employee,
16 or conducting meetings involving any of those
17 individuals, as part of the Federal or District of
18 Columbia government's internal deliberative
19 process; or
20 "(C) obligating funds of the United States
21 or the District of Columbia;
22 "(2) a Reserve officer of the Armed Forces or
23 an officer of the National Guard of the United
24 States who is serving voluntarily in excess of one

1 hundred and thirty days during any period of three
2 hundred and sixty-five consecutive days; and
3 "(3) the President, the Vice President, a Mem-
4 ber of Congress or a Federal judge only if specified
5 in the section.".
6 (c) NEW SECTION 202(f).—Section 202 of title 18,
7 United States Code, is amended by adding at the end the
8 following:
9 "(f) The terms 'officer or employee' and 'special Gov-
10 ernment employee' as used in sections 203, 205, 207
11 through 209, and 218, shall not include enlisted members
12 of the Armed Forces, nor shall they include an individual
13 who is retained, designated or appointed without com-
14 pensation specifically to act as a representative of a non-
15 Federal (or non-District of Columbia) interest on an advi-
16 sory committee established pursuant to the Federal Advi-
17 sory Committee Act or any similarly established committee
18 whose meetings are generally open to the public. The non-
19 Federal interest to be represented must be specifically set
20 forth in the statute, charter, or Executive act establishing
21 the committee.".

Mr. HORN. Too often, the financial activities and the back-room advisors of the White House have remained hidden in the shadows, regardless of administration. The continuing spate of allegations about mismanagement at the White House have been frequent reminders of the need for serious statutory changes in the way the White House is run.

The Presidential and Executive Office Financial Accountability Act of 1997 establishes a Chief Financial Office and a Deputy Chief Financial Officer, as well as a Chief Financial Officer for the Executive Office of the President. The Special Government Employee Act of 1997 updates the definition of a, "special Government employee," to cover unpaid, informal advisors.

The Chief Financial Officers Act of 1990, the CFO Act, was intended to help executive branch agencies improve their financial operations. It has been effective in doing so, although much remains to be done. And we know that two agencies, the Department of Defense and the Internal Revenue Service, are still in deep financial difficulty and probably will not be able to submit their balance sheets to us by the mandatory ruling of the law, which would be September of this year.

It is abundantly clear that the Executive Office of the President could benefit from the fiscal discipline imposed by the Chief Financial Officer Act.

The Chief Financial Officer Act would bring accountability to the financial operations in the White House. If there had been a Chief Financial Officer in the White House, the unorthodox accounting practices that prevailed in the Travel Office and which were used by the White House to justify the firing of longtime employees who had done no wrong, would never have been permitted. A Chief Financial Officer would have provided the Travel Office managers with the guidance and expert advice they sorely needed.

A Chief Financial Officer acts as a control to prevent abuses of power, whether minor, as in petty stealing, or serious, as in destroying records of national interest. Those are financial records.

Other examples of egregious waste and abuse in the Executive Office of the President have been directly traceable to these deficient accounting controls. We learned in the last Congress, for instance, that the White House Communications Agency had unvalidated obligations of $14.5 million. The Department of Defense's Inspector General reported that the White House Communications Agency paid only 17 percent of its bills on time. Taxpayers got stuck for penalties and interest on the other 83 percent of its obligations.

The Presidential and Executive Office Financial Accountability Act of 1997 would make the White House more accountable for its own operations by establishing an Office of Chief Financial Officer in the Executive Office of the President. The Chief Financial Officer, which is found in other Federal agencies, including the Departments of Defense, Justice, and the Central Intelligence Agency, would review and audit the White House's financial systems and records. A system of internal control would be established to prevent and correct errors.

The Special Government Employee Act of 1997 is important for similar reasons. Foremost is the need for accountability and adherence to conflict of interest and other disclosure requirements.

The White House has a history of using informal advisors who are present in the White House on an ongoing basis and regularly affect public policy. Since this is the week that we are establishing a monument to President Franklin Delano Roosevelt, we should remember that Harry Hopkins, one of his most important advisors, actually lived in the White House through most of the Second World War, and yet these individuals are utterly unaccountable to the public. The laws have changed substantially since the end of the Second World War, with ethics statements that all the rest of us file, these people need to file. Who actually works in the White House, who is whispering in the President's ear are always daily grist for the media and certainly of concern to many citizens. These are questions that all Americans have a right to ask and to have answered fully and openly. Too often advisors to the President remain hidden in the shadows.

This bill will shine light on those back-room advisors by providing clearer guidelines for special Government employees. It will expand the definition of "special Government employee" to cover unpaid, informal advisors to the President so that they come under the same conflict of interest and financial disclosure statutes as regular White House staff.

Hearings before the full Committee on Government Reform and Oversight in the last Congress demonstrated that certain associates of the President used their access to President Clinton, the First Lady and the staff of the Executive Office of the President to promote their own business interests, even to the extent of encouraging the termination of career employees of the White House.

This proposal would amend the current definitions to make it completely clear that in the future, similarly situated informal advisors would be, "special Government employees," who come under the conflict of interest and other disclosure requirements. This includes a functional test that focuses on what the advisors actually do and on whether or not they are actually involved in the Government's deliberative processes. The bill will help put a stop to abuses of power, the unelected and the unaccountable.

We welcome our guests today, Representative John L. Mica, Republican of Florida, who in the last Congress introduced H.R. 3452, the Executive Office Accountability Act, and is a strong supporter of accountability in the Federal Government. He will explain to us why the two bills are sorely needed.

We had invited Ada L. Posey, Acting Director, Office of the Administration, Executive Office of the President, to testify on the proposed legislation and how the provisions would affect the Executive Office of the President. Unfortunately, she is unable to attend today but has submitted a written statement for the record.

[The prepared statement of Ms. Posey follows:]

STATEMENT OF

ADA L. POSEY
ACTING DIRECTOR, OFFICE OF ADMINISTRATION
EXECUTIVE OFFICE OF THE PRESIDENT

ON

THE PRESIDENTIAL AND EXECUTIVE OFFICE FINANCIAL ACCOUNTABILITY ACT OF 1997 AND THE SPECIAL GOVERNMENT EMPLOYEE ACT OF 1997

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

ON

MAY 1, 1997

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to submit the views of the Administration regarding the Presidential and Executive Office Financial Accountability Act of 1997 and the companion measure entitled the Special Government Employee Act of 1997.

As you are aware, these proposals are substantially the same as legislation considered in the last Congress. In the case of the Financial Accountability Act the provisions are identical to those that were introduced in H.R. 3452. It would create the positions of Chief Financial Officer (CFO) and Deputy Chief Financial Officer within the Executive Office of the President (EOP). Further, it would subject the EOP to the financial management and auditing requirements of the Chief Financial Officers Act of 1990, which mandates financial plans, annual financial statements, and independent audits of those statements, including audits by the General Accounting Office.

Although there is no existing CFO within the EOP, the Financial Management Division (FMD) of the Office of Administration provides centralized financial management and accounting services for all of the EOP offices and agencies. The staff of FMD carry out many of the functions of a CFO, including financial reporting and internal control reviews. On an annual basis FMD coordinates the reports submitted by the EOP agencies in accordance with the Managers' Financial Integrity Act of 1982. Moreover, FMD generally coordinates audit matters with the General Accounting Office.

In testimony before this subcommittee last year we stated our concerns regarding this proposed legislation. We stated that while the financial reporting and accountability provisions of the bill are worthy, the proposed CFO position "within the Executive Office of the President" poses practical problems and concerns. During last year's hearing, however, we emphasized that our concern was a narrow one that went to the workability of creating a CFO, including the cost, administrative complexity and whether such a position would add value. Moreover, we signaled our willingness to develop an alternative to the proposal.

In the intervening period, we have had internal discussions with the purpose of envisioning how best to implement a CFO within the existing framework of the EOP. During our discussions, a number of fundamental practical problems have been raised.

The first problem is that, unlike the Cabinet departments and major agencies that have CFOs, the Executive Office of the President is not a separate legal entity that has its own functions, appropriations, and staff. Instead, the "Executive Office of the President" is simply a term that is

used to describe a number of separate entities that assist the President. Each of those entities -- and not the Executive Office of the President -- is responsible for administering its own appropriations and must account for its own spending decisions, contracting, personnel staffing, etc. The same holds true for each of the Cabinet departments and for those major agencies that have CFOs. When enacting the CFOs Act, Congress recognized that each department and agency is by statute, and properly should be, individually responsible and accountable for its own activities; Congress therefore did not establish CFOs that would be responsible for groups of departments or agencies, but instead established a separate CFO for each of the departments and covered major agencies. This preservation of a unified agency structure -- which is fundamental to how Executive Branch departments and agencies have traditionally operated -- ensured that responsibility would remain within the individual department or agency, and would not be divided, with some of the responsibility and accountability being placed outside the department or agency. Accordingly, if it were concluded that one or more of the separate entities in the EOP should have a CFO, then a separate CFO structure would need to be established within each such entity, rather than having a CFO established for the Executive Office of the President that would be outside of the individual EOP entities.

This raises the second problem, which is that the separate entities in the EOP are each too small to support their own separate CFO structures. In this respect, it is important to remember that, in the CFOs Act, Congress did not establish a CFO for each and every one of the separate entities that comprise the Executive Branch. For example, in addition to many small agencies, Congress did not establish a CFO for such major agencies as the Securities and Exchange Commission (SEC), the

Federal Communications Commission (FCC), and the National Archives and Records Administration (NARA). Instead, in the CFOs Act, Congress established CFOs only for the Cabinet departments and for certain major agencies (e.g., NASA). Most of these Cabinet departments and covered agencies -- as well as agencies such as the SEC, FCC, and NARA for which Congress did not establish CFOs -- are vastly larger than the entities that are within the EOP. For example, the CFO for the Department of Defense oversees a department that has 760,000 civilian FTEs and a budget of $284 billion, and the CFO for the Department of Veterans Affairs oversees a department that has 215,000 FTEs and a budget of $39 billion. By contrast, the Office of Science and Technology Policy has 39 FTEs and a budget of $4.9 million, and the Council of Economic Advisers has 35 FTEs and a budget of $3.4 million. In sum, the CFO structure was designed for the Cabinet departments and for major agencies such as NASA. In the CFOs Act, Congress made the judgment that CFOs were not appropriate for smaller agencies, such as the FCC and the SEC. The small entities that are in the EOP are far smaller than agencies that Congress excluded from the CFO structure.

Finally, as we noted during the hearings on the Presidential and Executive Office Accountability Act, the CFO legislation fails to provide funding or personnel to implement its provision. Clearly some adjustments may need to be made to the various agencies' appropriations in order to carry out additional responsibilities. Accordingly, the Administration urges the Subcommittee to consider authorizing additional funds and personnel for any new responsibilities under this bill if it is enacted.

To summarize, we believe that there are fundamental practical problems with establishing a CFO for the Executive Office of the President. However, we would like to work with the Committee to address these practical problems and explore ways to improve the financial management of the entities within the EOP.

With respect to the proposed amendment to the statutory definitions associated with special government employees, we are pleased to see that the committee has adopted changes supported by the Administration in the last Congress. We primarily opposed the special government employee provisions of H.R. 3452, as introduced in the last Congress, because they only applied to the EOP. This has been remedied by provisions that apply the new definitions uniformly to the executive and legislative branches. Consequently, our particular concerns -- which former Office of Administration Director Frank Reeder testified to last June -- have been addressed. Because this legislation presents a highly technical amendment to definitions in the Criminal Code, we defer to the views of other executive agencies, particularly the Office of Government Ethics, on the appropriateness and effectiveness of these particular amendments.

Thank you for the opportunity to submit written testimony on these proposed provisions. I will also be glad to answer written questions on these matters conveyed by the committee.

Mr. HORN. The second panel will feature two witnesses testifying in support of the Presidential and Executive Office Financial Accountability Act of 1997. Edward J. Mazur is the vice president, administration and finance, Virginia State University, former Controller, Office of Federal Financial Management, Office of Management and Budget. Mr. Mazur was the first Controller to be appointed after the passage of the Chief Financial Officers Act and oversaw its implementation in the executive branch agencies.

Cornelius E. Tierney is the director, center for public financial management, George Washington University School of Business and Public Management. He has authored authoritative texts on Federal Government accounting and auditing, was formerly chairman and National Director of the Governmental Practice Section of Ernst & Young. He was instrumental in the drafting of the Chief Financial Officers Act and in guiding its subsequent implementation.

The last panel will provide testimony on the Special Government Employee Act of 1997. Testifying are Gregory S. Walden, counsel, Mayer, Brown & Platt, and former Assistant General Counsel in the White House, and Stephen Potts, Director, Office of Government Ethics, accompanied by Jane Ley, Deputy Director.

I am glad to see you all here today and am looking forward to hearing your testimony. For the record, I should note that Mr. Sessions arrived during my opening statement and a quorum is present and ready to do business.

We will now start with our colleague, Mr. Mica, the author of the legislation the President approved last year, and he will tell us what remains to be done. The gentleman from Florida is recognized for as much time as he would like.

[The prepared statement of Hon. Stephen Horn follows:]

DAN BURTON, INDIANA
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
(202) 225–5074

"EXECUTIVE OFFICE OF THE PRESIDENT ACCOUNTABILITY MEASURES"

May 1, 1997

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)
Chairman, Subcommittee on Government Management, Information, and Technology

Today the subcommittee reviews two pieces of legislation that would bring increased accountability to the Executive Office of the President. Both bills were part of the original "Presidential and Executive Office Accountability Act of 1996," which passed the House by an overwhelming margin of 410 to 5 last September. I was a co-sponsor of that bill. Unfortunately, time was short at that point and several provisions of the House-passed bill, including those we are considering today, were removed prior to passage in the Senate.

Too often the financial activities and the back-room advisors of the White House have remained hidden in the shadows. The continuing spate of allegations about mismanagement at the White House have been frequent reminders of the need for serious, statutory changes in the way the White House is run. The "Presidential and Executive Office Financial Accountability Act of 1997" establishes a Chief Financial Office and a Deputy Chief Financial Officer for the Executive Office of the President. The "Special Government Employee Act of 1997" updates the definition of a "special Government employee" to cover unpaid, informal advisors.

The Chief Financial Officers Act of 1990 (CFO Act) was intended to help Executive Branch agencies improve their financial operations. It has been effective in doing so, although much remains to be done. It is abundantly clear that the Executive Office of the President could benefit from the fiscal discipline imposed by the CFO Act.

The CFO Act would bring accountability to the financial operations in the White House. If there had been a Chief Financial Officer in the White House, the unorthodox accounting practices that prevailed in the Travel Office, and which were used by the White House to justify the firing of longtime employees, would never have been permitted. A Chief Financial Officer would have provided the Travel Office managers with the guidance and expert advice they sorely

needed. A Chief Financial Officer acts as a control to prevent abuses of power, whether minor, as in petty stealing, or serious, as in destroying records of national interest.

Other examples of egregious waste and abuse in the Executive Office of the President have been directly traceable to deficient accounting controls. We learned in the last Congress, for instance, that the White House Communications Agency had unvalidated obligations of $14.5 million. The Department of Defense's Inspector General reported that the White House Communications Agency paid only 17 percent of its bills on time. Taxpayers got stuck for penalties and interest on the other 83 percent of its obligations.

The "Presidential and Executive Office Financial Accountability Act of 1997" would make the White House more accountable for its own operations by establishing an Office of Chief Financial Officer in the Executive Office of the President. The Chief Financial Officer, which is found in other Federal agencies, including the Departments of Defense and Justice and the CIA, would review and audit the White House's financial systems and records. A system of internal control would be established to prevent and correct errors.

The "Special Government Employee Act of 1997" is important for similar reasons. Foremost is the need for accountability and adherence to conflict-of-interest and other disclosure requirements.

The White House has a history of using informal advisers who are present in the White House on an ongoing basis and regularly affect public policy, yet who are utterly unaccountable to the public. Who actually works in the White House? Who is whispering in the President's ear? These are questions that all Americans have a right to ask and to have answered fully and openly. Too often advisors to the President remain hidden in the shadows.

This bill will shine light on these back-room advisors by providing clearer guidelines for "special Government employees." It will expand the definition of "special Government employee" to cover unpaid, informal advisors to the President so that they come under the same conflict of interest and financial disclosure statutes as regular White House staff.

Hearings before the full Committee on Government Reform and Oversight in the last Congress demonstrated that certain associates of the President used their access to President Clinton, the First Lady, and the staff of the Executive Office of the President to promote their own business interests, even to the extent of encouraging the termination of career employees of the White House.

This proposal would amend the current definition to make it completely clear that in the future, similarly situated informal advisers would be "special Government employees" who come under conflict of interest and other disclosure requirements. This includes a functional test that focuses on what the advisors actually do and on whether they are actually involved in the Government's deliberative processes. The bill will help put a stop to abuses of power the

unelected and unaccountable.

We welcome our guests today. Representative **John L. Mica** (R-FL), who in the last Congress introduced H.R.3452 and is a strong supporter of accountability in the Federal Government, will explain why the two bills are sorely needed.

We had invited **Ada L. Posey**, Acting Director, Office of Administration, Executive Office of the President to testify on the proposed legislation and how the provisions would effect the Executive Office of the President. Unfortunately, she is unable to attend today but has submitted a written statement for the record.

The second panel will feature two witnesses testifying in support of the "Presidential and Executive Office Financial Accountability Act of 1997." **Edward J. Mazur** is the Vice President, Administration and Finance, Virginia State University, and former Controller, Office of Federal Financial Management, Office of Management and Budget. He was the first controller to be appointed after the passage of the Chief Financial Officers Act, and oversaw its implementation in the Executive Branch agencies. **Cornelius E. Tierney** is the Director, Center for Public Financial Management, George Washington University School of Business and Public Management. He has authored authoritative texts on Federal Government accounting and auditing, and was formerly Chairman and National Director of the governmental practice section of Ernst & Young. He was instrumental in the drafting of the Chief Financial Officers Act and in guiding its subsequent implementation.

The last panel will provide testimony on the "Special Government Employee Act of 1997." Testifying are **Gregory S. Walden**, Counsel, Mayer Brown & Platt, and former Assistant General Counsel in the White House; and **Stephen Potts**, Director, Office of Government Ethics, accompanied by **Jane Ley**, Deputy Director.

STATEMENT OF HON. JOHN L. MICA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MICA. Well, I thank you, Mr. Chairman. I really couldn't start without commending your leadership. I know they often do this in a laudatory fashion before hearings, but you certainly deserve a great deal of the credit and responsibility for the passage of the legislation that we passed last time.

As you know, we sit on the panels in Congress and we sit on the investigations and we conduct various investigations. Sometimes that's where the action ends, but you were able to help push through some changes and reforms that we saw as a result of what was disclosed in those hearings about the way the White House operated.

And I think that the essence of the difference that really delineates the United States from banana republics or Third World countries; that we conduct that oversight and we make the changes.

And as you said, part of the changes were incorporated in the legislation we passed together, but there are a couple of elements that are missing and I would like to speak to them today.

The subjects covered by the bills which you have outlined really are identical to provisions included in the Presidential and Executive Office Accountability Act that I sponsored last year. Despite all of our hard work, the Senate did not go along, and the need for those items still remain today.

Like many Americans, I have become concerned about the operation, management, and financing of the White House, which even to the casual observer today, lacks accountability and the White House often operates without responsible restraints.

These bills address significant problems that our hearings and investigations have uncovered. As you know, one creates a financial officer to improve the financial management at the White House. The other would clarify the term "special Government employee." And I think that that need—still remains and should be addressed by the legislation proposed here.

Hearings during the past Congress showed that the White House financial operations lacked both accountability and structure. The Travelgate hearings, which we participated in, highlighted some of the shortcomings in White House fiscal responsibility.

Mr. Chairman, had there been a Chief Financial Officer at the White House back then, it is my belief that that officer would have reviewed the Travel Office's financial management practices and many of the problems the White House experienced and problems that came up and were uncovered as a result of our hearings could have been detected and any deficiencies would have helped the Travel Office managers to correct them.

Long-term White House employees unfortunately were used as scapegoats, and then the matter ended up before the Congress and a huge reimbursement was required before the matter was closed. But much of that could have been avoided.

Likewise, Mr. Chairman, hearings before the subcommittee on which I serve, National Security, International Affairs, and Criminal Justice, revealed very serious deficiencies at the White House Communications Agency.

Accounting controls were so poor that the Agency recently had paid $14 million in unvalidated obligations. Equipment and services that it no longer needed were paid for, along with items that were never even delivered to the Agency. They also paid for many of these same items twice.

An audit by the Department of Defense IG also found that the Agency paid only 17 percent of its bills on time, causing the taxpayers to pay interest and penalties on the remaining 83 percent.

These incidents, unfortunately, are not just ancient history, Mr. Chairman, but enduring reminders. Similar scandals, I predict, will arise in the future in the White House.

The objective of this special Government employee legislation is to require more public accountability by so-called volunteers or people who just pop up at the White House directing, influencing, or becoming involved in policy development or operations of the White House and then we have no standard or ability to demand responsibility or accountability from these individuals.

These individuals often advise the President and employees in the highest responsibilities of the Executive Office of the President. They function as Federal employees, even though they are not formally employed. As chairman of the House Civil Service Subcommittee, that gives me a great deal of concern. They are not subject in many instances to financial disclosure, ethics requirements and even the barest minimum standards of accountability and responsibility that we have set for Federal employees.

Once again, Mr. Chairman, the Travelgate hearings revealed Congress must take action. I was particularly dismayed by the activities of Harry Thomason, which came to light in our investigation. Our hearings revealed Mr. Thomason, a Clinton operative, an unpaid volunteer, had office accommodations around the halls of the White House, participated in meetings with employees, actually staged many of the White House events involving the President, and we saw attempts where he tried to, in conflict—potential conflict of interest situations—influence a policy set by the White House. In short, he acted as if he was a White House employee but he was, indeed, a walking conflict of interest.

Mr. Thomason advocated the dismissal of the Travel Office employees and promoted an air charter company in which he had an interest, a business interest. Clearly, if he had been a Federal employee or some designated employee, this would have fallen into that realm.

Mr. Chairman, without an adequate definition of special Government employee, this activity is unacceptable by any standard. Unfortunately, it has become standard operating procedure at this White House.

More recently, we discovered that the White House has used the services of some 41 volunteers who were actually drawing salaries from private organizations. More than half of them were paid by the Democratic National Committee. The rest were paid by other organizations, various organizations, who could have had potential conflicts of interest. Some of them even had grants from the Federal Government.

The positions these volunteers held were not menial, and I have a list of some of their positions for the record. I will be glad to provide them.

Among the people to whom these volunteers, so called——

Mr. HORN. Without objection, that will be inserted in the record, Mr. Mica.

[The information referred to follows:]

VOLUNTEERS PAID BY NON-FEDERAL SOURCES IN THE WHITE HOUSE, THE OFFICE OF THE VICE PRESIDENT AND THE OFFICE OF POLICY DEVELOPMENT FROM 1/20/93 TO THE PRESENT

NAME	TENURE 1	TYPE OF ASSIGNMENT	DUTIES/JOB DESCRIPTION	SOURCE OF SALARY	AGENCY	SUPERVISOR AND POSITION	APPROVED EMPLOYMENT 2	DUTY STATION
Dennis Alpert	01/31/94 - 11/30/94	Volunteer	Advance	DNC	OVP	Jack Quinn Chief of Staff to the VP	Jack Quinn	Room 279 OEOB
Karen L. Anderson	06/01/93 - 07/21/95	Volunteer	Staff Assistant/Regional Coordinator, Political Affairs	DNC	WHO	Reta Jo Lewis - Spec Asst to the President Doug Sosnik, Director	Joe Velasquez Doug Sosnik	Rm 77 &115 OEOB
Maureen Alta	05/04/94 - 09/17/94	Volunteer	Staff Assistant, Political Affairs	DNC	WHO	Tom Epstein Spec Asst to the President	Joe Velasquez	Room 115 OEOB
Benjamin Austin	05/27/93 - 08/23/95	Volunteer	Staff Assistant, Advance	DNC	WHO	Ann Edwards Director, Press Advance	Joe Velasquez	Room 185 5 OEOB
Steven Bacher	01/20/93 - Aug-96	Volunteer	Advance	DNC	WHO	Isabelle Tapia/Paige Reffe Director of Advance	Isabelle Tapia Paige Reffe	Room 185 5 OEOB
Arnold Bennett	Mar-94 - n/a	Volunteer	Media Relations – Health Care Communications Group	Families USA Foundation	WHO	Greg Lawler Policy Analyst	Greg Lawler	
Lisa Berg	07/24/95 - 03/01/97	Volunteer	Scheduler	DNC	OVP	Kim Tilley Director of Scheduling, VP	Jack Quinn	Room 281 OEOB
Thomas Burke	04/25/94 - 09/30/94	Contractor	Subcontractor to DNC for information systems development working on document system-Health Care Comm. Group	Subcontractor to DNC Contract	WHO			
Katherine Button	05/20/94 - 04/11/96	Volunteer	Staff Assistant to the Deputy Chief of Staff to the First Lady	College University Resource Institute		Melanne Verveer Deputy Chief of Staff to the First Lady		Room 100 OEOB
	04/12/96 - 01/18/97	IPA	Staff Assistant to the Deputy Chief of Staff to the First Lady	College University Resource Institute	WHO		Melanne Verveer	
Elizabeth Cohen	11/22/93 - 08/17/94	IPA	Scientific and Technological Economic Issues	Congressional Acoustical Science Fellow	OPD	Bowman Cutter Dep Asst to the President	Bowman Cutter	Room 209 OEOB
Sabrina Cortelia	11/08/95 - 12/31/96	Volunteer	Special Assistant to the Speechwriter	College University Resource Institute	WHO	Alison Muscatine Presidential Speechwriter	Melanne Verveer	Room 100 OEOB
Donald Dunn	10/22/94 - 12/31/94	Volunteer	Staff Assistant, Political Affairs	DNC	WHO	Joan Baggett Director, Political Affairs	Joan Baggett	Room 115 OEOB
Marie Garza	11/28/95 - 11/27/96	IPA	Hispanic Outreach	National Council of LaRaza	WHO	Suzanne Valdez Associate Director	Alexis Herman	Room 122 OEOB
Stephen Gleason	06/23/94 - 11/10/94	Volunteer	Physician, Health Care Communications Group	Mercy Clinics, Inc.	WHO	Michael Lux Spec Asst to the President	Harold Ickes	Room 122 OEOB
Judith A. Gold	Jun-95 - Jan-96	Volunteer	Women's Issues	Altheimer & Gray		Elizabeth Myers Dir., Women's Outreach	Elizabeth Myers	708 Jackson Place
	Jan-96 - May-96	Volunteer	Women's Issues	Altheimer & Gray/DNC	WHO			
Sara Grole	04/01/93 - 01/28/95	Volunteer	Scheduling	DNC	WHO	Patti Solis, Dir of Scheduling for the First Lady	Patti Solis	Room 100 OEOB
Karen R. Guss	09/13/94 - 09/05/95	Fellow	Policy Analyst	Georgetown Women's Law and Public Policy	WHO	Jennifer Klein Senior Policy Analyst	Evelyn Lieberman	Room 100 OEOB
Kirk Hanlin	01/20/93 - 03/08/97	Volunteer	Advance	DNC	WHO	Isabelle Tapia/Paige Reffe Director of Advance	Isabelle Tapia Paige Reffe	Room 185.5 OEOB
Cookie Hashemi	08/28/95 - 11/08/96	Volunteer	Staff Assistant, Political Affairs	DNC	WHO	Ray Martinez Spec Asst to the President	Doug Sosnik	Room 115 OEOB
Joseph Hernandez-Kotski	07/10/94 - 12/20/94	IPA	Assistant to the Associate Director for Hispanic Outreach	Hispanic Assoc. of Colleges	WHO	Suzanne Valdez Associate Director	Steve Hilton	Room 122 OEOB
Stanley Herr	Jul-93 - 12/31/94	Fellow	Focus on policies relating to the disabled and their families	Joseph P. Kennedy Foundation	OPD	Carol Rasco Asst. to the President	Carol Rasco	Room 224 OEOB
Dwight Holton	05/23/94 - Aug-94	Volunteer	Health Care	DNC	WHO	Greg Lawler Policy Analyst		

1 Because volunteers were not salaried, the dates of their tenure as volunteers may be inexact. Many have also served as regular, paid White House employees in other periods.
2 Where available, we have listed the name of the approving individuals as indicated on the personnel or volunteer forms; otherwise, we have listed the head of the office.
3 Granted access in connection with official duties. No remote access to WhoDB.
4 During tenure as volunteer. Some of these individuals have also served as regular, paid White House employees, and may have received a security clearance in connection with that employment.
5 There are three individuals (David Morehouse, Ed Emerson, Pat Halley) who were hired by the DNC and worked with the White House to do Advance work. They did not have a pass, computer, phone or desk here at the White House. They were cleared in as appointments, if they needed to come in the complex.

NAME	TENURE 1	TYPE OF ASSIGNMENT	DUTIES/JOB DESCRIPTION	SOURCE OF SALARY	AGENCY	SUPERVISOR AND THEIR POSITION	APPROVED EMPLOYMENT 2	DUTY STATION
Susan Landgarten	03/15/93 - 12/09/94	Volunteer	Assisted the Deputy Chief of Staff to the Vice President	DNC	OVP	David Strauss Deputy Chief of Staff, VP	Jack Quinn	Room 276 OEOB
Joshua Legg	07/25/95 - 10/31/95	Volunteer	Staff Assistant to the Deputy Chief of Staff	DNC	WHO	Harold Ickes Deputy Chief of Staff	Harold Ickes	Room 176 OEOB
Elias Mark	11/06/95 - 12/07/96	Volunteer	Staff Assistant to the Deputy Chief of Staff	DNC	WHO	Harold Ickes Deputy Chief of Staff	Harold Ickes	Room 176 OEOB
Sandra Martinez	01/05/97 - Present	Volunteer	Assistant to Speechwriters	Scholarship from MANA (Non-Profit Organization)	WHO	Carolyn Curiel Presidential Speechwriter	Carolyn Curiel	Room 194 OEOB
Tom McMahon	11/08/96 - 03/08/97	Volunteer	Advance	DNC	OVP	Dennis Alpert Director of Advance	Ron Klain	Room 279 OEOB
Melissa Murray	08/20/94 - 12/31/94	Volunteer	Assistant to Ms. Wilcox -- Business Outreach	DNC	WHO	Caren Wilcox Volunteer	Steve Hilton	Room 122 OEOB
Luanne Nyberg	06/15/94 - 7/30/94	Volunteer		Children's Defense Fund	WHO	Diane Limo, Spec Asst to the Dir of Sched for the First Lady	Patti Solis	Room 100 OEOB
Ellen Ochs	01/10/95 - 02/27/97	Volunteer	Assisted the Deputy Chief of Staff to the Vice President	DNC	OVP	David Strauss Deputy Chief of Staff, VP	Jack Quinn	Room 276 OEOB
Peter O'Keefe	04/12/96 - 9/15/96	Volunteer	Assisted the Director of Business Outreach	DNC	WHO	Cheryl Cater Spec Asst to the President	n/a	Room 122 OEOB
Nicole Rabner	Sep-93 - 07/01/95	Volunteer	Assistant to the Deputy Chief of Staff to the First Lady	College University Resource Institute	WHO	Melanne Verveer DCOS to the First Lady	Melanne Verveer	Room 100 OEOB
Irwin Redlener	08/15/94 - 11/10/94	Volunteer	Physician, Health Care Communications Group	Montefiore Medical Center, NYC (Part-Time)	WHO			
Leroy Sanchez	11/30/94 - 05/31/95	IPA	Photographic Assistant	Los Alamos National Lab	OVP	Callie Shell Photographer	Jack Quinn	Room 471 OEOB
	06/19/95 - 08/31/95	IPA	Photographic Assistant	Los Alamos National Lab	WHO	Lon Weiner Photo Editor	Bob McNeeley	Room 475 OEOB
June Shih	10/04/95 - Present	Volunteer	Research Assistant	Creator Syndicate	WHO	Alison Muscatine Presidential Speechwriter	Alison Muscatine	Room 190 OEOB
Jeffrey Teague	Feb-94 - 08/14/94	Volunteer	Assisted the Deputy Chief of Staff to the Vice President	DNC	OVP	David Strauss Deputy Chief of Staff	Jack Quinn	Room 267 OEOB
Joe Trahern	05/02/94 - 08/06/96	Volunteer	Staff Assistant	DNC	WHO	Linda Moore Spec Assist to the President	Joan Baggett Doug Sosnik	Room 115 OEOB
Kristopher VanGiessen	09/08/93 - Mar-95	Volunteer	Scheduler	DNC	OVP	Tony Wilson Director of Scheduling	Jack Quinn	Room 283 OEOB
Caren Wilcox	06/20/94 - 09/30/95	Volunteer	Business Outreach	DNC	WHO	Steve Hilton	Steve Hilton	Room 219 OEOB
Derek S. Wolf	04/09/95 - 07/01/95	Fellow	International Trade	Nixon Center for Peace & Freedom	WHO	Bob Kyle Spec Asst to the President	Tom O'Donnell	Room 209 OEOB
Barbara Woolley	06/01/94 - 02/22/97	Volunteer	Outreach for healthcare, women, agriculture, tobacco and rural issues	DNC	WHO	Marilyn Yager, Dep Asst to the President/Alexis Herman Assistant to the President	Steve Hilton	Room 122 OEOB

Because volunteers were not salaried, the dates of their tenure as volunteers may be inexact. Many have also served as regular, paid White House employees in other periods.
Where available, we have listed the name of the approving individuals as indicated on the personnel or volunteer forms; otherwise, we have listed the head of the office.
Granted access in connection with official duties. No remote access to WhoDB.
During tenure as volunteer. Some of these individuals have also served as regular, paid White House employees, and may have received a security clearance in connection with that employment.
There are three individuals (David Morehouse, Ed Emerson, Pat Hailey) who were hired by the DNC and worked with the White House to do Advance work. They did not have a pass, computer, phone or desk here at the White House. They were cleared in as appointments, if th

Mr. MICA. Thank you, Mr. Chairman.

Among the people to whom these so-called volunteers reported were such high key level administration officials as Harold Ickes, then Deputy Chief of Staff, Melanee Verveer, Deputy Chief of Staff to the First Lady, Jack Quinn, then Chief of Staff to Vice President Gore, and Alexis Herman, then Assistant to the President.

Mr. Chairman, when individuals who depend on a private organization for their livelihood are put on—placed on the White House staff, opportunities for such conflicts of interest unfortunately abound.

The most obvious question, of course, is who is the master? Is it the President, for whom they ostensibly work, or is it the person who signs their paycheck?

When paid employees of private organizations develop Government policies, opportunities for promoting self-interest are plentiful. The disclosure of these so-called volunteers reinforces the conclusion we reached last year, Mr. Chairman: The laws defining special Government employees must be tightened and clarified. The American people must know that volunteers who perform the functions of Federal employees are subject to all the same rules, regulations, conflict of interest and ethics laws, and requirements we impose on other Federal employees if we are to maintain confidence in our Federal Government, and particularly at the highest level of our Government, the Executive Office of the President.

Mr. Chairman, we do not allow this in the Congress in our policy development. We should not allow it in the White House, the highest office in our land, that, again, is charged with immediate response on national security issues and numerous other responsibilities, again at the very highest level.

The reforms that your bill proposes are long overdue. They are minimal as far as requirements for responsibility and accountability. I look forward to working with you, Mr. Chairman, in any way I can assist. I still have the highest, very highest, regard for the work you did last time. When others said that legislation wouldn't pass, you worked tirelessly, right up to, I think, the last day of the session, and secured at least some reform that brought the White House at least partially under the same laws as everyone else, which we found not to be the case in our previous investigations. And the rest of the job remains to be done.

I am determined to work with you, your subcommittee, to get this badly needed legislation enacted.

Thank you, again.

[The prepared statement of Hon. John L. Mica follows:]

**TESTIMONY OF REPRESENTATIVE JOHN L. MICA
ON THE "PRESIDENTIAL AND EXECUTIVE OFFICE FINANCIAL ACCOUNTABILITY ACT OF 1997" AND THE "SPECIAL GOVERNMENT EMPLOYEES ACT OF 1997"
BEFORE
THE SUBCOMMITTEE ON GOVERNMENT, MANAGEMENT, INFORMATION AND TECHNOLOGY**

May 1, 1997

Mr. Chairman, thank you for inviting me to testify before this subcommittee. I strongly support the Presidential and Executive Office Financial Accountability Act of 1997 and the Special Government Employee Act of 1997.

The subjects covered by these bills are not new to either of us, Mr. Chairman. We worked very closely together, and with Mrs. Maloney, when identical provisions were included in the Presidential and Executive Office Accountability Act that I sponsored last year. Despite all of our hard work some of the needed improvements we considered did not survive in the other body. I commend you, Mr. Chairman, for renewing this effort to improve management at the White House.

Like many Americans, I have become concerned about the White House, which even to the casual observer, often lacks accountability and operates without responsible restraints.

These bills address significant problems in White House operations. One would create a Chief Financial Officer to improve financial management at the White House. The other would clarify the definition of "special government employee" with respect to Presidential advisors.

Mr. Chairman, financial management at the White House must be improved. Hearings during the past Congress showed that White House financial operations lacked both accountability and structure.

The Travelgate hearings highlighted some of the shortcomings in White House financial responsibility. Mr. Chairman, had there been a CFO at the White House back then, he or she would have routinely reviewed the Travel Office's financial management practices. The CFO would have detected any deficiencies and helped the Travel Office managers correct them. Congress failed the American people by not having adequate financial structures or safeguards in place. Long term White House employees were used as scapegoats because we failed to require reliable management or financial accountability in our Chief Executive Office.

Likewise, Mr. Chairman, hearings before a subcommittee on which I serve - National Security, International Affairs, and Criminal Justice - revealed very serious deficiencies in oversight and accountability at the White House Communications Agency. We heard of

egregious examples of waste and abuse because of the almost total lack of controls in this agency. The accounting controls were so poor the agency recently had $14.5 million in unvalidated obligations. Equipment and services that it no longer needed were paid for, along with items that were never even delivered to the agency. They also paid for the same items twice. An audit by the Department of Defense's IG also found that the agency paid only 17% of its bills on time, causing the taxpayers to pay for interest and penalties on the remaining 83%.

These incidents are not ancient history, Mr. Chairman, but enduring reminders. They remind us that unless Congress acts to impose financial accountability and structure on the White House, similar scandals will arise in the future. These are precisely the kinds of problems a CFO will identify and correct.

The objective of the "Special Government Employee" bill is to require more public accountability by so-called "volunteers" at the White House. These individuals advise the President and employees in the Executive Office of the President. They function as federal employees even though they are not formally employed.

Once again, Mr. Chairman, the Travelgate hearings revealed why Congress must take this action. The activities of Harry Thomason are Exhibit A. Those hearings revealed that Harry Thomason, a Clinton operative and unpaid volunteer, had office accommodations, roamed the halls of the White House, participated in meetings with employees of the Executive Office and with the President and attempted to influence policy.

In short, he acted as if he were a White House employee. But he was a walking conflict of interest. Mr. Chairman, evidence from our hearings showed that Mr. Thomason advocated dismissing the Travel Office employees and promoted an air charter company to the benefit of his own business interests. Harry Thomason was a partner in TRM, an enterprise that had unsuccessfully attempted to secure business from the Travel Office.

However, without an adequate definition of "special government employee" this activity, unacceptable by any standard, was S.O.P - standard operating procedure - at the White House.

More recently, we have discovered that this White House has used the services of some 41 "volunteers" who were actually drawing salaries from private organizations. More than half of them were paid by the Democratic National Committee. The rest were paid by, among others, such organizations as Mercy Clinics, Inc., Montefiore Medical Center, the Children's Defense Fund, the National Council of La Raza, and the Georgetown Women's Law and Public Policy.

The positions these "volunteers" held were not menial. Some of their job titles included Staff Assistant to the Deputy Chief of Staff, Staff Assistant to the Deputy Chief of

Staff to the First Lady, Assistant to the Associate Director for Hispanic Outreach, Policy Analyst, and Research Assistant.

Among the people to whom these "volunteers" reported were such key high-level Administration Officials as Harold Ickes, then Deputy Chief of Staff, Melanie Verveer, Deputy Chief of Staff to the First Lady, Jack Quinn, then Chief of staff to Vice President Gore, and Alexis Herman, then Assistant to the President.

Mr. Chairman, when individuals who depend upon a private organization for their livelihood are put on White House staff, opportunities for conflicts of interest abound. The most obvious question, of course, is who is the master; is it the President for whom they ostensibly work, or is it the person who signs their paycheck? When paid employees of private organizations develop government policies, opportunities for promoting self interest are plentiful.

The disclosure of these "volunteers" reinforces the conclusion we reached last year, Mr. Chairman: The laws defining "special government employees" must be tightened and clarified. The American people must know that "volunteers" who perform the functions of federal employees are subject to conflict of interest and ethics laws if they are to have confidence in the federal government.

Mr. Chairman, the reforms your bills would make are long overdue.

I look forward to working with you, Mr. Chairman, and the other members of this subcommittee to make these bills the law of the land. I would be happy to answer any questions you may have.

Mr. HORN. Well, I thank you very much for your kind comments, and the credit is to you. I saw you work the floor to get, what, 100-and-some signatures on your bill before it was ever introduced? What was it, 106, something like that?

Mr. MICA. Well, we did have bipartisan support.

Mr. HORN. Right.

Mr. MICA. And people understood the problem, that Congress was required to live under the same laws as everyone else. It is a simple thing to explain to folks. And the White House should be required to live under the same laws as everyone else.

Now, Mr. Chairman we have a situation where we have these people running around the White House influencing policy. We can't do that here in the Congress. They should not be able to do that there. So we must institute that.

When you don't have a Chief Financial Officer in the White House, how can you expect financial accountability and responsibility? We as the Congress, we as an investigation and oversight subcommittee, saw what went on in the White House. It was a financial mismanagement menagerie that we should not allow to continue. And we have seen that the White House is not a small potatoes operation. It is huge, with hundreds and hundreds of employees, and with thousands of detailees and with money spent, hard earned taxpayer money spent, in a totally unacceptable fashion for which there is no accountability.

So the other measure, the Chief Financial Officer and Financial Accountability, should be instituted. It doesn't matter whether it is Bill Clinton, George Bush or some future President. That is the least we can do as a Congress to ensure that taxpayer funds are properly expended.

Mr. HORN. Well, I know your time is pressed, but I would like——

Mr. MICA. No, I have time.

Mr. HORN [continuing]. If you have time, I would like my colleagues, starting with Mr. Sessions, who was the first to arrive, to be able to ask you questions if that's acceptable.

Mr. MICA. I can stay for the next 6 hours.

Mr. HORN. Very good. OK.

Mr. Sessions, the gentleman from Texas, is recognized.

Mr. SESSIONS. Thank you, Mr. Horn.

Mr. Mica, thank you for being here today. Certainly the intuitive nature that you have in dealing with this subject is one that is interesting to me, and I have got just a few questions. Would the First Lady fit under this?

Mr. MICA. Well, the First Lady is already covered by, I would imagine, covered by certain responsibilities. But this deals with, again, folks who are wandering around the White House doing official functions in the guise of volunteers or without any accountability.

I think the First Lady does fall under certain requirements and, again, specifically this isn't geared at the First Lady's office.

Mr. SESSIONS. OK. Would this be geared, in your opinion, at people who have been—who are known in the press as FOB's, "Friends of Bill"?

Mr. MICA. Well, again, I am not interested in doing this just because there is one President, one administration, or one First Lady. We have got to think beyond that. A Chief Financial Officer is long overdue in the White House, whether it is a Republican President or a Democrat President. The use of——

Mr. HORN. Excuse me. I think we ought to define at that point, when we say "White House," it is the Executive Office of the President.

Mr. MICA. Yes.

Mr. HORN. Which includes the White House, the Office of Management and Budget and about 10 other agencies.

Mr. MICA. Exactly. It goes beyond that. So I think that that is a basic requirement.

The definition of "special Government employee" is just to get a handle on this, on people who are influencing policy, who are in the White House, who have access to information and yet no accountability, no responsibility, no conflict of interest, no financial disclosure.

And I just happened to cite some from this administration. The White House Communications Agency, which we investigated, was just as horrendously operated under the last administration as this administration. So these are a couple of areas that we have an opportunity and a responsibility, as a Congress, to get a handle on. Otherwise, again, this is what separates us, as I said, from the Third World countries and the banana republics. They don't change it. They look the other way and the stuff goes on.

Here, we bring it to light. We air it in the public. We work in a bipartisan fashion to correct it and improve the system. That's the only intent.

Mr. SESSIONS. Well, what my comments are really meant to say is, does this address situations that we see today? The intent of the legislation is meant that if there is someone who is in the White House, who is either formally or informally assuming some role where they either have authority or responsibility, or perceived authority or responsibility, they are influencing Government and that's what the intent of this is about.

Mr. MICA. This is for today and tomorrow.

Mr. SESSIONS. Absolutely. But it addresses situations that exist today.

Mr. MICA. Situations that we have seen.

Mr. SESSIONS. Or that we are aware of.

Mr. MICA. Yes, that we are aware of, yes.

Mr. SESSIONS. That we are aware of.

Would you believe that—and I am looking at the Special Government Employees Act of 1997, page 3, line 14, No. C, Serving Involuntarily. Are there any time constraints that's given in that? Or if someone is in there and they are serving involuntarily, they would automatically comply as opposed to 130 days?

Mr. MICA. Well, we are trying to put—we are trying to put some——

Mr. SESSIONS. Reasonableness.

Mr. MICA. Yes, some timeframe and some reasonableness to this.

You can't hire, in your congressional office—or have a volunteer unless they are connected with an educational program. And some

of that may be justified by the same standard. But bringing folks in off the street who are paid by some other organization or have a potential conflict of interest, we have to have some parameters and some definition.

Mr. SESSIONS. But that quite probably would be day one?

Mr. MICA. The provision that you cite affects the military only. I think it is the 130-day.

Mr. SESSIONS. OK. Thank you, Mr. Chairman.

Mr. HORN. I thank you. I now recognize the ranking minority member, ranking Democrat, Mrs. Maloney of New York, if she has an opening statement or would like to combine that with questioning. Let's start, since we have two more also, 10 minutes to a side.

So the gentlelady is recognized.

Mrs. MALONEY. Thank you, Mr. Chairman. At this moment, on the floor is the housing bill on another committee, the Banking Committee, on which I serve and I have several amendments on that bill and I am going to have to go to the floor. But I do want to add my voice, with yours and others, today as we consider the Presidential and Executive Office Financial Accountability Act and the Special Government Employee Act. Both of these bills were originally included as provisions of H.R. 3452, the Presidential and Executive Office Accountability Act, which is now Public Law 104–331.

These provisions were unfortunately deleted from H.R. 3452 prior to final passage by the other body, by the Senate, last year. H.R. 3452 extended certain labor and civil rights laws to the White House, much as the Congressional Accountability Act did for Congress.

I believe this is a very good idea, and the majority worked with us in a bipartisan manner to pass that legislation, and I thank the chairman. The Presidential and Executive Office Financial Accountability Act would require the appointment of a Chief Financial Officer in the Executive Office of the President. The Chief Financial Officer Act of 1990, brought needed improvements to the executive branch by requiring sound financial management practices, automated financial systems, and annual reports to Congress.

Putting a Chief Financial Officer in the Executive Office of the President is a good idea and one which the White House supports in principle. The Special Government Employee Act would change the definition of a special Government employee to require a functional test. This bill mirrors an amendment I offered last year to H.R. 3452, with the support of the chairman, and has the support of ethics experts from both sides of the aisle.

Persons covered under the definition would be required to comply with the criminal conflict of interest and financial disclosure statutes. Under this bill, a special Government employee is an individual who works less than 130 days in any year and performs a Federal function. A Federal function would include providing regular advice to high level officials, including Members of Congress, and conducting meetings involving such persons as part of the Government's internal deliberative process.

As the committee report on H.R. 3452 makes clear, this definition is intended to exclude informal "kitchen cabinet" advisors.

Mr. Chairman, I support both of these provisions. I supported them last year and I continue to support them. While neither of these bills has yet been introduced, the draft legislation I have seen is quite promising and I just am glad to be here with you. And I just congratulate my colleague, Mr. Mica.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

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Opening Statement -- Rep. Carolyn B. Maloney
Hearing on the "Presidential and Executive Office Financial Accountability Act"
and the "Special Government Employee Act"

May 1, 1997

Thank you Mr. Chairman.

Today we consider the "Presidential and Executive Office Financial Accountability Act" and the "Special Government Employee Act." Both of these bills where originally included as provisions of HR 3452, the "Presidential and Executive Office Accountability Act," which is now public law 104-331. These provisions where unfortunately deleted from HR 3452 prior to final passage by the other body. HR 3452 extended certain labor and civil rights laws to the White House, much as the Congressional Accountability Act did for Congress. This was a very good idea, and the Majority worked with us in a bipartisan manner to pass that legislation, for which I thank the Chairman.

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Mr. Chairman, I supported both of these provisions last year, and I continue to support them. While neither of these bills has yet been introduced, the draft legislation I have seen looks quite promising.

Thank you.

Mrs. MALONEY. One of the things I did want to ask Mr. Mica, both your statement and Chairman Horn's actually made references to financial problems encountered by the White House Communications Agency. And I would simply just like to note for the record that that Agency is not part of the Executive Office of the President and would not be covered by this legislation. We are considering today the White House Communication Agency as under the statutory authority of the Department of Defense. So I just wanted to make that clear.

Do you want to comment on that?

Mr. MICA. Well, I would say that the lady is correct in addressing the point that she made. However, we found that some of the folks that were directing operations of—there is almost—there are over 1,000 military assigned to the White House, and we found the special employees directing some of these folks, which also raises a number of eyebrows.

We also found a mix of accounts in the way money was spent, some attributed to the White House and some attributed to the defense agency. In fact, there were numerous instances where money could be saved if we had had, I think, a Chief Financial Officer working with the Agency to see where economies could be made. And I would be glad to provide for the subcommittee some specific instances where this legislation would have saved substantial money if there had been some structure and organization from the White House to that Agency.

Mr. HORN. Without objection, that exhibit will be put in the record at this point.

Mr. MICA. Thank you.

[The information referred to follows:]

EXAMPLES OF SAVINGS THAT COULD HAVE BEEN ACHIEVED WITH A CFO

- Only 17% of WHCA's bills were paid on time, taxpayers incurred an undetermined amount of interest and penalties on the other 83%. A CFO would have ensured that legitimate bills were paid on time.
- WHCA spent $4.9 million for mobile communications equipment that would require the use of an additional C-141 aircraft to transport standard equipment loads and was also incompatible with most hotel electricity units.
- WHCA purchased $7.8 million in services and equipment that were outside its mission.
- $14.5 million in outstanding obligations were unvalidated.
- WHCA failed to collect $4.3 million for annual communications support to the Secret Service for the period 1990-1995.
- $294,000 was paid for services that were never provided.
- $300,000 software packages were purchased but unopened.
- $577,000 worth of equipment was unaccounted for and at risk for waste or loss.
- WHCA lacked accountability for non-expendable property on hand and had excess expendable supplies valued at approximately $226,000.
- WHCA authorized an undetermined amount of duplicate payments and payments that exceeded the agreed-upon price for telecommunications equipment and services leased for trips.
- WHCA paid $795,000 for leased long haul telecommunications circuits that were no longer required.
- WHCA did not have procedures to ensure that premium pay to civilians was made in accordance with law. An IG review determined that 1 employee received premium pay without working the necessary overtime hours.
- WHCA was billed $91,000, which it paid, for services quoted at $35,000.

Mrs. MALONEY. I would like a clarification. Does your bill—the Special Government Employee Act, would that apply to Members of Congress?

Mr. MICA. Well, no, I don't—I think we are already covered.

Mrs. MALONEY. No, we are not.

Mr. MICA. Well, we are covered under certain accountability and disclosure——

Mrs. MALONEY. But not with respect to the Government Employee Act.

Mr. MICA. On the 15th, we will be filing disclosure. In fact, we do have some accountability. But I would imagine, I am not an attorney, if you got into a situation where you had a Member of Congress influencing policy and spending time at the White House, there may be provisions that they would fall under in addition to their current responsibility. But I can't see somebody from the Congress serving in both of those capacities.

Mrs. MALONEY. But we certainly influence policy in the House, influence policy in a lot of ways, so possibly it should apply to us now.

Second, the Chief Financial Officer, we don't have a Chief Financial Officer for Congress. Do you believe we should have a Chief Financial Officer for Congress, too? And wouldn't that be consistent with the spirit of the Congressional Accountability Act?

Mr. MICA. Well, I think that it may be statutorily time to include some type of a provision. I just joined the House Oversight Committee yesterday, and that may be a topic for discussion. I know that the new majority has put certain safeguards in by rules or by their structure and some of that may require a statutory provision.

Mr. HORN. I congratulate the gentleman on his appointment to that committee, and I hope his visitors center will also be implemented. I looked with joy upon your appointment.

And I think Mrs. Maloney makes an important point. We do have an Inspector General who was of great help when he went through all of the accounts. And as you know, we had the first audit since 1788, when we took over in 1995. But the point is well-taken on a Chief Financial Officer. Maybe you can pursue that with the same tenacity and focus you have done this legislation.

Mr. MICA. We will take them one at a time, Mr. Chairman.

Mrs. MALONEY. Just for clarification.

Mr. MICA. Yes.

Mrs. MALONEY. Certainly Members cannot be special Government employees in advising the White House, but they can hire or use them themselves in policies that we are developing in the House. So maybe it should be expanded to cover the House, too; Congress, too.

Mr. MICA. Well, you may have a very good point, that we may want to extend the same thing to the House as we learned from the White House—I am sorry, the Congressional Accountability Act. If we have gaps there that should be filled, we may want to address that.

At this juncture, though, we do have the experiences we have seen from several White Houses that we should institute a Chief Financial Officer; that we should clarify the definition of a special Government employee there.

It is not as easy, the way the Founding Fathers set up this legislative mechanism, to influence 218 and 60 in the Senate. We do have one Chief Executive Officer and one Chief Executive Office. We want that to run at as high a standard as we can possibly set.

I do want to end, though. I had commended Mr. Horn for his leadership on this issue, and I want to take a moment to commend Mrs. Maloney, because you cannot achieve any legislative success without bipartisan cooperation. And you have certainly been a leader in making the progress that we have made and I look forward to working with you.

And if there are amendments, corrections in this legislation, I am committed to work with you. And if there are other avenues we can pursue to improve the operation of the Congress, now with my powerful appointment to the House Oversight Committee, I am committed to work with you.

Mrs. MALONEY. Thank you.

Mr. HORN. I thank the gentlelady for the good questions. And I now yield 10 minutes to the gentleman from New Hampshire, Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman. I will consume far less than 10 minutes.

Thank you, Mr. Mica, for your participation today and your testimony. It is of terrific value to the committee, I am sure.

A couple of quick questions about the implementation of the CFO at the White House. First, who would the individual report to and who would they be accountable to directly, and what kind of a communication might exist between that individual and, say, the GAO?

Mr. MICA. Are you talking about a Chief Financial Officer?

Mr. SUNUNU. Chief Financial Officer, yes.

Mr. MICA. Well, first of all, you statutorily create the position so it does have some requirements. There are certain structures already within the Executive Office of the President for operations. But this individual would be pinpointed by law as being responsible for the financial operations and management in the White House.

So that's basically the position you are creating and the responsibility and the charge.

Right now, who is responsible?

Mr. SUNUNU. Are you asking me?

Mr. MICA. Well, I point that out.

Mr. SUNUNU. That was my next question to you.

Mr. MICA. We do have—I guess, the President is, and that individual would also report to the President. But we do have——

Mr. SUNUNU. He would report to the President as opposed to the Chief of Staff?

Mr. MICA. Right. But we do—I am sure that there will be internal—there is enough flexibility in the law to allow a proper structure as far as chain of command and reporting.

Right now, it is sort of like it is the responsibility of the President but no one in particular. So we are creating a position with specific responsibility, accountability and, again, somewhere where we can pinpoint this.

As I point out, too, the White House is not a small operation. It is huge. It has got hundreds of employees, Executive Office of the President.

Mr. SUNUNU. 1,500 or so full-time?

Mr. MICA. Yes. And it deals with millions and millions of dollars and operations. When you bring in Defense and other supporting agencies, it is a mammoth operation. So we are just trying to, based on the experience we have seen over several administrations, ensure that there is some system of, again, financial responsibility and accountability.

Mr. SUNUNU. And I would imagine it has varied a great deal from administration to administration, and even from department to department.

But in general terms, who has picked up the responsibility or who has been given the obligation of fulfilling some of these financial requirements within the White House?

Mr. MICA. In the past, it has been sort of an arbitrary decision of the President in the structure that is developed by each administration. There is a certain amount of responsibility, through various offices and agencies. I guess OMB and some of the others would get involved.

But, again, there is no specific financial officer required now. That's the big change that this makes and pinpoints responsibility.

Mr. SUNUNU. With regard to the concern over volunteers and clarifying what would constitute a volunteer or a special employee, in the reviews and hearings that you have participated in, could you give an example of a fairly clear-cut conflict of interest that could exist with that type of personnel in the White House?

Mr. MICA. Well, I will give a couple. For example, we looked at some of the organizations that paid volunteers who have done substantial business with the Federal Government. For example, the National Council of La Raza, received over $1 million in Federal grants between the fourth quarter of 1995 and the third quarter of 1996. Likewise, I believe it is called Montefiore Medical Center, I am sorry, received some 58 grants during that period of time for hundreds of thousands of dollars, and several of these organizations had so-called volunteers operating at the White House.

So those are a couple of examples. I also cited several others in my testimony. But there are specific examples where there is a potential conflict of interest, where folks who are dealing with the Government and are receiving grants or assistance from the Government, are placing folks in there to do work.

It just isn't right. It doesn't meet the smell test, as you would say.

Mr. SUNUNU. And the current administration is supportive of this clarification?

Mr. MICA. Of the clarification? Well, I am not sure.

Mr. HORN. That was the comment of the ranking Democrat, and there are a couple of questions I will be exploring with Mr. Walden when he is on the witness stand, on the definition of special Government employee. That's one of the reservations. No problem with the Chief Financial Officer Act and—or she had understood that both bills were now supported by the administration. But I think we want to tighten up that special Government employee definition

so that we aren't getting in individuals that the President might want to talk to every day by telephone.

Mr. MICA. Absolutely, and a cabinet member, or Members of Congress, or others.

Mr. HORN. I am thinking of ones that are not Government employees.

Mr. MICA. I am sorry. When I said "cabinet," I meant informal.

Mr. HORN. Ex-cabinet members?

Mr. MICA. Informal cabinet. But what you are trying to do is ensure that someone who is around the White House, who is directing personnel, who is directing activities——

Mr. HORN. Exactly.

Mr. MICA [continuing]. Who looks like a Federal employee, who barks like a Federal employee, who gives commands like a Federal employee, who has access like a Federal employee, or even a political appointment, is accountable.

I don't care who the President has in there, but a little bit of financial disclosure, a little bit of compliance with that because they understand that if they are there in the highest office in the land, that they do comply with some of these things that shows that we are all operating at the highest standards. So whether it is in the White House or the Congress, we have got to set that highest standard. And that's the intent.

Now, if the language we have now or we have proposed now doesn't do that, we are willing to work with them. This isn't geared just for this administration.

Mr. HORN. Right.

Mr. MICA. It is geared for the future. And we want to do the right thing. Maybe you could talk to your staff to give us some guidance.

Mrs. MALONEY. Could I just ask a question quickly?

Mr. HORN. Certainly.

Mrs. MALONEY. I certainly support the intent of both of them, and I would like you to know that the White House is not opposing these two bills. I don't know if they are supporting them or not. Just to clarify it.

I would support the special Government employee functional definition, but I think it has to be clarified because I think a President should be able to talk to whomever they want. If President Clinton wants to talk to George Bush 130 days out of the year for advice, I don't think George Bush should have to disclose and be treated—I just think that needs to be defined better.

And I would like to ask on the Chief Financial Officer, do you see one Chief Financial Officer for the White House or do you see one in every single office of the White House? Do you see one chief—how is that defined?

Mr. MICA. I think that you will end up probably with one Chief Financial Officer so we have some accountability, and then that individual can appoint other people. But you have pinpointed responsibility for the finances under that activity, and then sub-activities.

Again, I think you can't get to—you need to leave enough flexibility but you want that accountability and responsibility pinpointed. That's how I envision the position.

And again, I don't want to tie the hands of this administration or future administrations. Just, again, try to get some handle on this and some accountability.

You ought to call some of these folks in and ask them who is doing what and who is responsible for what? And you would see folks pointing this way and that way. There is nobody.

The President is in charge, but I mean, granted, whether it is Bill Clinton or George Bush, or whomever the future President may be, he is not the financial officer from a practical standpoint. But he is going to take the heat for it.

So I think that some things that this administration has gotten in trouble for could have been avoided if there had been in place someone who was responsible, who was pinpointed with that financial responsibility and we can avoid problems in the future by instituting this. So I am willing to work with anyone. We don't want to tie anyone's hands. I try to avoid using this administration as an example, and I am sure we can find other problems in other administrations. But our job is to make the thing work right.

Mrs. MALONEY. OK. I look forward to Mr. Walden's testimony. His written testimony last year led me to drafting the special employee functional definition, and I just—maybe he can help us clarify it more so that it fits your description and more of what I want.

I have to go back to the floor. Excuse me. I apologize, Mr. Chairman.

Mr. MICA. Thank you.

Mrs. MALONEY. I apologize to Mr. Walden. I was looking forward to hearing your testimony.

Mr. HORN. Thank you.

The gentleman from New Hampshire.

Mr. SUNUNU. I yield back the balance of my time, Mr. Chairman. Thank you.

Mr. HORN. All right.

Mr. SUNUNU. Thank you, Mr. Mica.

Mr. HORN. I now yield 10 minutes to the gentleman from Virginia, Mr. Davis.

Mr. DAVIS OF VIRGINIA. John, let me just ask you, what is wrong with being able to, theoretically, for a congressional office, where you are not allowed to do this, or the Office of the President to be able to utilize volunteers, people who want to come in and help stuff envelopes, answer mail and the like?

Mr. MICA. Well, first of all, I think you violate some labor laws.

Mr. DAVIS OF VIRGINIA. But conceptually, outside of this?

Mr. MICA. Conceptually.

Mr. DAVIS OF VIRGINIA. Why should taxpayers have to pay to hire people when we can have volunteers to do some of this?

Mr. MICA. Again, I would like to have volunteers, too. I think it could be useful, but it does violate the laws.

Mr. DAVIS OF VIRGINIA. I agree.

Mr. MICA. Paying folks minimum wage.

In a position like the Executive Office of the President, where you have folks that might have some potential conflict of interest, and there are many, I mean——

Mr. DAVIS OF VIRGINIA. Well, you could do disclosure.

Mr. MICA. I mean, there are thousands and thousands of grants and largess or some decision coming out of the White House can greatly impact an industry or an association or an activity. So you don't want that appearance where someone is coming in and volunteering. And I, as chair of the House Civil Service Subcommittee, can go investigate what Federal employees are doing or you can look at certain White House employees; but these people are not accountable. They are not accountable under conflict of interest. They are not accountable under ethics. They are not accountable under financial disclosure.

They are nice to have around probably, but it just doesn't meet, like I said, the smell test.

Mr. DAVIS OF VIRGINIA. Well, I went to lunch with a CEO in my district who is the head of a company. It is about a $300 million a year company. And we were talking and he gets paid $1 a year. Now he has some options that if he turns the company around and things of that nature, but his salary is zip. He has made money in life. He likes the challenge. A lot of people used to come to Government for the challenge. There were a lot of dollar a year men who would come down, lend their expertise, didn't ask for anything out of there.

There is nothing wrong with having people who could file under the disclosure law, but I think we ought to be encouraging people who want to give something. They are going to be accountable to somebody along the way. I just want to make sure we get the proper balance as we go through there. There is absolutely nothing wrong with people wanting to help their Government and be willing to work for nothing, whether it is volunteer or whatever. I think we make a mistake not looking at it in that way.

Mr. MICA. Mr. Chairman, there are plenty of opportunities and no one has access to more appointment opportunities for volunteer positions than the President of the United States.

I recommend to you the "plum" book, I recommend to you the countless commissions, boards, task forces, all kinds of groups that the President appoints so they can participate. They can even influence policy through those legislative or created——

Mr. DAVIS OF VIRGINIA. John, I think the point——

Mr. HORN. Appointing advisory committees.

Mr. MICA. It is working in the White House, access to staff, whether it is a military staff, access to resources, access to national security information, access to influencing policy in that fashion in the guise of being a Federal employee.

Mr. DAVIS OF VIRGINIA. I understand.

Mr. MICA. People who are volunteering information to the President, Counsel to the President, suggestions——

Mr. DAVIS OF VIRGINIA. But there are tons of people who never see the President who can be out there working in some of these offices.

Mr. MICA. It doesn't mean moving in, getting a phone, directing staff and policy, though, and having no responsibility. I would even be glad if they would sign up under $1 a day or something but meet these—the same criteria.

Mr. DAVIS OF VIRGINIA. I am not quarreling with the disclosure requirement. I just think sometimes we lose sight, we spend so

much time and effort making sure somebody is not in conflict, some imaginary conflict that we can't utilize some of the great talent that's out there that really wants to help and has no hidden agenda. So it is a proper balance. I am not sure that the bill doesn't reach that balance. I just want to say, coming from the other direction, we don't want to lose sight of the fact that there are people who can contribute a lot sometimes and we end up discouraging sometimes by overregulating what volunteers can do.

That's not to say that this legislation doesn't do some very good things and I am not going to support it. But I just want to kind of get that off my chest.

Mr. HORN. I understand the gentleman's concern, but the intent of this legislation is not to stop in any way the right of the President of the United States to communicate and get the advice of any person he wants to get.

Mr. DAVIS OF VIRGINIA. Right.

Mr. HORN. What it is trying to stop is when a friend of any President, as the gentleman from Florida said, is roaming the halls of the White House giving orders to Government employees and there is no accountability with that individual.

Mr. DAVIS OF VIRGINIA. Right.

Mr. HORN. But people assume, knowing a close relationship to the President, in either a campaign or as a personal friend or they read the society pages, they assume that's an order from the President.

Mr. DAVIS OF VIRGINIA. And it probably is sometimes, and sometimes it is not.

Mr. HORN. It might well be. But those are the people we need to have some accountability. I am really not concerned about the wonderful people that help in the mail room in administrations regardless of party.

Mr. DAVIS OF VIRGINIA. Right.

Mr. HORN. Those are devoted volunteers.

Mr. DAVIS OF VIRGINIA. Right.

Mr. HORN. I don't believe they are paid anything.

Mr. DAVIS OF VIRGINIA. They are not.

Mr. HORN. If I remember on that. But with the thousands of letters the White House receives every day, there is nothing wrong with volunteers helping on the mail.

Mr. DAVIS OF VIRGINIA. Right.

Mr. HORN. Now, we, for example, are restricted from having individuals, unless they are interns tied to an academic program.

Mr. MICA. Right.

Mr. HORN. I think there is now a provision where you can have 2 or 4 people over 65 as a senior intern or something. But we have been fairly tight on that. There is nobody roaming around giving our office orders.

Mr. DAVIS OF VIRGINIA. We have a lot of people in our office giving orders.

Mr. HORN. Well, they give us orders.

Mr. DAVIS OF VIRGINIA. OK. I appreciate your comments, John. I think it is thoughtful. I think from a Federal employee's perspective it has some safeguards built into it. I just want to make sure we get it in the right balance.

Thanks. I yield back.

Mr. HORN. I thank the gentleman.

Are there any further questions from anyone on the panel? If not, we thank the gentleman from Florida for his usual concise, focused comments and we appreciate it.

Mr. MICA. Thank you.

Mr. HORN. Thank you.

We will now go to the second panel and that's the panel with Edward J. Mazur and Cornelius E. Tierney. If you will please come forward. As you know, with the exception of Members, who we assume tell the truth—and when they don't, we don't talk to them again—you gentlemen will raise your right hands.

[Witnesses sworn.]

Mr. HORN. Both witnesses have affirmed, the clerk will note. If it is OK with you, we will start just as the outline is on the schedule.

Edward J. Mazur is the vice president, administration and finance, Virginia State University, former Controller, Office of Federal Financial Management, one of our favorite agencies, and Office of Management and Budget.

STATEMENTS OF EDWARD J. MAZUR, VICE PRESIDENT, ADMINISTRATION AND FINANCE, VIRGINIA STATE UNIVERSITY, AND FORMER CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; AND CORNELIUS E. TIERNEY, DIRECTOR, CENTER FOR PUBLIC FINANCIAL MANAGEMENT, GEORGE WASHINGTON UNIVERSITY SCHOOL OF BUSINESS AND PUBLIC MANAGEMENT

Mr. MAZUR. Mr. Chairman and members of the subcommittee, good afternoon.

Mr. Chairman, I strongly support the central thrust of the Presidential Executive Office Financial Accountability Act of 1997. But I would like to offer this afternoon a few modifications that I believe would make the legislation more effective and perhaps more thoughtfully tailored to the operating circumstances found in the Executive Office of the President.

Mr. Chairman, as long as the Congress or the American public intend to hold our President responsible and politically accountable for what happens fiscally in the White House, then he needs to be provided with help and someone who will clearly shoulder questions about fiscal accountability, as they might arise in the future.

The President of the United States, whose duties are awesome and from whom we expect so very, very much and toward whom our society appears to have little tolerance for error, should have available to him in the Executive Office of the President a Chief Financial Officer who would have two basic requisite credentials.

First, the person must have a proven understanding of what constitutes sound accounting and financial controls and appropriate financial management practices.

Second, the person must have confidence in the authority granted to them by the legislation you are now contemplating, and the self-confidence to provide thoughtful, balanced and decisive advice

concerning the financial activities of the Executive Office of the President.

In short, Mr. Chairman, the person must have the confidence and the judgment, when required, to say no.

I am very much of the mind that the Executive Office of the President is unique, in contrast to almost all other areas of the Government. Its role in national security is undeniable and, accordingly, my proposed modifications reflect two core beliefs.

First, the President truly needs and will benefit from a Chief Financial Officer who can focus undivided attention on the financial management practices of the EOP and be responsive to the President.

Second, the Congress cannot afford to lay out in public the business and the structure of the White House in such a free flowing manner that it could be used by individuals in this world who would wish to do harm to the operating heart of our Government.

In short, Mr. Chairman, if some overworked staff member in the White House mishandles a financial matter, I don't think we need to tell the world about it, but we certainly need to fix the problem.

With this in mind, my recommended modifications to the legislation are as follows: That the idea of establishing an Inspector General in the EOP be permanently set aside and that the legislation include, instead, a provision that would require the EOP to secure the services of an outside public accounting firm to perform an audit in conformance with the standards promulgated by the Controller General.

Second, that the legislation be modified to provide that this outside public accounting firm be selected by a committee, chaired by the Deputy Director for Management in OMB, and comprised of the Chief Financial Officer of the Executive Office of the President, OMB Legal Counsel, the Controller of the Office of Federal Financial Management, the Assistant Controller General for Accounting and Financial Reporting Division of the U.S. General Accounting Office, and the Vice Chair of the President's Council on Integrity and Efficiency, which is the group of Inspectors General.

Three, that the legislation clearly set a requirement for the Chief Financial Officer to prepare annually financial statements under guidelines issued by the Office of Management and Budget, consistent with the provisions of the Chief Financial Officer Act.

As an aside, Mr. Chairman, I believe that we can have one set of statements for all 12 areas, combining their operations.

The fourth modification, that the outside auditor engaged by the Executive Office of the President address its audit report directly to the President and provide copies to the Chief of Staff of the White House, the Chief Financial Officer of the EOP, the Director of the Office of Management and Budget, and either the Senate and House committees with oversight responsibilities for the Central Intelligence Agency or the oversight committees of jurisdiction, if that report is received under a seal of confidentiality.

The fifth modification, that the legislation clarify that all accounting, financial reporting and financial analysis functions now in existence in the Executive Office of the President be transferred in full, together with all associated staff, to an organization under the responsibility of the Chief Financial Officer of the EOP.

Sixth, that the proposed legislation restrict access by the Chief Financial Officer to information, policies, communications, and records that relate to the processing of the EOP financial transactions, the maintenance of all budgets affiliated with EOP as set forth in the budget of the U.S. Government and other associated financial affairs in EOP, unless that restriction of access is waived by the President's Chief of Staff.

And the final or seventh modification would be that the full duties of the Deputy Director for Management of the Office of Management and Budget, as contemplated in the CFO's Act, apply to the selection of the Chief Financial Officer of the EOP.

These modifications, Mr. Chairman, I believe would provide adequate internal controls in the EOP and a Chief Financial Officer, with the confidence and the background to ensure that the fiscal affairs of the EOP are always carried out in a responsible manner. These modifications would also ensure that a person selected for the Chief Financial Officer position would have clear authority and a higher probability of carrying out his or her duties successfully.

I would be avoiding the issue if I did not speak, although just for a second, on the White House Travel Office matter. The inefficiencies and inadequacies of internal controls and other operating deficiencies in the White House Travel Office could have been readily addressed by a Chief Financial Officer if one had been in place at the time.

The identification of fiscal and operating deficiencies is something that all CFOs throughout Government consider as a normal part of their efforts, as is an expeditious resolution or correction of such deficiencies. Such matters do not have to become politically explosive when they are viewed as the responsible and timely improvement of inadequate conditions.

In closing, Mr. Chairman, the bottom line is that I believe that we cannot afford to have our President distracted in any way by how financial transactions and other fiscal matters are handled in the Executive Office of the President. Someone must accept the responsibility, as provided in this act, to keep fiscal matters straight and to be the one to step forward and be politically accountable to the Congress if something appears to be going wrong.

I really appreciate the opportunity to be here this afternoon and would be happy to answer questions later.

[The prepared statement of Mr. Mazur follows:]

Mr. Chairman and Members of the Subcommittee:

My name is Edward J. Mazur. I am Vice President for Administration and Finance at Virginia State University, in Petersburg, Virginia. Between December 1991, and June 1993, I served as the first Controller of the Office of Federal Financial Management appointed under the CFOs Act.

I strongly support the central thrust of the "Presidential and Executive Office Financial Accountability Act of 1997," but would like to offer a few modifications that I believe would make the legislation more effective and more thoughtfully tailored to the operating circumstances found in the Executive Office of the President. By "central thrust", I mean the desire of Congress to provide the President with an improved opportunity to ensure an adequate level of internal controls within the Executive Office of the President (EOP) and a strengthening, over time, of financial management practices in the EOP.

FINANCIAL PROFESSIONALS CAN HELP CHIEF EXECUTIVE OFFICERS

I would like to begin this afternoon by telling you a story. There serves in the United States Senate today a person for whom I have great regard. He is Virginia's junior Senator, The Honorable Charles S. Robb. As you may be aware, Senator Robb served as Virginia's Governor from 1982 to 1986. Toward the end of his first year in office, just a few days before Christmas, I met with Governor Robb to propose a significant change in the financial management practices of the Commonwealth.

Our discussions over the change quickly moved to a vigorous debate on the merits. After going on for about twenty minutes, I could see that the Governor was struggling with some of the short term negatives associated with the change. At that point, he leaned forward and in his strong Marine Corp voice said "Ed, your ruining my Christmas holiday". In response, I leaned forward and said "Governor, your not doing much for my holiday either".

It was a defining moment in our relationship and a defining moment in the financial management practices of the Commonwealth of Virginia. That meeting resulted in Governor Robb agreeing to support a significant and far reaching change in the financial management and financial reporting practices of the Commonwealth. His decision, on that day, became the cornerstone of an entirely new, very modern, and extremely well received structure of financial policies, reporting practices, auditing practices, and modern systems that resulted in Virginia receiving, in 1986, national recognition for excellence in financial reporting, and being cited, in 1990 and 1991, as the best financially managed state in the United States.

This story offers an example of how the periodic availability of an experienced financial officer, to a chief executive officer, may produce benefits beyond the basic provision of financial reports or the prevention of embarrassing circumstances.

A CHIEF FINANCIAL OFFICER FOR EOP

The President of the United States, whose duties are awesome, from whom we expect so very, very much, and toward whom our society has little tolerance for error, should have available to him in the EOP a person, in the form of a Chief Financial Officer, who would have two basic requisite credentials.

First, the person must have a solid and proven understanding of what constitutes sound accounting and financial controls and appropriate financial reporting and financial management practices, and have exerted leadership in improving the financial affairs of organizations with which he or she had been previously associated.

Second, the person must have confidence in the authority granted to them by the legislation you are now contemplating, and the self-confidence to provide thoughtful, balanced, at times creative, and, above all, objective and decisive advice concerning the financial activities of the EOP. In short, the person must have the confidence and the judgement, when required, to say "no!"

Notice that I did not mention the importance of a political background or even a political affiliation. Having been first appointed by a Republican Governor, and reappointed by three Democratic Governors, and having been appointed by a Republican President and being permitted to continue in service by a Democratic President, I tend to think that the political posture of the Chief Financial for the EOP is not a necessary credential, nor a predictor of success.

PROPOSED MODIFICATIONS TO THE LEGISLATION

I indicated at the beginning of my comments that I would be proposing certain modifications to the legislation that is now before you. I hope that you will find these changes to be helpful and that they would represent, to Administration, the type of adjustments that would enable the White House to embrace your proposals.

As backdrop to these recommendations, I want to share with you that I am very much of the mind that the EOP is "unique", in contrast to almost all other areas of government. It has a

role in national security that is undeniable and that requires as much attention to protecting the interests of the United States as we take in protecting our capacity for defense through the Department of Defense, and our capacity to understand the threats of this world we live in through the Central Intelligence Agency. Accordingly, my proposed modifications reflect two core beliefs.

First, the President truly needs and will benefit from a Chief Financial Officer who can focus undivided attention on the financial management practices of the EOP, and be responsive to the President.

Second, the Congress cannot afford to lay out in public the business and structure of the White House in such free flowing manner that it could be used by individuals in this world who would wish to do harm to the operating heart of our government.

With this in mind, my recommended modifications are as follows:

1. That the idea of establishing an Inspector General in the EOP be permanently set aside and that the legislation include a provision that would require the EOP to secure the services of an outside public accounting firm to perform an audit in conformance with standards promulgated by the Comptroller General of the United States, and under a scope of work established by the Chief Financial Officer of the EOP, with the review and concurrence of the Deputy Director for Management of the Office of Management and Budget.
2. That the legislation be modified to provide that this outside public accounting firm would be selected by a committee chaired by the Deputy Director for Management of the Office of Management and Budget and comprised of the Chief Financial

Officer of the EOP, OMB Legal Counsel, the Assistant Comptroller General for the Accounting and Financial Management Division of the U.S. General Accounting Office, and the Vice Chair of the President's Council on Integrity and Efficiency.

3. That the legislation clearly set a requirement for the Chief Financial Officer to prepare, annually, financial statements under guidelines issued by the Office of Management and Budget consistent with the provisions of the Chief Financial Officer's Act, as amended.

4. That the outside auditor engaged by the EOP address its audit report directly to the President, and provide copies to the Chief of Staff of the White House, the Chief Financial Officer of the EOP, the Director of the Office of Management and Budget, and the Senate and House Committees with oversight responsibilities for the Central Intelligence Agency.

5. That the legislation clarify that all accounting, financial reporting, and financial analysis functions now in existence in the EOP be transferred in full, together with all associated staff, to an organization under the responsibility of the Chief Financial Officer of the EOP.

6. That the proposed legislation restrict access by the Chief Financial Officer to information, policies, communications and records that relate to processing of EOP financial transactions, the maintenance of all budgets affiliated with EOP in The Budget of the United States Government, and the other associated financial affairs of EOP, unless that restriction of access is waived by the President's Chief

of Staff.

7. That the full duties of the Deputy Director for Management of the Office of Management and Budget, as contemplated in the CFOs Act apply to the selection of the Chief Financial Officer of the EOP, specifically as they are cited in Sections 503(a)(8),(9) and (10) of the CFOs Act, as amended.

These modifications would ensure that the central thrust of this legislation is achieved, which is to provide adequate internal controls in the EOP, and a Chief Financial Officer with the competence and the background to ensure that the fiscal affairs of the EOP are always carried out in a responsible manner. These modifications would also ensure that the person selected for the Chief Financial Officer position would have clearer authority and a higher probability of carrying our his or her duties successfully. Current oversight provisions by the Congress over the EOP, through, in part, the exercising of audits by the U.S. General Accounting Office, and through budget hearings and other oversight mechanisms, would remain in force and would, I believe, become more effective because of the presence of a Chief Financial Officer in the EOP.

CLOSING COMMENTS

It would be avoiding the issue if I did not, albeit briefly, comment on the White House Travel Office matter. I was still serving as Controller of the Office of Federal Financial Management (OFFM) when the White House Travel Office controversy first appeared. Two senior persons in the Federal Financial Systems branch of OFFM were temporarily assigned to assess the travel office systems and make recommendations on their improvement. From my distant view of their efforts, the inefficiencies and inadequacies of internal controls, and other

operating deficiencies in the White House Travel Office could have been readily addressed by a Chief Financial Officer, had one been present at the time. The identification of fiscal and operating deficiencies is something that all CFOs consider as a normal part of their efforts, as is an expeditious resolution or correction of such deficiencies. Such matters do not have to become politically explosive when they are viewed as the responsible and timely improvement of inadequate conditions.

I very much appreciate having this opportunity to share my thoughts on this important legislative initiative.

Mr. HORN. I thank you for your very full and helpful written statement that you have submitted to the committee, and your summary of that statement. I am sure we will have a lot of questions as we discuss it. It is very helpful.

Our next panelist is Cornelius E. Tierney, the director, Center of Public Financial Management, George Washington University School of Business and Public Management.

Dr. Tierney.

Mr. TIERNEY. Thank you very much, Mr. Chairman. Thank you for the opportunity to provide some comments and views on this legislative hearing dealing with the Presidential and Executive Office Financial Accountability Act of 1997.

I understand this proposed legislation to be an initiative to apply the major provisions of the CFO Act, as amended, to the Executive Office of the President.

I must admit my initial reaction was one of surprise that the Executive Office of the President had not voluntarily complied with the CFO Act of 1990. I was not aware that during any of the hearings, studies, discussions, that preceded the passage of the 1990 act, or held subsequently by any party, that anyone thought that the Executive Office of the President, particularly those operating entities, would not come into compliance.

In 1982, and later in 1987, I chaired two non-Federal initiatives that examined the Federal Government's financial management processes—its managers, systems, controls, policies, procedures, and practices in the financial arena. The recommendations of those studies are among some of the major provisions of the CFO Act of 1990 and as amended.

These studies document the very serious problems, the weakened nonfinancial management practices and, at times, the lack of accountability that was permitted to exist within the Federal Government for years, for decades and the better part of two centuries.

With respect to the proposed legislation, I would like to offer the following half dozen summary comments.

First, I had noted the research by the Congressional Research Services legal analysis to point out some of the involvements of the entities in the EOP with issues of national security, confidential policy matters, and it discussed issues as arrogation, encroachment and aggrandizement, et cetera.

These points do not seem relevant to, and I do not feel they should be viewed as obstacles or impediments to the implementation of good financial management.

Somewhat related, I do not believe the proposed act is an intrusion by a CFO or making the CFO a party to any secret or confidential or intelligence deliberations or national security discussions. I guess I think it is somewhat of a stretch for anyone to assert that the adoption of sound financial management practices by the EOP entities would somehow disrupt management functions or somehow interfere impermissibly with the performance of a constitutional function.

Second, as drafted, the proposed legislation exempts both the proposed chief and the deputy financial officers from the qualification standards promulgated by OMB. I sincerely hope that these exemptions are not viewed as condoning a diminution of the de-

sired quality of financial management and these financial executives. I don't believe meeting these criteria would ever be a significant hurdle to the type of candidate that would aspire to such a position as the CFO of the Executive Office of the President.

Third, achievement of effective financial management practices, sound controls, requires a commitment to high integrity, strong ethical values, by the most senior executives. There is a premise in the accounting profession that effective controls, sound financial practices, full accountability, is established by the "tone at the top." If those at the top are not concerned, then few others will worry either. In the Federal Government the tone has to be set by the Executive Office of the President.

Fourth, some may raise the issue of whether the appointment of a CFO to the Executive Office of the President might intrude or somehow disrupt the performance of financial management activities as currently practiced there. Once again, I find it difficult to envision sound management practices as being an intrusion or a disruption to any activities.

Additionally, we should keep in mind that technically and financially the Executive Office of the President is a relatively simple financial management operation.

Fifth, the relative insignificance of budgets, and I use that advisedly because they are about $200 million, depending on how one counts the dollars, to other entities and other Federal operations should not be a factor for not complying with this proposed legislation. I think, regardless of size, the leadership expressed by the Executive Office of the President will be seen as the example or the standard that other financial managers would follow.

Last, not mentioned yet is the issue of tenure. The short tenure itself of senior Federal executives is another reason for ensuring that financial management controls are sound, consistently applied and regularly monitored. The National Academy of Public Administration has reported on many occasions that in the executive branch, senior financial management leadership changes, on the average, are every 18 months. This turnover of short-timers seriously undermines the stability and the dedication needed to ensure that jobs started are completed, and that there is uniformity and consistency of financial practices.

No private concern or nonprofit could long tolerate the tenure—turnover ratio that is prevalent among senior financial executives—Federal executives. For this reason, I see the appointment of a Deputy CFO at the EOP, having the qualifications outlined in the act, as significantly addressing that management void or gap related to tenure in office.

In summary, the Chief Financial Officer Act of 1990 began the important and enormous task of making internal controls and accounting and reporting systems the safeguards they were intended to be. Further success will require the unswerving commitment of all professionals in protecting, preserving and accounting for Federal resources. For these reasons, I believe and endorse and accept the conditions set forth in the proposed Presidential and Executive Office Financial Accountability Act of 1997. This act, adopted by the Executive Office of the President, will send a clear message

that sound and practiced financial management is a high priority of the Federal Government.

Mr. Chairman, this completes my oral comments. I have separately provided a more detailed paper on this issue. Thank you very much.

[The prepared statement of Mr. Tierney follows:]

Testimony
before the

Subcommittee on Government Management, Information and Technology
U. S. Houses of Representatives

on the

"Presidential and Executive Office Financial Accountability Act of 1997"

by

Cornelius E. Tierney
Professor of Accountancy
School of Business and Public Management
The George Washington University

May 1, 1997
2:00 p.m.
Cannon House Office Building

Mr. Chairman, thank you for the opportunity to provide comments and views at this legislative hearing on the *"Presidential and Executive Office Financial Accountability Act of 1997."*

I understand this proposed legislation to be an initiative to apply the provisions of The Chief Financial Officers Act of 1990, amended, to the Executive Office of the President.

My initial reaction was one of surprise--that the Executive Office of the President had not voluntarily complied with the Chief Financial Officers Act of 1990, and as amended.[1] I am not

[1]The Executive Office of the President is a conglomerate of agencies, offices, and activities that includes, among other organizations, entities such as the White House Office, the Office of Budget and Management, the Council of Economic Advisors, the National Security Council, the Office of Trade Representatives, the Office of Science and Technology Policy, the Office of the National Drug Control Policy, the Office of Administration, and the Office of the Vice President.

aware, that during any of the studies or discussions or Congressional hearings that preceded the passage of the 1990 Act, or subsequently, any party thought the Executive Office of the President, and particularly its operating entities, would not comply.

I suggest that the efforts to improve federal financial management, supported by Congress and now being implemented by federal departments and agencies, can be achieved only if the Executive Office supports in actions as well as words this serious work to correct some very serious problems that have existed for all too long in federal financial management.

In 1982, I chaired a non-federal initiative that examined the federal government's financial management processes--its managers, systems, controls, policies, procedures, and practices. The recommendations of that study called for the strengthening the controllership function in the federal government, the appointment of CFO's in department and agencies, the development and publication of departmental financial reports, and other improvements in accounting and financial systems and systems of controls.[1]

Later, in 1987, I chaired another effort; this for the American Institute of Certified Public Accountants. The AICPA issued a report, widely distributed at the time, that recommended (1) a chief financial officer be appointed for the federal government and for each department and agency; (2) the implementation and application of uniform financial accounting and reporting practices throughout the federal government; (3) the issuance of annual financial statements at the department level and governmentwide; and (4) the annual independent audit of the department and financial statements.[2]

Recommendations of these studies are among some of the major provisions of the Chief Financial Officers Act.

These studies document the very serious problems, the weakened or nonexistent financial management practices, and at times the lack of accountability that was permitted to exist within the federal government for years, decades, and the better part of two centuries.

I reviewed the draft copy of "*"Presidential and Executive Office Financial Accountability Act of 1997."* Additionally, I read with interest the memorandum of the Congressional Research Service outlining constitutional questions and particularly thoughts with respect to any impermissible aggrandizement/encroachment issues relating to the Constitutional separation of powers.[3]

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[1]Strengthening Controllership in the Federal Government--A Proposal, The Association of Government Accountants, Alexandria, VA., published May 1985.

[2]Discussion Memorandum: Federal Financial Management--Issues & Solutions, the American Institute of Certified Public Accountants, New York, NY, 1989.

[3]Memorandum: "Constitutional Issues Relating to Establishing a Chief Financial Officer in the Executive Office of the President," by the Congressional Research Service of the Library of Congress, Washington, DC, dated June 24, 1996.

With respect to the proposed "*Presidential and Executive Office Financial Accountability Act of 1997,*" I offer the following comments, some are addressed by the Congressional Research Service's analysis and some are not:

1. The legal analysis points out the involvement of some entities in the Executive Office with issues of national security and confidential policy matters and appropriately addresses potential Presidential versus Congressional arrogation/encroachment/aggrandizement issues in relation to our government's separation of powers doctrine.

These are legitimate concerns for the Executive Branch, Congress and even citizens. But, these points do not seem relevant to and should not be viewed obstacles or impediments to the practice of good financial management.

In no instance does the Chief Financial Officers Act, in describing the authority and functions of an agency chief financial officer or a deputy, provide for the intrusion of a CFO into or as a party to secret or confidential or intelligence deliberations, or national security discussions of any department or agency. Thus, it seems to be somewhat of a "stretch" to assert that the adoption or adherence to sound financial management practices by Executive Office entities would somehow disrupt or somehow interfere impermissibly with the performance of a President's constitutional function.

The section of the Chief Financial Officers Act dealing with a CFO's "authority and functions" is extremely definitive and limiting to fiscal and financial subjects as: financial management activities, agency accounting and financial management systems, accounting and internal control principles and standards, integration of budget and accounting information and other specifics--but, all in relation to financial management.

Many of these financial management tasks must be done today within the Executive Office of the President. But, whether all are performed competently, are performed uniformly across all Executive Office entities and are consistently performed from one fiscal period to another, by persons with demonstrated ability and practical experience in financial management practices is not known. Sound financial management would be ensured upon application of the Chief Financial Officers Act.

2. As drafted, the legislation exempts both the proposed Chief and the Deputy Financial Officers from the qualification standards promulgated by the Office of Management and Budget.

I would hope that such exemptions are not viewed as condoning any diminution in the desired quality of financial management.

The Chief Financial Officers Act now requires that candidates for these offices possess a minimal level of competence through demonstrated ability and practical experience in accounting, financial management, and financial systems along with extensive practical experience in financial management in large governmental or business entities. This standard of expected competence should continue to be minimal criteria. Meeting these criteria will never be a significant hurdle for any candidate for the position of CFO of the Executive Office of the President.

3. Achievement of effective financial management practices and a sound control environment requires a commitment to high integrity and strong ethical values by the most senior executive.

In all organizations, the financial management and control environment is directly dependent upon the attitude of senior executive management. In the accounting profession, there is a premise that effective controls, sound financial practices, and full accountability is established by the "tone at the top."

Top management support is paramount to the implementation and adherence to these sound business practices. If those at the "top" are not concerned, few others will worry either. In the federal government, the "tone" must be set by the Executive Office of the President.

4. Some might raise the concern of whether the application of the Chief Financial Officers Act to the Executive Office of the President could "intrude" or disrupt the performance of financial management activities as currently practiced by these entities.

The legal analysis addressed, to some degree, the "intrusion" aspect of the proposed legislation. The point considered was whether proposed legislation could possibly be an impermissible disruption in the performance of financial management activities by Executive Office entities.

Clearly, current financial management practices of these entities that are deficient should be modified or changed or "disrupted." But, adhering to the business concepts and practices expressed or implied in the Chief Financial Officers Act of 1990 and incorporated in the "*Presidential and Executive Office Financial Accountability Act of 1997*" do not appear to be a difficult or particularly onerous undertaking or impermissible intrusions or disruptions.

Unless existing practices are deficient or inadequate--and one should not presume this is the case--it is unlikely that implementation of the proposed legislation would perceptively disrupt the performance of financial management activities of these entities. If an assessment indicates that existing practices should be improved, one would hope that changes would be made.

5. The relative insignificance of the budgets of Executive Office entities should not be a factor for not complying with the Chief Financial Officers Act.

While relatively insignificant in relation to budgets of some other federal entities, the annual expenditures of Executive Office entities are still significant. Most entities in the private sector have annual expenditures far less in amount than the Executive Office. But, regardless of size, attaining the desired uniformity in budgeting, accounting and reporting by entities in the Executive Office and a consistency of these practices from one fiscal period to another should be seen as the example or standard for all responsible federal financial managers.

Much, if not all, expenditures of Executive Office entities are for payroll, benefits, travel, and support services--few if any significant procurement actions are executed by these organizations. These financial management considerations appear to be rather simple, straightforward, and readily understood.

6. The short tenure of senior federal executives is another reason for ensuring that financial management controls are sound, consistently applied, and regularly monitored.

The tenure in office of key senior level appointed executives is extremely volatile, and those in Executive Office entities not exempted from this phenomenon. The National Academy of Public Administration has reported that in the executive branch, senior financial management leadership changes, on the average, every 18 months. With a new election and new appointees, the learning begins anew. This turnover of "short-timers" seriously undermines the stability and dedication needed to ensure that jobs started are completed and that there is a uniformity and consistency to financial practices.

Under the present structure, short-timers can do little to help with systems or systemic problems. Under the present structure, when senior management leaves, so does much of the institutional and financial management memory. The appointment of a Deputy Chief Financial Officer having the qualifications outlined in the proposed Act could significantly address this management void or gap.

The Chief Financial Officer Act of 1990 began the important and enormous task of making internal controls and accounting and reporting systems the safeguards they are intended be. This emphasis on financial management improvement has been underscored and continued in subsequent legislation. Further successes will require the unswerving commitment of all professionals in protecting, preserving, and accounting for federal resources.

Endorsement and acceptance of the *"Presidential and Executive Office Financial Accountability Act of 1997"* by the Executive Office of the President would be a clear message that sound and practiced financial management is a high priority of the federal government.

3/30/97

Cornelius E. Tierney
Professor of Accountancy
Director, Center for Public Financial Management
School of Business and Public Management
The George Washington University
Washington, DC

Background Overview

Cornelius Tierney, a certified public accountant and for almost 25 years a general partner and the chairman and national director of Ernst & Young's (and earlier Arthur Young's) governmental and public sector practice. He has since August 1993 been a full time professor of accountancy (for undergraduate and graduate corporate and governmental auditing) and graduate accountancy and business/government policy. In 1996, Professor Tierney established and continues as director for GWU's Center for Public Financial Management. During the 1960s, Neil Tierney was an assistant director of auditing and an assistant director for accounting (serving with the U. S. General Accounting Office, then the Office of Economic Opportunity, and later the Civil Aeronautics Board).

Repeatedly, he led national efforts of the American Institute of CPA's. Professor Tierney chaired the task force the drafted the AICPA's audit guidance to the accounting profession for implementing the Single Audit Act of 1984. He also chaired the AGA's and the AICPA's task forces and was a principal author of reports that were codified by Congress into the Chief Financial Officers Act of 1990. Professor Tierney was an original member and served for the maximum 6-year term on the Federal Accounting Standards Advisory Board, having been appointed by the Secretary of Treasury, Director of OMB and the Comptroller General.

Academic and Publication Background

• ***Academic*** 1980-1981, fulltime professor(teaching intermediate accounting to Masters candidates; governmental accounting to Masters and Bachelors candidates) and 1982-1986 adjunct professor for governmental accounting at Georgetown University; 1983 to present professor of accountancy at The George Washington University.
• ***Publications.*** Since 1970, professor Tierney authored or co-authored ten books and numerous articles on governmental accounting, auditing, and financial management. His tenth book, Governmental Auditing: Standards and Practices , was published by Commerce Clearing House in April 1996.
• ***Degrees/Certification.*** Bachelors in accounting and finance 1958; Masters in business administration 1960; Doctorate in business administration (honoris causa) 1992; Certified public accountant (Massachusetts) 1964. Certified government financial manager 1995.

Professional Affiliations

Since 1962, he was a member and chair of many national committees of AGA, plus served for years as the chair of the AGA's National Headquarters Building Fund and for several years as the pro-bono chair and ceo of AGA's Education and Research Foundation. Since 1965, Professor Tierney has served as a member and active contributor to several national government related accounting and auditing committees and task forces of the American Institute of CPAs.

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Mr. HORN. We thank you for that helpful testimony. And as you know, your full statements are automatically put in the record once we introduce you, and then your summary follows that.

Let me ask a series of questions of both of you. And don't feel bashful about chiming in. I would like this to be a dialog, not just questions and answers. So if one of you disagrees with the other, say so. It will be helpful.

I guess one question to begin with is: Why do you think the Executive Office of the President has not voluntarily complied with the Chief Financial Officers Act? OMB is complying with the Government Performance and Results Act. Should it not have complied with the CFO Act before now? What is the feeling on that?

Mr. MAZUR. I could speak to the time I was there, which was about a 19-month period. And with all the other parts of the CFO Act to attend to at that time, it did not come up. It was not very actively considered or discussed, that I can think of.

The White House was something that appeared to operate. They have a long number of years, under some processes, for operating. It wasn't until, I think, the Travel Office issue hit and one had a chance to sort of see how everyone started scurrying that you got a sense that there wasn't one person to come forward. So I think this legislation is timely.

Mr. HORN. Do they ever borrow the staff from OMB? And now I am asking you for sort of a historical understanding or institutional memory on this and what you have heard about it. This is strictly hearsay.

Have any Presidents borrowed some expert in finance from OMB to go look around the place and make sure that things are accounted for?

Mr. MAZUR. When I was there, I could not—I can't recall any general request to take a broad look around. Again, I think at the time we were pretty busy getting a lot of the major agencies set up and perhaps it was omitted for that purpose.

Certainly, when the Travel Office issue hit, there were a couple of fellows who worked for me, respected professionals, who did go over and spend some time and reported their findings to, I think, the Director of Administration and perhaps a couple of others, and tried to be helpful with suggestions. And I would imagine that might still take place from time to time.

Mr. HORN. Speaking of the Director of Administration, the Office of Administration in the White House has argued that the Executive Office of the President cannot reorganize to have one Chief Financial Officer and prepare one set of statements to be audited. Instead, the Office of Administration in the past, and this is last year when we were in these discussions, argued in favor of surrogate Chief Financial Officers in each of the 12 divisions of the Executive Office of the President and the preparation of 12 sets of financial statements.

Now, 7 of these divisions have fewer than 45 full-time equivalent employees. Let me just put in the record here the full-time equivalent to get an understanding of this. Office of the Vice President, 21 full-time equivalents; Office of Policy Development, 30 full-time equivalents; Council of Economic Advisors, 28 full-time equivalents; Council on Environmental Quality and Office of Environmental

Quality, 16 full-time equivalents; National Security Council, 44 full-time equivalents; Office of the National Drug Control Policy, 38 full-time equivalents; Office of Science and Technology, 35 full-time equivalents.

I am not sure this represents the whole executive branch, and I want to take a look at the White House office who obviously has 387 full-time equivalents as of fiscal year 1996, and I guess we don't have the updates for fiscal year 1997 because we are in that year right now. We are past 1996. But we will put the actual amount in the record at this point without objection.

You have got the Executive Residence at the White House, 86. We have mentioned the Vice President; we have mentioned Economic Advisors; we have mentioned Environmental Quality; we have mentioned Policy Development; National Security Council; Office of Administration happens to have 182 full-time equivalents; Office of Management and Budget, 522 full-time equivalents; Office of the National Drug Control Policy, we mentioned; and Office of Science and Technology we mentioned; Office of the U.S. Trade Representative, 159 full-time equivalents.

Anyhow, the summary for fiscal year 1996, the full-time equivalents, is 1,548. Now, a lot of people as we know, and this goes back certainly to at least the Roosevelt administration, maybe a few before, are detailees from the various departments. Now, I think Congress has tried to slow that down or stop it at various times, but am I correct that my understanding is there is still a number of people that are detailed over to the Executive Office of the President one way or the other?

Mr. MAZUR. I don't have a current understanding of that. My general understanding when I was here was that that was something that happened—something that probably happened from time to time. I did not see a lot of that with my own eyes.

But your earlier question was, why might they be opposed to having one set of financials? I am a little perplexed by that. I think from a technical point of view, and Mr. Tierney probably could speak better to this, I can't envision any impediment at all to bringing together a set of financial statements or a combined set where you would see the financial activity of each 1 of those 12 activities and then pulled into one. As Neil pointed out, I don't believe it is very complex and sophisticated vis-a-vis the fiscal affairs of some of our larger Federal agencies, a lot of salary, a lot of travel, and a lot of supplies and things like that.

I suspect the opposition probably comes from tradition and perhaps the notion that each one of these separate units is a bit—although within the EOP, a bit independent, but that is just a suspicion on my part, but I can't think of any technical impediment.

Mr. TIERNEY. As to why the noncompliance, I guess when I read the proposed legislation, Mr. Congressman, I was rather stunned. I had led a major study effort by the Association of Government Accountants and a much more detailed one by the American Institute of Certified Public Accountants (CPA) back in the 1980's, and many discussions here on the Hill with people in the Executive Office of the President, OMB. There was not a whisper that it would not comply, so I was really surprised.

With respect to the borrowed staff, just coincidentally I got a phone call before coming up here from a long-time colleague saying, what are you going to do this afternoon, and so I mentioned it to him. And he said, do you remember—I hadn't—but one of the problems, the only problem I saw with the Executive Office of the President once this gentleman reminded me was that cost accounting was an enormous effort.

There was a study about 17 years ago with volunteer assistance from CPAs, certified public accountants, and the American Institute of CPAs, where they did a study of the Executive Office of the President to try to find out what was the cost—the President was interested in the cost of running the White House at that time.

The cost accounting was complex, to say the least, because there were no records, but everyone knew that the Air Force jet costs money, the Interior, the Parks Service costs money, the Secret Service, the Marine Guard, and it went on and on; an estimate of maybe several hundred, maybe over 1,000 people. None of this cost, of course, is recorded in the books of the Executive Office of the President.

The work was substantially completed, although I think I am correct in saying a report was never issued on this because of the "detailee-type" issue.

So that was the only thing that I saw was complex because the individual agencies were reluctant to release the cost or pleaded that they did not have the cost of loaned personnel. But I have to admit, I had to have my memory refreshed about 2 hours ago on that.

Mr. HORN. That was either the Carter administration——

Mr. TIERNEY. It was, yes.

Mr. HORN. And I wonder if that study is in the papers of President Carter in his fine library in Atlanta?

Mr. TIERNEY. I know the study was substantially completed. I am not sure, maybe a draft was prepared. No report was ever issued because being certified public accountants, they just couldn't come to conclusion of the costs. It was elusive to say the least.

Mr. HORN. Well, I will ask the staff to contact the Carter Library, which is one of my favorite libraries, I have spent a lot of time there, and see if we can't find that document somewhere. It would be interesting to see. It was probably the first and the last President to ever ask that question.

Mr. TIERNEY. Well, he is the only one that I know.

You ran down a list of the people, and, of course, to a lot of people 1,000 full-time equivalents is a big staff. When you look at the groups, they are kind of bunched into a couple of organizations, and it seemed like maybe the major ones could indeed have a financial statement, and the others could be treated as an office. I don't see it as a very complex accounting or financial management issue, but I do see the issue as enormously important. I quite honestly would hate to have it get out that the Executive Office of the President is not complying with the CFO Act. I don't know what that would do to the financial mindset of the financial managers in the Federal Government.

Mr. HORN. I suspect they all know that.

Mr. TIERNEY. I didn't. I was surprised to learn that.

Mr. HORN. Do we know how many funds that the President has complete discretion over in terms of, say, the hospitality fund or whatever? I think the President ought to be left with discretion in some of those areas. I suspect he has got an Intelligence fund somewhere, unless that pot is over in the CIA and audited by the CIA people.

But I am trying to divide this thing into some manageable ways, because it just seems to me one Chief Financial Officer could advise all of these agencies, and maybe a Deputy and a very small staff, because this is not a major problem in the number of people with financial transactions, I would think.

Mr. MAZUR. If I may make a comment?

Mr. HORN. Sure.

Mr. MAZUR. The budget that was submitted in March under the Office of Administration on page 63, I guess it is, the appendix talks about the Office of Administration's mission is to provide high-quality, cost-effective administrative services to the Executive Office of the President, and that wording does not limit it to any of those 12 that you have cited. And it says, "these services as defined by Executive Order 1202(a) of 1977 include financial," and then it goes on to say, "personnel, library record services, information management systems support, and general offices services."

The question that was asked earlier of Congressman Mica was where would this CFO go? There is no unit—there is no physical unit with people in it called the Executive Office of the President from a funding point of view. It is really these 12 separate areas that are funded, but the Office of Administration, already delegated with that responsibility, would seem to be the likely place to house a Chief Financial Officer and a Deputy. And what I am envisioning is that this legislation would, in effect, cause that office functionally to be split. Not uncommon is the split that often takes place in the agencies with the creation of the CFO. If you remember, a lot of those were preceded by assistant secretaries for administration. Well, those things were split out, and you have your CFO focusing on financial systems and financial matters and reports, and then you have an Assistant Secretary still continuing on with a lot of the other things.

Mr. HORN. You are generally right on that, but I must say I still boil when you see some departments, such as Treasury, merge the two offices, and when I see the basket case of the Internal Revenue Service within Treasury, and you wonder where is the CFO. The fact is there is no single CFO. It is merged under the Assistant Secretary for Management, and if I had a case like that, there would be a full-time CFO, and that was the congressional intent.

Mr. MAZUR. And I think——

Mr. HORN. That is why we have to change that law maybe in the process.

Mr. MAZUR. Or make it tougher, right, because there are distributions of responsibilities.

But in this case, if you could look to one person that would work collegially within the White House to clarify and set policies. Lately in the news, you read about funds coming into the White House under various circumstances. Well, and perhaps they have rules and procedures for how they handle these things, and a lot of good

Americans get excited and enthused and all the best intentions, will send checks in with notes saying, we love you, here, use it for good purpose or for that, or it is a gift, or fix the rug in the Roosevelt room, whatever it might be. There are 1,548 individuals over there in the White House, and if suddenly somebody thrusts something in their hand, they ought to know exactly what they do with that, and hopefully it would involve turning it over immediately to a CFO, who would send it back or move it to where it needs to be and maintain logs along the way.

I don't think it is necessarily going to be the most sophisticated financial management environment, but one that is going to take discipline and a confidence in the CFO to use the authority judiciously and professionally but firmly to bring in line anything of an activity that relates to finance that is not correct today.

Mr. HORN. I think that is a good suggestion. And do you see the CFO role as a mixture of, say, vice president for finance and controller?

Mr. TIERNEY. Yes, certainly.

Mr. HORN. What function am I missing there? Are they also the business manager?

Mr. TIERNEY. I think I also see a systems responsibility. Instead of just accounting or financial, I think they go hand in hand with systems, the information systems, because then you have the ability to define what costs shall be. How do you account the costs? How do you report the costs?

Mr. HORN. Does that mean we also need a chief information officer in the White House?

Mr. TIERNEY. No, I wouldn't go—I think if the CFO just had the responsibility, because under the CFO Act there is information systems responsibilities.

Mr. HORN. As I remember, some of the recent administrations that have gone into the White House could not believe how arcane and antique some of the computer systems were.

Mr. TIERNEY. Yes.

Mr. HORN. It seems to me the President of the United States ought to have the latest version, the latest generation.

Mr. TIERNEY. Well, it would seem so. He of all people is somebody that could afford it.

Mr. HORN. He could sure reprogram some money without objection by Congress. What the President gets is what the President wants in the Executive Office of the President.

Mr. TIERNEY. On that point, I think the challenge—I think it is a relatively simple—it is not a complex operation. But I think the talent that one might see applying for the CFO or the Executive Office of the President, I think you are going to see some quality professionals, certainly capable of handling the task if there was one established.

Mr. HORN. Well, let me look at a few more things I wanted to pursue. Some were in your testimony, and I want to make sure I have hit a few items that I have noted here.

Really, one of the proposals they made to us last year was, well, we don't like the idea of one Chief Financial Officer, but we would like to have one in every division. It doesn't make sense to me, frankly, to have one in every division. But I tell you this is some-

thing that does concern me and I think ought to concern the President. How would you ensure that the confidentiality of information contained in the financial statements is maintained if you contract out an audit to either an independent accounting firm or even to OMB, which is prepared to do audits, or even do you need to contract out the audits there?

Mr. MAZUR. In my testimony I proposed having the audit prepared by an outside firm.

Mr. HORN. Having the committee select that, as I recall.

Mr. MAZUR. Yes, and the reason I did that was, first of all, I thought it might possibly add to the benefit of the Congress and perhaps even to the benefit of the President through that independence even more credibility to the results.

In addition, I do not see personally the Executive Office of the President being a place that could effectively use an Inspector General staff of several individuals. Typically for an audit of financial statements in the case of what we are talking about here, a couple of hundred million dollars and 1,500 people, we are talking about a relatively small group of individuals coming in for a few months at most and getting it done and issuing their report on internal controls, and off they go.

There are firms that work throughout Government today, and I am certain that there are rules of confidentiality both within the firms that exist. As an old CPA, I can remember those and certainly security clearances and other things that could come to bear and preserve that confidentiality.

My notions of confidentiality in terms of sharing the financial report are more, again—I don't think it does the country any good that if somebody over in the White House, inadvertently or whatever, can't get 2 and 2 together to equal 4, it is a problem that needs fixing. I don't think that is something that we need to share with the whole world, and the Congress needs to be assured that it is going to be fixed and fixed on a timely basis.

Mr. TIERNEY. If there is a security issue, I don't think that is a valid one. I do know major firms, their senior management, the management committee of the major CPA firms, I know are automatically cleared to secret and top secret. For many years I held a top secret security clearance because I was consulting with Government, doing their audits, and the entire staff held very high security clearances.

Those types of responsibilities have been handled by independent accounting firms for decades, and I have never heard a leakage on that. So I don't think that would be—security, I don't believe, is an issue, a real issue.

Mr. HORN. Mr. Mazur, I noticed in your testimony on page 5, your point 6, that the proposed legislation restricts access by the Chief Financial Officer to information, policies, communications and records that relate to processing of EOP, Executive Office of the President, financial transactions, the maintenance of all budgets affiliated with the Executive Office of the President in the budget of the U.S. Government, and other associated financial affairs of the Executive Office of the President, unless that restriction of access is waived by the President's Chief of Staff.

And I was curious what type of situations are you worried about there? And is the President's Chief of Staff the proper one to do that?

Mr. MAZUR. It is a supposition on my part, but if I remember correctly, the legislation calls for the President to designate for himself a head of agency. My personal sense was that might be the Chief of Staff.

The idea here is that in reading some of the background information, particularly the letter that was received by the committee about the possible interference with the President's authority, that it would be important and a positive thing to reduce any fears in the White House that this particular position was going to be focusing on financial matters. And, yet, if in pursuing the development of policy—and as I mentioned this before, the President receives thousands of letters every day, and I will bet you if you went over there, there are a dozen of them that for some reason or another have checks in them. What do you do with that? How is it handled?

I think in establishing policy that might affect or influence how some of these 1,548 folks might handle unique situations they get themselves in, I think the CFO would want to be able to do that and might need the release of the Chief of Staff in order to sit and have discussions relative to those issues.

So, it was an attempt to balance out concerns for too great of an encroachment against the need to have access and thought the Chief of Staff would want to be the responsible person.

Mr. HORN. Do you have any comment, Dr. Tierney, on that?

Mr. TIERNEY. No, I hadn't thought about that. I thought more of the executive branch budget-type issues and the preparation of this plan. Those are things I think that Congress and the President have already worked out over the years.

Mr. HORN. Now, the Office of Administration, obviously, Mr. Mazur, you must have worked with it fairly closely, I would think, when you were in OMB.

Mr. MAZUR. Not closely, but somewhat.

Mr. HORN. I just wondered what your feeling as to how effective that office is in setting up some standards, systems, policies to advise people who are very busy in all of these offices? These are all 7-day-a-week offices, and the question is is there any sort of system; and when one President leaves, usually everything, including the policy manuals, are taken with him unless they work out something with the incoming President or the incoming President asked, I'd appreciate knowing how you did it? And President Eisenhower had McKinsay & Co., go and do a study of everything in the whole executive branch.

Mr. MAZUR. President Bush was in town in my city several days ago and speaking to a group, and one of the first things he said was to note his praise for the White House staff, the permanent staff that was there.

I was not there enough in that unit at all to form any opinions as to their expertise, but I will give you a supposition. The supposition is that probably the whole thing now works. There is a mechanism there. I sense that there are probably long-term employees and even directors of administration. I knew the last one who was either full or acting, Frank Reeder. He used to be a suite-mate of

mine, an absolutely superb public servant, and I am sure while he was there for 19 months, he tried to do a good job and tried to have the job done better.

The point of your legislation, though, is that with a couple of hundred million dollars around and 1,548 individuals, let's guarantee that there is speaking to these issues in the EOP a person clearly with the competence and the experience necessary to speak with authority about financial affairs.

And, you know, I told a little story in my testimony about an exciting conversation I had one time with Senator Robb.

Mr. HORN. I enjoyed reading that, that you ruined his Christmas holidays.

Mr. MAZUR. It was. Because when he pushed back as we were debating that issue vigorously and said what he said, which is that, you are ruining my Christmas vacation, if I wasn't sure of my vision of financial management or my authority or my responsibilities, I could have just as easily sort of wilted, picked up my papers, apologized for ruining his vacation and left the room.

I didn't. We stayed the course and debated the issue further. He arrived at a wonderful decision, and he is one of the finest financial-management-oriented Governors we have ever had.

You have to have someone who, in the heady environment in the White House, with all of these wonderful talents and egos to go with it, is going to recognize when someone is off base on something and will have the force of confidence to say no.

I have said no to Governors. I have said no to Attorney Generals. It wasn't a common thing, but you had to be prepared to do it and stand at least the moment of displeasure when you did it. That is the kind of person you need.

This does no good to the President of the United States or to the Presidency to have anyone in the United States think that there is anything other than the highest effort and the highest of integrity going on in the White House, and that is why I decided to accept your invitation, and I am pleased to be here to speak about this thing. We need to help our President and future Presidents just not have any question at all about what goes on over there and how it is done.

Mr. HORN. You are absolutely right. And it seems to me any President that takes that office, the first thing they ought to do is have the conversation that you and Governor Robb had.

Some of you have heard this story, but my first day as a university president I called in the controller and I said, look, there is a business manager that you report to, and there is a vice president for administration, finance, that he reports to. And I said, I don't give a hoot about the hierarchy; when you see something cross your desk that would be a headline in the L.A. Times, you walk around both of them into my office. He did that 2 weeks later and saved my scalp by just saying, hey, this does not make sense.

And you need some sort of system like that where people say, it doesn't matter who the heck it is burning, let's tell the boss about it. And usually the boss is the last to know in a large bureaucracy, which, frankly, was two or three times the size of the White House full-time equivalent. But that is just basic wisdom, and you learn

over time, and I am amazed some of the Presidents have not learned it.

And that is one of the problems down there. They come in. A lot of them have run very little, but—if they came from the Senate, a Senate office, if that, and if they went to the Senate, they probably had a law office. And they were maybe the managing partner, or they were maybe a loner, and so they are not used to running things in a complicated organization, and that is one of the problems. We ought to institutionalize a few of these functions by making them responsible and responsive to the President if he takes the heat when something goes wrong down there.

I thank you both. It has been very helpful testimony, and it has raised a number of questions that I think we need to have answered before we can go back to the drafting board, if you will, and before we put these bills in. So I thank you very much for coming.

We will now go to panel three, and that is Stephen Potts, Director, Office of Government Ethics. He is accompanied by Jane A—I assume it is pronounced Ley, Deputy Director, Office of Government Ethics; and Gregory S. Walden, who has been here before, counsel for Mayer, Brown & Platt, former Assistant General Counsel in the White House.

Mr. POTTS. Mr. Chairman, it is Ms. Ley.

Mr. HORN. If you would raise your right hand?

[Witnesses sworn.]

Mr. HORN. All three witnesses have affirmed. And if it is OK with you, we can start with Mr. Potts. You are the first one on the panel three list. And Ms. Ley, the Deputy Director, is accompanying you. So welcome, we are glad to hear from the Office of Government Ethics.

STATEMENTS OF STEPHEN POTTS, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY JANE S. LEY, DEPUTY DIRECTOR, OFFICE OF GOVERNMENT ETHICS; AND GREGORY S. WALDEN, COUNSEL, MAYER, BROWN & PLATT, AND FORMER ASSISTANT GENERAL COUNSEL IN THE WHITE HOUSE

Mr. POTTS. Thank you, Mr. Chairman. I want to thank you very much, first of all, for the opportunity to testify today on a draft bill entitled the Special Government Employee Act of 1997.

This draft bill would amend section 202 of Title 18 to clarify the definition of "special Government employee." In doing so, it also, for the first time, sets forth the standard definition of "officer" or "employee."

We believe with the clarity changes discussed in my written testimony that the draft you provided us does accurately reflect the present text and interpretive gloss given the term "special Government employee" and the terms "officer" or "employee."

The term "special Government employee" and the concept it represents was introduced into the Criminal Conflicts of Interest Code way back in 1962. Since then the term has been used widely in all aspects of the executive branch ethics program. In addition to the criminal conflict statutes, it is used in public financial disclosure law, the confidential financial disclosure regulations of the executive branch, the civil ethics statutes of Title 5 U.S.C., appendix,

and finally the executive branch administrative standards of conduct.

In most of these statutes or regulations, there is a specific reference to 18 U.S.C. section 202, as the primary source of the term. Consequently, we have a very real interest that any amendments to section 202 and the definition of "special Government employee" continue to reflect long-standing interpretations.

Again, the draft bill which we reviewed does this, as well as make the definition more easily read. And accordingly, we are pleased to support both of those concepts.

That would complete my oral statement, and I would like to have my more complete written testimony submitted for the record, and I am happy to answer any questions Mr. Chairman.

Mr. HORN. Well, we appreciate that. And we appreciate your support. We obviously look to you to give us the correct language if we are ever in error in some of this. You can be sure that we will be checking with you. So I thank you for coming. And stay with us so that we can have a dialog after Mr. Walden finishes.

Mr. POTTS. Thank you.

[The prepared statement of Mr. Potts follows:]

STATEMENT OF

STEPHEN D. POTTS
DIRECTOR, OFFICE OF GOVERNMENT ETHICS

ON

A 3/25/97 DRAFT BILL ENTITLED
THE SPECIAL GOVERNMENT EMPLOYEE ACT OF 1997

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

ON

MAY 1, 1997

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear today to discuss a draft bill entitled The Special Government Employee Act of 1997. You provided us with a copy of this draft with our letter requesting our testimony. The draft bill sets forth provisions that would amend 18 U.S.C. § 202, making the definition of "special Government employee" more clear and adding for the first time a definition of "officer" and "employee".

Last year, when your Subcommittee first proposed changes to the definition of special Government employee, my staff worked with yours to develop language that would reflect clearly the interpretations given to the term since it was introduced in the conflicts of interest context in 1962. We also strived as well to introduce format changes that would make all of the section more easily read. The term special Government employee is used throughout statutes and regulations within the executive branch ethics program and thus any change to that definition could have a substantial impact on our program.

We believe that the language ultimately developed then, which now appears in the draft you provided us accomplishes both of those goals. While we have two slight changes we would suggest for clarity purposes, we believe that a bill that reflects this draft would be beneficial to the ethics program.

We continue to believe that to clarify the definition of special Government employee, it is just as important to add definitions of "officer" and "employee". Then "special Government employee" will simply be a subset of those terms. Presently,

chapter 11 of title 18, which contains the conflict of interest provisions, includes no definition of an officer or employee. Subsection (c) of section 202 merely makes clear that the President, Vice President, a Member of Congress or a Federal judge is not an "officer" or "employee" for purposes of the restrictions unless otherwise provided.

Consistent with our understanding of past interpretations which have been guided by 5 U.S.C. §§ 2104 and 2105, the three-part test of an "officer or employee" will then be a person who: (1) is retained, designated, appointed, or employed by the Government; (2) is under the supervision of a Federal officer or employee; and (3) performs an authorized Federal function. A special Government employee will be an individual who meets that three-part test, who serves only in the legislative or executive branch or in an independent agency and whose length of service was determined at the outset to be no more than 130 days in a 365-day period.

While the theory is not difficult, developing language was challenging, in part because the present definition of special Government employee is both general and specific as to coverage and, as such, is not cleanly drafted. In addition, officers and employees of the District of Columbia needed to be included. Further, the definition of special Government employee has been codified at section 202(a) for a substantial number of years and given the plethora of references to that citation in other statutes, regulations, opinions and case law, we did not want that citation to change, even though it might be more logical for officer and employee to be defined in subsection (a) and the definition of special Government employee defined in a subsequent subsection.

As mentioned earlier, we do have two concerns with the language of this draft. First, it is our understanding that the phrase "as part of the Federal or District of Columbia government's deliberative process" at the end of subsection (c)(1)(B) modifies all of the preceding clauses of subsection (c)(1)(B). To the extent that this is not clear, the language should be reformatted to clarify this point.

The second concern is with the last sentence of proposed subsection (f). It has been correctly pointed out to us that "charters" do not "establish" advisory committees. We would very much like to have an opportunity to work with the Committee to develop technically correct language for this sentence that is consistent with past interpretations. In the meantime, however, we would ask that the last sentence of subsection (f) as it appears in this draft be deleted from any bill acted upon by your committee.

This concludes my statement. I will be happy to respond to any questions you may have.

Mr. HORN. So we now have Mr. Walden, and your book we have all taken a look at on Best Behavior: The Clinton Administration and Ethics in Government. And we appreciate that bit of scholarship, and we hope you are not losing too many clients as a result of that, but welcome.

Mr. WALDEN. Thank you, Mr. Chairman. My name is Gregory Walden. I am counsel with the law firm of Mayer, Brown & Platt. The testimony I will provide today, however, is solely my own, and it is based largely on my experience as Associate Counsel to President Bush where I served as day-to-day ethics advisor to the White House staff.

I am pleased to endorse the bill before you as it is the same provision which passed the House last year as part of H.R. 3452.

This legislation is needed because the current statutory definition of "special Government employee" does not provide fair notice that informal advisors who act as de facto Government staff are subject to the criminal conflict of interest provisions and financial disclosure obligations. Clearer standards as to what conduct triggers application of the conflict of interest laws are needed in order to safeguard the public interest against improper access and influence by outside consultants on behalf of private interests.

Initially, the Clinton administration failed to appreciate the serious ethics concerns resulting from its heavy reliance on outside consultants. Only belatedly did the White House recognize that it needed to take steps to alleviate the public's suspicion. The current administration's difficulties and the likelihood that future administrations will also stumble confirm my conviction that reform is needed.

The bill would not change the substantive definition of "special Government employee" as that term has been interpreted and applied by the Justice Department and the Office of Government Ethics. But the DOJ and OGE interpretations are not well-known even, I suspect, within the ethics community. The functional test enunciated in these interpretations, which looks to whether and to what extent the informal advisor is performing a Federal function, apparently has not been the subject of frequent application or further elucidation for the benefit of agency management and ethics officials. Consequently, informal advisors are currently at risk of becoming a special Government employee without knowing it.

Perhaps more significant, the public confidence in the integrity of Government decisionmaking suffers when outsiders are free to act as de facto Government staff without being subject to the ethics restrictions intended to maintain the public's trust.

The bill before you does about as good a job as any in addressing a problem without creating additional ones or raising questions as to its possible over- or underinclusiveness. Indeed, the restructuring of section 202 and the codification in Title 18 of the definition of "officer" or "employee" are additional improvements in the clarity of the law.

That said, codifying the functional test will not obviate the exercise of judgment and fact-specific determinations. The bill adopts the functional test by providing that advisors or consultants who are not expected to work more than 130 days in any 365-day period are SGEs if they perform a Federal function under authority of law

or an executive act. The bill defines "Federal function" to include supervising, managing, directing, or overseeing other Federal employees, obligating Federal funds, or conducting or organizing meetings, or regularly providing advice to Federal employees as part of the Government's internal deliberative process.

The bill properly excludes representatives who are appointed for the very purpose of representing a private or non-Federal interest on an advisory committee or board. The bill also properly excludes independent contractors, although not expressly, because they are not under the supervision of any Federal employee, and supervision is a requirement in the bill.

The provision with the most play in it, yet perhaps the most important clarification of the law, is the regular advice trigger. The word "regular" is intended to exclude the single visit or occasionally held meetings. The term "deliberative process" is well-known to executive branch agencies. It consists of inter- and intra-agency discussions and written communications which lead to an agency decision.

By confining this provision to the Government's internal deliberative process, the provision is intended to exclude situations where outsiders meet with or call up Government officials to complain, explain, lobby or ask for help.

Frequent Hill contacts by lobbyists or a constituent would not make that person an SGE unless he or she were to function as a de facto staffer regularly participating in meetings closed to the public in which legislative policy, strategy and tactics are discussed.

Again, the occasional internal meeting in which an outsider is invited to participate would not by itself make the outsider a special Government employee.

So I do not think that this bill would chill the regular exchange between the President and outside advisors or between Members of the House or Senate and their constituents or other members of the public.

I thank you for the opportunity to provide these views and remain available to answer any of your questions.

Mr. HORN. Well, we thank you both for your statement, which is in the record, as well as the summary.

[The prepared statement of Mr. Walden follows:]

Mr. Chairman, Members of the Subcommittee. My name is Greg Walden. I am currently counsel with the law firm of Mayer, Brown & Platt in Washington, D.C. The views expressed herein are solely my own, based largely on my service as Associate Counsel to President Bush, from 1991 to 1993, where I functioned as the day-to-day ethics adviser to White House staff.

I very much appreciate the opportunity to address the Special Government Employee Act of 1997, which would amend the definition of "special Government employee" in 18 U.S.C. § 202 to codify the functional test used by the Justice Department and Office of Government Ethics over the years. I favor legislative action because, as I told this Subcommittee last year, my experience with the concept while in the Bush White House led to me to believe that legislative revision of the definition is warranted. My observations of the Clinton Administration's various difficulties with the concept have only strengthened my conviction that reform is necessary. My book, On Best Behavior -- The Clinton Administration and Ethics in Government, published last year by the Hudson Institute, devotes three chapters to the problem: one deals with the President's perhaps unprecedented reliance on advisers and consultants who are not regular Federal employees, such as Harry Thomason, Paul Begala, and Dick Morris; one deals with whether the First Lady was a special Government employee while she chaired the Health Care Task Force (I conclude that she was); and another deals with the status of the so-called "anonymous horde" of outsiders who served on the interdepartmental working group that prepared recommendations for the Clinton Administration's health care legislative package.

I also favor the legislation before you, as it is the same provision which was included in H.R. 3452, which passed the House in the last Congress, and which faithfully and

accurately reflected the recommendations I made in testimony to this Subcommittee last June. Regrettably, the special Government employee provision was not included in the Senate bill, and thus was not made a part of the bill that ultimately was signed into law as Public Law No. 104-331 (Oct. 26, 1996). The bill before you directly addresses the problems with the current statutory definition and provides clear guidance as to the conduct which triggers the application of the conflict of interest and financial disclosure provisions. As I observed last year, it is often the case that identifying a problem is easier than drafting legislation that precisely addresses the problem. The bill before you does about as good a job of any in addressing a problem without creating additional problems or raising questions as to its possible over- or under-inclusiveness.

Every President has relied to varying degrees on the advice of persons outside of the Government. And every President has maintained a regular line of communication with his party's Chairman and other key party officials. There is nothing unusual or wrong about the President or White House seeking advice from persons outside of Government; indeed, Presidents should be encouraged to develop and maintain contacts with persons outside of the Government, who can be called upon from time to time to provide impartial or disinterested advice, special expertise, or simply a perspective different from those found within Government. Moreover, as de facto head of his political party, the President must be able to meet freely and regularly with party officials.

Although my Government experience is in the Executive Branch, I believe the same can safely be said about Members of the House and Senate, who are elected officials and who also ought to be free to elicit and obtain advice from constituents and other persons

outside of Government.

As private citizens, these informal advisers have jobs, professions, clients, financial interests, and other affiliations that could give rise to a potential conflict or appearance of a conflict because of their access to and influence Government officials. However, so long as these informal advisers do not exercise any Government function or direct or supervise any Federal employee, they remain outside of the Government and are not subject to the laws and standards of ethical conduct.

Where an informal adviser performs certain functions that ordinarily would be performed by a Government employee, the adviser risks being considered a "special Government employee." The term "special Government employee" is defined by 18 U.S.C. § 202(a) as

> an officer or employee of the executive . . . branch of the United States Government . . ., who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis[.]

A special Government employee is not necessarily required to sever any outside interest or affiliation, but is subject to conflict-of-interest restrictions, which prohibit the adviser from providing advice on or otherwise participating in any particular matter in which he has a financial interest.[1] In order to remedy an identified conflict or potential conflict, a special Government employee must either rid himself of the conflicting interest or association or recuse himself from the matter which gives rise to the conflict.

Also, most special Government employees are required by law to file a confidential

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[1]18 U.S.C. § 208(a); 5 CFR § 2635.402(a).

financial disclosure report within 30 days of assuming their duties.[2] These reports are intended to assist agency ethics officials in identifying potential conflicts of interest.

Even if an adviser avoids engaging in conduct that would make him a special Government employee, as that term is now defined, his financial interests and outside affiliations nonetheless carry the potential for ethics concerns. The President seeks advice from persons whose opinions and judgment he respects and trusts; he may well be oblivious of an adviser's financial interests and affiliations, and yet -- to any outside observer aware of these interests or affiliations -- the adviser is identified with them. Because the adviser is given access to the White House that is not ordinarily given to persons outside of Government, the suspicion arises that the adviser may be acting on behalf of a client or in furtherance of a financial or fiduciary interest, in addition to, or instead of, providing advice based on one's general experience and expertise. This suspicion leads to the conclusion that the person or entity on whose behalf the adviser is acting is being given special access and preferential treatment. Special access and preferential treatment run afoul of a cardinal principle of Government ethics, that "[e]mployees shall act impartially and not give preferential treatment to any private organization or individual."[3]

Without a financial disclosure report or other form of disclosure, the White House may be ignorant of the adviser's financial interests and affiliations that could color (or be seen to color) his advice, unless the adviser brings them to the White House's attention or

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[2]5 CFR § 2634.904(b). Some special Government employees, by virtue of their rate of pay or significant responsibilities, are required to file a public financial disclosure report. See 5 CFR 2634.202.

[3]Exec. Order 12,674 (as amended), § 101(h); 5 CFR § 2635.101(b)(8).

until the media reveals one or more of them in a less-than-flattering light. The White House therefore is for the most part unable to identify potential conflicts. The public, of course, is even more in the dark.

Advisers who are granted special entree into the White House by virtue of a previous affiliation with the President (through former Government service, political campaigns, or business enterprises), and who use that special access to promote the interests of a client, are subject to criticism for trading on their former ties. This situation is virtually indistinguishable from the revolving door phenomenon, to which the post-employment restrictions in statute and executive order are addressed. The concern over the revolving door is that recently departed Federal officials have inordinate influence over Government decisionmaking by virtue of the associations they developed and the information they obtained while in Government. Yet, this same concern is present when the President grants a meeting to a former colleague, business partner, or campaign official.

Moreover, informal advisers who participate in White House policy and strategy meetings are likely to be privy to nonpublic information that may be of interest and use to an adviser's outside clients. This gives such outside clients a window on White House deliberations that is not open to all.

So it is clear that the regular presence of informal advisers in the White House poses a host of ethics concerns. And it is equally clear that the current definition of "special Government employee" in Title 18 does not adequately address these concerns, for it is often uncertain -- even to an agency ethics official -- whether an outside adviser has become a special Government employee by virtue of the adviser's regular presence and the nature and

extent of his participation in internal Government discussions. The words of section 202(a) suggest a functional test ("retained . . . to perform . . . duties"), yet no such test is spelled out in the statute. Thus, whether an adviser is subject to the criminal conflict-of-interest laws turns on words whose meaning remains elusive.

The term "special Government employee" was first defined by statute in 1962, as part of the recodification of the conflict-of-interest laws, and made effective in 1963. The concept originated with President Kennedy's desire to ensure that advisers and consultants to the Government would be subject to the same conflict-of-interest standards to which regular Federal employees are subject, while not being subject to the full panoply of ethics standards.[4] Previously, the ethics laws had been construed equally to apply to regular Government employees and consultants who performed temporary or intermittent services to the Government. Because special Government employees serve the public interest, they were made subject to the conflict-of-interest restriction of 18 U.S.C. § 208 to the same extent as a regular employee. Because of the part-time, temporary, or intermittent nature of their service, however, the other ethics laws were applied to them in a more limited way.[5]

Also important was the distinction the new law implicitly drew between a special Government employee and a person who is not ***any*** type of Government employee.

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[4]*See* Memorandum to the Heads of Executive Departments and Agencies (Feb. 9, 1962), *cited in* OGE Informal Advisory Letter 82 X 22 (July 9, 1982), at 328-332.

[5]Basically, special Government employees are treated as regular employees for purposes of 18 U.S.C. §§ 207 and 208, but subject to lesser restrictions in 18 U.S.C. §§ 203, 205 and 209. And, unlike some regular officers or employees, special Government employees may engage in outside employment for compensation. For example, special Government employees who are appointed by the President are not subject to the outside earned income ban imposed by Executive Order 12,674 (as amended).

Following the enactment of section 202(a), President Kennedy issued a memorandum dated May 2, 1963, entitled, "Preventing Conflicts of Interest on the Part of Special Government Employees," which drew an important distinction between a ***special Government employee*** and a ***representative***.

> It is occasionally necessary to distinguish between consultants and advisers who are special Government employees and persons who are invited to appear at a department or agency in a representative capacity to speak for firms or an industry, or for labor or agriculture, or for any other recognizable group of persons, including on occasion the public at large. A *consultant or adviser whose advice is obtained* by a department or agency from time to time *because of his individual qualifications and who serves in an independent capacity is an officer or employee of the Government.* On the other hand, *one who is requested to appear* before a Government department or agency *to present the views of a non-governmental organization or group which it represents, or for which he is in a position to speak, does not act as a servant of the Government and is not its officer or employee. He is therefore not subject to the conflict of interest laws[.]*[6]

It is apparent that the primary focus of the 1962 legislation was on members of. advisory committees and other part-time members of other formally established entities.

Often advisory committees are composed largely of representatives of private interests. The very *raison d'etre* of most advisory committees is to obtain the views of persons and entities who would be directly affected by the regulation or legislation under consideration. These persons are appointed ***because*** of their position in the private or non-Federal sector, and are expected to provide their particular perspective and represent their parochial interests on the advisory committee. They are not called upon to shed their background, opinions, or affiliations and represent only the public interest, however defined.

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[6]Quoted in OGE Informal Advisory Letter 82 X 22, 325 at 329-30 (July 9, 1982)(emphasis in original).

For these reasons, advisory committee members are often considered "representatives," neither regular employees nor SGE's, and they are not subject to the conflict-of-interest laws. The check on the inordinate or improper influence of private interests on Government deliberations is to place the advisory committee's deliberations in the sunshine, where the public can monitor the propriety and integrity, as well as the reasonableness, of the Government's decisionmaking. In theory, there should be no gray area between these two concepts. If a person regularly advises the Government, he is doing so either as a ***representative of a private interest*** or as a ***special Government employee serving the public interest***.

However, the clear focus of any revision of the definition of special Government employee should be on informal or outside advisers who do not serve as a member of an advisory committee or part-time commission, because among the thorniest issues involving the reach of the conflict-of-interest laws is whether informal advisers who regularly provide advice to the President and other Government officials are subject to the ethics laws.

While the statutory definition of "special Government employee" has not been materially revised since its enactment, the Office of Government Ethics (OGE) and the Department of Justice have issued helpful guidance.

In 1981, OGE listed some criteria to determine whether someone is a special Government employee, as opposed to someone who is not any type of Federal employee: Whether the person (1) has sworn or signed an oath of office, (2) is paid a salary or expenses, (3) enjoys agency office space, (4) serves as a spokesperson for the agency, (5) is subject to the supervision of a Federal agency, and (6) serves in a consulting or advisory

capacity to the United States.[7] While these criteria are instructive, they are not particularly helpful with regard to informal advisers to the President. Of greater relevance are two opinions that dealt specifically with the issue of frequent or regular advice. As will be seen, both opinions embraced a functional test, although neither opinion provided clear guidance as to when an informal adviser became a special Government employee.

In 1977, the Justice Department's Office of Legal Counsel (OLC) was asked to determine whether a particular individual's frequent informal consultations with the President made him a "special Government employee." OLC determined that, as a general rule, even frequent consultations did not make an informal adviser a special Government employee, "just as Mrs. Carter would not be regarded as a special Government employee solely on the ground that she may discuss governmental matters with the President on a daily basis."[8]

However, OLC determined that because the individual in question had gone beyond the role of informal adviser, he had become a special Government employee and should be formally appointed and duly sworn.

> Mr. A, however, seems to have departed from his usual role of an informal adviser to the President in connection with his recent work on a current social issue. Mr. A has called and chaired a number of meetings that were attended by employees of various agencies, in relation to this work, and he has assumed

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[7]OGE Informal Advisory Letter 81 X 8 (Feb. 23, 1981), citing B. Manning, Federal Conflict of Interest Law 26-30 (1964). The second criterion -- pay -- is not determinative, because section 202(a) expressly provides that special Government employees may be retained without compensation. The first criterion -- oath of office -- is a formality the absence of which also should not be deemed determinative. The third criterion -- supervision by a Federal agency -- is relevant mainly to the concept of independent contractors, who, largely because they operate without direct Government supervision, are not deemed employees of the United States.

[8]2 Op.O.L.C. 20 (Feb. 24, 1977).

considerable responsibility for coordinating the Administration's activities in that particular area. Mr. A is quite clearly engaging in a governmental function when he performs these duties, and he presumably is working under the direction or supervision of the President. For this reason, Mr. A should be designated as a special Government employee for purposes of this work, assuming that a good faith estimate can be made that he will perform official duties relating to that work for no more than 130 out of the next 365 consecutive days. If he is expected to perform these services for more than 130 days, he should be regarded as a regular employee. In either case, he should be formally appointed and take an oath of office.[9]

The Office of Government Ethics also considered the status of informal advisers:

3. *Individuals Outside the Government Who Advise an Official Informally*

A Federal official may occasionally receive unsolicited, informal advice from an outside individual or group of individuals regarding a particular matter or issue of policy that is within his official responsibility. . . . An incident of this sort sometimes prompts the inquiry whether the outsiders have become SGE's of the agency. In general, the answer is that they have not, for they are not possessed of appointments as employees ***nor do they perform a Federal function***.

However, as so often happens in considering the applicability of the conflict-of-interest laws, a generality is insufficient here and a *caveat* is in order. ***An official should not hold informal meetings more or less regularly with a nonfederal individual . . . for the purpose of obtaining information or advice for the conduct of his office. If he does so, he may invite the argument that willy-nilly he has brought them within the range of 18 U.S.C. 202-209***.[10]

The considerations used in determining whether someone is a special Government employee are similar to, ***but not the same as***, the criteria in the definition of "officer" and "employee" in the Federal personnel statutes.

An "officer" means "an individual who is--
(1) required by law to be appointed in the civil service . . . ;

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[9]Id. at 23.

[10]OGE Informal Advisory Letter 82 X 22, 325, at 336 (July 9, 1982)(emphasis added).

> (2) engaged in the performance of a Federal function under authority of law or an Executive act; and
> (3) subject to the supervision of [the President or Federal officer], while engaged in the performance of the duties of his office. . . .[11]

> An "employee" means "an individual who is--
> (1) appointed in the civil service . . .;
> (2) engaged in the performance of a Federal function under authority of law or an Executive act; and
> (3) subject to the supervision of [the President or Federal officer] while engaged in the performance of the duties of his position. . . .[12]

These criteria, while also instructive, are not dispositive. For instance, a formal appointment is not necessary to subject an informal adviser to the conflict-of-interest laws. The definition of special Government employee in 18 U.S.C. § 202(a) is broader than the definitions in sections 2104 and 2105. In the latter statutes, an "appointment" is required. Section 202(a), however, includes all those who are "retained, designated, appointed or employed" to perform Government duties.

In its 1977 opinion, OLC examined the criteria in the definitions of "officer" and "employee" in 5 U.S.C. §§ 2104 and 2105, stating that "variants of these same three factors have, in fact, been utilized in one context or another under the conflict-of-interest laws.

> For example, the first criterion under the civil service test -- that the person be appointed in the civil service -- is analogous to the definition of the term "special Government employee" for the purposes of the conflict-of interest laws: an officer or employee "who is retained, designated, appointed, or employed" to perform duties . . . . The quoted phrase connotes a formal relationship between the individual and the Government. . . . In the usual case, this formal relationship is based on an identifiable act of appointment. . . . ***However, an identifiable act of appointment may not be absolutely essential for an individual to regarded as an officer or employee in***

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[11] 5 U.S.C. § 2104(a).

[12] 5 U.S.C. § 2105(a).

> ***a particular case . . . perhaps where there was a firm mutual understanding that a relatively formal relationship existed.***[13]

Thus, OLC recognized that the definitions in the personnel statutes were not determinative of the applicability of the conflict-of-interest laws.[14]

The central factor that should be used to determine whether an informal adviser is a special Government employee is whether the adviser is in fact performing a Federal function. Providing advice to the President is not inherently a Federal function, because the President receives advice from persons both inside and (clearly) outside of Government. But the regular provision of advice, which is given in official White House meetings, with other White House staff present, and which advice is often indistinguishable from the advice provided by the White House staff, suggests that such an adviser is performing a Federal function and is serving as a de facto member of the White House staff.

The badges of Government employment status -- pay, title, paperwork, office, pass and phone -- are just that, indicia. They are concomitant with the exercise of a Federal

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[13]2 Op.O.L.C. at 20-21 (emphasis added).

[14]Similarly, OGE's 1982 informal advisory letter considered sections 2104 and 2105 as only "instructive" in interpreting the definition of a special Government employee in the context of advisory committees. There are several additional reasons why these provisions do not further define "special Government employee." First, both sections 2104 and 2105 begin with the phrase, "For the purposes of this title" (Title 5), so that these laws do not expressly define the words "officer" and "employee" in Title 18. Second, Title 5 concerns the U.S. Government civil service; most employees of the White House Office are hired instead under authority of Title 3, § 105. Third, exempting a person performing a Federal function from the ethics laws merely for lack of a formal appointment would exalt form over substance and create a gap in coverage. The White House, or any other agency, would be able to exempt an unpaid adviser from coverage of the ethics laws simply by declining to execute the proper paperwork.

function. The fundamental question remains whether the adviser is performing a Federal function. So the frequency of meetings, their nature, and the manner in which the advice is solicited, given, and debated are all relevant.

A continuum exists from the one-time visit with the President, to the periodic one-on-one visits by the President's pollster, to the regular participation in White House meetings involving the President and others, to the adviser with a White House pass, office and phone, to the adviser who chairs meetings or directs others. In my view, Harry Thomason, Paul Begala, and Dick Morris were far enough along the continuum to be considered special Government employees. Harry Thomason was given a White House office and a phone and provided advice regarding the staffing and structure of the White House Travel Office. Paul Begala was more or less a fixture in the White House in 1993, according to several accounts. And Dick Morris's centrality in Presidential policy deliberations during 1995 and 1996 is widely acknowledged. Any legislative revision to section 202(a) should capture advisers who function as de facto staff.

What is needed is to codify the functional test used by Justice and OGE, and to do so in clear language. The functional test would dispel the notion that the absence of a formal appointment or paperwork is dispositive. It would also provide fair notice by spelling out the various circumstances by which an informal adviser can be subject to the conflict of interest and financial disclosure laws. However, the functional test would not obviate the exercise of judgment and discretion by agency ethics officials, because applying the functional test still would depend heavily on the facts.

The bill before you codifies the functional test, and also clarifies that a person who is

expected to perform a Federal function for more than 130 days within 365 consecutive days is a regular Government employee. The bill also explicitly excludes representatives, who are not any type of Government employee, and properly excludes independent contractors, because the bill requires that an employee, whether regular or an SGE, be under the supervision of a Government official.

The bill properly looks to the nature of the services the person is retained to provide: a person retained to supervise, manager, direct, or oversee any other Federal employees in the conduct of their office would be a special Government employee; a person retained to chair or organize meetings of Federal employees on matters of Government policy would also be considered a special Government employee, and a person retained to provide ***regular*** advice to the Government, and who provides such advice to the Government ***as part of the Government's internal deliberative process*** would also be considered an SGE.

Because the bill before you does all these things, I endorse the bill as written and urge the Congress to pass this legislation.

Adopting the functional test proposed in the bill would not chill the regular communications between the President and the Chairman of the President's political party, or with the President's pollster, so long as these persons do not regularly participate in deliberations with other Government officials as part of the Government's official decisionmaking process.

Adopting the functional test proposed in the bill also would not chill the regular exchange between Members of Congress (or their staffs) and their constituents or other members of the public. A constituent or other person representing their own or another's

private interest would not become an SGE unless that person regularly participated in the internal deliberative or predecisional process of a Member's office or committee. So even weekly meeting with a Member would not make the person an SGE unless he functioned essentially as a de facto staffer.

I thank the Subcommittee for the opportunity to provide these views and remain available to answer any of your questions.

Mr. HORN. You heard, perhaps, the discussion of the ranking Democrat, Mrs. Maloney of New York, and her concerns. What is your reaction to that?

Mr. WALDEN. I don't believe the bill as drafted poses any threat to the regular exchange of communications between the President and outside informal advisors, with this caveat: It is one thing for any President to call up a friend or someone on the outside and to speak with that person on a regular basis on issues of Government policy. It is quite another thing to invite that same person inside the White House to participate in meetings with other White House or executive branch staffers, where those meetings are held to arrive at a Government policy or decision.

If that is done on a regular basis, there really is no functional distinction, no factual distinction, between the outside advisor and the full-time Government employee. And in those situations, the informal advisor should be deemed a special Government employee and subject to the ethics laws as if he or she were a full-time Government employee.

This bill will not, however, chill the exercise of the President soliciting advice from outsiders or Members from soliciting outsiders. As an example, if the President wanted to—any President wanted to, on a weekly basis, have the president of the AFL–CIO in on Mondays and the president of the Chamber of Commerce in on Tuesdays, 52 weeks a year, for one-on-ones to get their outside views on what labor wants or what business wants, I do not believe that would make them special Government employees.

Mr. HORN. What would they have to do to become a special Government employee? Suppose the President said, boy, I'd sure like that carried out, and expressed his interest, and one of these gentlemen or women, as they walk out of the White House, go in to see the assistant to the President in charge of that area and say, by the way, Pete, the boss and I were just talking, and he wants this done. Does that trigger the special Government employee?

Mr. WALDEN. Well, it might if it is done on a regular basis. Certainly, the way I would read the bill, if the President is deputizing an outside consultant to supervise or carry out a Federal policy by supervising or directing other Federal employees, then that is covered by the bill, and it ought to be covered by it.

Mr. HORN. Is that directing or just giving the assistant a hot tip about what the boss plans to do?

Mr. WALDEN. Well, this goes back to what I said before, that even the best crafted bill is not going to obviate the exercise of discretion or fact-specific determinations. And mere conduit information perhaps would not trigger the requirement that someone be supervising or directing, but again, with high-profile friends or associates of a President communicating Presidential wishes and desires to lower level officials, I think implicit in that is that it is not simply a communication of information, but that the President has deputized that person to carry out a Presidential directive.

Mr. HORN. Well, let's say in his chat with the President, the President says, as Roosevelt certainly had, the problems—since this is the week for his monument to go up—the arguments between, say, Louis Howe, informal advisor, and Harry Hopkins, informal advisor; the habit he had of setting agencies and Cabinet

Secretaries against each other in competition in the case of Hopkins of WPA and Ickes of PWA as he walked out and talks to the President, and he says, hey, I have a problem with a bunch of these guys. One wants to do this, and the other wants to do that. And maybe if they did it strongly enough, I could get this other character who is too important to me politically for me to really turn down, but I could accept something someone else does. And in a sense it is a tip that, hey, why don't you mobilize this person—he didn't say it directly—and get that person to really get moving and get his staff working on the right memoranda and paper and all the rest so I can sign off on this thing. Does that conversation make any difference?

Mr. WALDEN. A single conversation, I don't believe, would give me or should give us a problem. I would want to know whether that is a single occurrence or whether, after the tip or the information is provided, whether the outsider stays in the matter and follows up to see that that is carried out. If there is followup, it looks as if the person is again acting as a supervisor. But if, after that one meeting with the President, the person on the way out goes over to the Old Executive Office Building, knocks on the door and says, I just had a meeting with your boss, and this is what he wants done, and I have a plane to catch, and that is the end of it, and that informal advisor doesn't come back and doesn't follow up on the issue, I don't think that makes the person a special Government employee.

Mr. HORN. Suppose he dictates a memorandum for the assistant to sign on his way to the airport or before he leaves for the airplane. Does that dictation of a memorandum, which looks like now the assistant is recommending it, does that trigger the special Government employee?

Mr. WALDEN. If that is done on a regular basis, I think yes.

Mr. HORN. What you are saying is that there needs to be a pattern and practice of behavior.

Mr. WALDEN. That is right.

Mr. HORN. Not just one or two instances.

Mr. WALDEN. That is right. I think regularity modifies the provision of advice and the conduct of meetings. I think if you are obligating funds or you are supervising, I don't believe there is a regular—I don't think "regular" in the bill as drafted right now modifies supervision or direction or management, but I believe that is implicit in the bill. Again, if it is just passing along information, it probably doesn't amount to supervision because there is no followup.

Mr. HORN. Suppose the President has a retreat at Camp David for the Cabinet, and at one retreat, maybe he does this every 6 months, he has in the president of the AFL–CIO, for example, and they are sitting there arguing over everything in terms of what the policies ought to be, not just in labor, but health and human services, education. The AFL–CIO has a broad agenda. And in another 6 months he brings in the head of the U.S. Chamber of Commerce, same thing. He is an active participant while the Cabinet is away with their shirtsleeves thinking, where do we go from here? Does that trigger anything?

Mr. WALDEN. Well, if it is done on a single-time basis, I don't believe it does under the bill as drafted.

Mr. HORN. So they have to suffer through two or three retreats on a regular basis?

Mr. WALDEN. Well, I don't know if a number fairly can be placed on this. I think you have to look and see again what is actually being done by this advisor or consultant. Is it something that without the person knowing the identity and profession of the person, an outside observer, coming into the room not knowing anybody where they work, would say, oh, yes they are all Federal employees. If the outsider is acting as if he is a Federal employee—and I hate to say you know when you see it, because that was the standard that Potter Stewart used to define obscenity. This bill is far more precisely drafted, and I endorse it on that basis, but there is still play in it, and there is still flexibility, and it still depends a lot on the facts.

I don't believe that anyone would be prosecuted for violating the conflict of interest laws in a situation where the application of the special Government employee definition to that person would be subject to reasonable dispute.

Mr. HORN. Of course. It is dubious if anyone would be prosecuted for anything if the President is the appointee of the U.S. attorney. I doubt if somebody is going to bring charges, right? We have a real problem there in any administration. Your friendly U.S. attorney gets a call from the President and says, what are you doing to my boy, et cetera. So maybe it is not a worry on this.

I am curious on the degree to which this applies to congressional staff, and are there different examples that perhaps have you had experience from or that can you frame that relate to congressional staff doing something like some of the examples we have talked about in relation to the Executive Office of the President? Any feelings on that, gentlemen? Ms. Ley.

Mr. WALDEN. Well, I would just say that the current law applies to special or Government employees retained to advise the legislative branch as well as the executive branch, and this bill would continue application to both the executive and the legislative branches, I think there may be some different concerns or considerations involved as to the extent to which this definition applies to outside advisors who participate on the Hill. But as currently drafted, I again do not believe that it would affect the routine and regular requests that Members and staff make to outsiders to provide advice, perhaps even to submit draft legislation for the review of a committee or a Member.

Mr. HORN. Before my time here, starting in 1993, there were well-known cases of where spouses who were not on the payroll pretty much ran the congressional office; either the spouse that was the elected Member who was along in years, perhaps senile, and spouses just ran the place. Now, does that trigger the special Government employee?

Mr. WALDEN. I believe it would. If the spouse of a Member were functioning as de facto administrative assistant or Chief of Staff, I don't believe there is any.

Mr. HORN. Any instances in the Office of Government Ethics?

Ms. LEY. Actually it might trigger the definition of a full-time Government employee, not just a special Government employee.

Mr. HORN. What is the trigger, the number of hours a week?

Mr. WALDEN. 130 days within any consecutive 365-day period.

The virtue of this legislation as drafted is that by defining "officer" and "employee" and "special Government employee" similarly, with the one distinction, or the one major distinction, of time served. If you are full-time, then you have the full panoply of ethics restrictions. If you are a special Government employee, you have the conflict of interest restrictions and some financial disclosure obligations, but other ethics restrictions to a lesser degree.

Mr. HORN. As you know, our ethics filings in office staffs are different than the executive branch, as I remember, in the sense that you pick one person—it is automatically triggered by a certain salary level, but you can pick another person that is less than that salary level, or you could put them all in for that matter, but it is much more discretionary than I think it is in the executive branch. Have you ever been consulted on cases like this?

Mr. POTTS. I am not sure what you mean, consulted. You are absolutely accurate, Mr. Chairman, in describing our system as the financial disclosure system being pretty much dictated by the statute we operate under, even down to the categories of the financial worth of the assets that are disclosed.

So, we really don't have a lot of flexibility in establishing our 278 financial disclosure form. Then we do have a separate, less burdensome confidential disclosure system, which we developed for lower ranking employees, and which is not available to the public, but is available within the agency to supervisors to make sure that, for example, the procurement officer doesn't have a conflict of interest in contracting.

Mr. HORN. You mentioned, I think, in your testimony, it goes back to about 1962. Was that Bayless Manning's book on conflict of interest in the Kennedy administration? Is that the origin of the office primarily?

Mr. POTTS. I am really not sure. I think it was really more certain kinds of scandals and whatever, that it occurred. In fact, I would say in my office when I arrived 6 years ago, the initial way staff would describe certain provisions in the ethics laws was that was the Meese amendment or something like that.

Mr. HORN. Sure.

Mr. POTTS. Usually these amendments in the acts really were a reaction to certain kinds of scandals that had erupted.

Mr. HORN. Ms. Ley, any comments?

Ms. LEY. I was just going to say I think that term arose in 1962 out of this whole period of time previous to that for the, quote, "dollar-a-year men," and they decided that there needed to be some concept of people who provided less than full-time or intermittent services to the Government either on a paid or unpaid basis, and that they should be—if they were carrying out Federal functions and had met the three-part test—that they should meet the conflict of interest restrictions.

Mr. HORN. Interesting.

Mr. Walden.

Mr. WALDEN. There was a question earlier by another Member about the use of volunteers in the White House.

Mr. HORN. Right.

Mr. WALDEN. Unless the law has changed since I worked there, I would like to offer this: The Bush White House had a number of volunteers who worked at administrative responsibilities, such as White House mail, because I think the President each year would get something like 10,000 letters, or maybe that is 10,000 gifts, and maybe it is 100,000 or a million letters, but I think it is more than what the taxpayer would want to pay for full-time employees to go through mail.

And so there were a number of volunteers. The volunteers—the retaining of those volunteers didn't violate any law because the minimum pay requirements do not—did not at that time, and perhaps still do not, apply to the White House office, and that was a determination made by the Justice Department's Office of Legal Counsel, so there was no legal prohibition with retaining volunteers.

The point of this bill is that if those volunteers are not simply—well, those volunteers, if they are working and performing a Federal function, something that would ordinarily be done by a Federal staffer, then they would be subject to the definition of "special Government employee," but it would not be onerous to them because their responsibility is such they would never really be in a conflict situation. They would not have to worry about divesting or recusing. And they would also probably not be—it would not be necessary for them to file even a confidential financial disclosure requirement.

So I don't think it is a problem. I don't think that this bill would in any way prohibit or restrict the White House's ability to retain those volunteers. I think there is a problem, however, as Congressman Mica said, when you have not someone just simply answering mail, but serving in a policy function and working full time and having their salary paid from an outside interest.

Mr. HORN. Should we add an exception for those performing routine clerical functions? Would that cover the White House mail and perhaps tours and other things that volunteers might do there?

Mr. POTTS. If I might add, I want to support what Mr. Walden said, because I don't think that would be necessary. It wouldn't be harmful to have that because it wouldn't be necessary for the reasons he stated.

Right now, the vast majority of Federal employees do not file either a public or a confidential financial disclosure statement. It is only triggered by certain categories, either by rank or by responsibility, such as being a procurement official or something.

So I would agree that there would not be, under this, any kind of onerous financial disclosure responsibilities or other potential liabilities under the ethics laws imposed on special Government employees that were volunteers as such.

Ms. LEY. If I may, though, I don't know that you would want to necessarily put in a specific exemption for volunteers, because if you found a volunteer who was giving tours—and, please, Mr. Walden, correct me if I am wrong—if you found a volunteer giving tours, but making sure that anybody who took his tour had to pay

him, who was selling that access to the White House, you certainly would want to have some statute somewhere to say, no, this is wrong.

Mr. HORN. I suspect anybody that gave a tour and charged for it would be out on their ear within about 10 minutes.

Mr. POTTS. I would hope so.

Mr. HORN. You might be right.

Mr. POTTS. Mr. Chairman, I wanted to go back and just pick up on one point just to make sure, because I know this is something that all three of your panel members feel should be done. And I am addressing the draft statute on page 4, lines 17, 18, and 19. And I believe Mr. Walden referred to this phrase as—and this is talking about that you are a special—to be a special Government employee, you have got to provide regular advice, counsel or recommendations to the President, et cetera, Member of Congress, or Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals. And then it has the parenthetical phrase, as part of the Federal or District of Columbia government's internal deliberative process.

Our joint concern is that that phrase is really meant to modify both the first part of that statement as well as the phrase, conducting meetings involving any of those individuals.

Currently it might be a little ambiguous as to whether the last phrase, as part of the Federal or District of Columbia government's internal deliberative process, only modifies "conducting meetings," but it should also be redrafted to make it clear that it covers the first part of that, providing regular advice, counsel, et cetera.

Mr. WALDEN. And I think as redrafted, it would respond to the concerns expressed by more than one Member, I believe, perhaps the ranking member, that we do not want to, by this legislation, chill the regular communication between the President or Members and outsiders.

Mr. HORN. Now, obviously, someone is going to raise the problem, is there a spouse situation here? I assume under the ethics laws whatever the President files, the spouse is involved in that, and there is no worry about that this is directed at any spouse, male or female.

Mr. POTTS. Right. The public financial disclosure statement that must be filed by high-ranking, including the President, Government officials, Federal Government officials, in the executive branch is a filing which covers the assets, for example, of the filer, spouse and dependent children.

Mr. HORN. Right, and does it go beyond dependent children at all to others?

Mr. POTTS. No.

Mr. WALDEN. I think there is a concern outside of financial disclosure with the application of section 208, which is the conflict of interest statute. The President is exempt from the application of section 208, as are Members of Congress, as are congressional staff. It is an open question in the sense that it has never been resolved by a court as to whether the First Lady is covered by section 208 either as a full-time Government employee or as a special Government employee.

I believe, and I wrote this in my book, that when the First Lady was delegated the responsibility for supervising the health care legislative task force effort, she became a special Government employee for that purpose. Of course, that avoids the question of whether any First Lady in their traditional role of supervising White House staff, other Federal employees, is a full-time employee.

I think this issue deserves consideration by Congress because it is likely to come up in the future in an increasing manner, and we ought to be very clear as to whether the First Lady is covered or not covered by the criminal conflict of interest laws.

Mr. HORN. Well, the First Lady, as you suggest, has headed a Federal staff assigned to her for, what, six administrations at least? When did it go back? I don't know if Eleanor Roosevelt had any staff, but didn't Mrs. Truman at least have a secretary? Usually the staff and the First Lady work together, and should we exempt that type of Federal function and strictly get into it if there is a policy aspect?

Mr. WALDEN. There may be a policy reason whereby the traditional function of First Ladies, that is, somewhat diplomatic, somewhat ceremonial, would not—a First Lady who confines herself or a First Spouse confines himself to those traditional responsibilities, perhaps as a policy matter—should not trigger the full panoply of the ethics restrictions, although there would be financial disclosure obligations on the President, and therefore, as Director Potts said, it would cover the First Lady or the First Spouse.

But I do think that we are likely to see again, and I think we have in the White House right now, although there is no analog, I guess, to the Health Care Task Force in 1993 and 1994, I believe that Mrs. Clinton is functioning and giving regular advice.

This is not to be critical of Mrs. Clinton. It is simply that if she is being treated, and others in the future are being treated, as de facto Chiefs of Staff or assistants to the President and chairing meetings and supervising the conduct of White House policy, then I believe as a policy matter they ought to be subject to the ethics restrictions.

Mr. HORN. Besides the First Spouse, do we have any sort of automatic de facto staff that you have seen in looking at the House and how it functions? Are there other positions that fall into being de facto staff?

Mr. WALDEN. I think in the early days of the first term of the Clinton administration, there were several former campaign officials who were involved on a regular basis in meetings to determine the President's economic policy and other matters. I base this on public reports and on several books on the first term of the Clinton administration.

I think, and I wrote this in my book, I think Paul Begala, probably because of the regularity of his presence in White House meetings and because he was tasked by the President to come up with proposals and strategies, was a special Government employee. But I am not so sure about James Carville and Stanley Greenberg and Mandy Grunwald. Although they were in on a regular basis, they may have been only at political strategy meetings. I think their involvement was a lot less.

I would say that, again, based on public reports, Dick Morris, in 1995 or 1996 was probably a special Government employee. I don't know what he is doing right now. It's a very, very interesting question, if you are simply a broker between branches of Government, what that makes you. But I certainly think that based on what he did in 1995, inside the White House, and 1996, he should have been treated as a special Government employee.

And I think the White House——

Mr. HORN. Now, is that because one could say some of these individuals are in private enterprise, they are representing clients besides the President and might well be considered special interest advocates, lobbyists, or whatever? Would that automatically trigger a financial disclosure, an ethics disclosure of some type?

Mr. WALDEN. The fact that an outside advisor might have outside interests and is expected to have outside interests and perhaps clients, that is the concern that justifies applying the ethics laws to that person because of the definition of a special Government employee. But in determining whether or not someone is a special Government employee, you would not look to what they are doing on the outside. You would look to what they are doing on the inside.

Mr. HORN. Now, some would argue over the years that whether you are a Member of Congress or President of the United States, you stand for election, and that the people ought to decide those questions if an ethical question is raised in the campaign. Is that enough, or is more needed?

In other words, the right to know, you freely don't know fully unless you have a signed statement, and even then people can lie, but there are punishments for lying on those. So what is your feeling that in the case of the President, why does he need to have any of his advisors, who might well be lobbyists—and we know a lot of people have left the White House in both Democratic and Republican administrations and become some of the key people in this city, that are legislative advocates. And presumably when they come up here in Congress, they are supposed to file that they are backing or opposing a particular bill. Who looks at it? None of us do.

I have thought maybe we ought to have them get a button on them when they come in, I am for H.R. 1012, and I get $100,000 a month for doing it. And then we could sort of weigh it one way or the other. But none of us really have the time to go tracking them down as to have they filed the statements and all the rest.

The law, as you know, on lobbying disclosure up here has been filled with loopholes that really a lot of the most active lobbyists are State and local governmental officials. In fact, we have a room full of them today, and we had a whole—several rooms of them for the last few days. It is sort of the week for governmental officials.

Now, because they are governmental, they really don't have to file on a lot of these things. I don't know if the executive branch is the same way, but I would suspect mayors, Governors are pretty intense in trying to get something done.

What do you think on some of those problems?

Mr. POTTS. Well, if I could comment, I think from some of the underlying purposes of our ethics program, throughout the Govern-

ment, but especially in my area of the executive branch, what we are trying to do is to give citizens reason to have confidence that decisions that are being made in the executive branch are not being motivated and improperly influenced by selfish reasons, selfish financial gain.

And the technique here is really transparency. I guess it is somewhat similar to the way the SEC operates. It doesn't dictate what you do, but what you do, you have to disclose.

And that is certainly the instance with the President. And in his instance, where, as Greg has pointed out, he is not subject to 208, which is the conflict provision, we rely there on the citizens to, you know, throw a rascal out if they have—if they are acting as President just to feather their own nest.

With the other officials that are subject to 208, and this comes up immediately, for example, with a Presidential nominee, the White House and the agency and my office finally does an ethics scrub of the financial disclosure statement of the nominee to find if there are any conflicts disclosed with the job that that nominee is to assume upon confirmation.

And I would estimate in maybe 30 percent of the cases we find there is some either small or large conflict, and we then negotiate an ethics agreement with the nominee, which the nominee would agree to either divest, set up a blind trust or, you know, some other means of resolving those conflicts of interest upon confirmation.

Mr. HORN. Yes, Mr. Walden?

Mr. WALDEN. I think with regard to the President and, to a lesser extent Senators and Members of Congress, they stand for election, and their activities are closely watched by would-be opponents, by critics, by gadflies and by the media. This clearly is the case with the President.

So that if there is any allegation or suspicion that the President is engaged in a conflict or maybe doing something improper, it is likely to be seen and reported and publicly alleged, but not so with the White House staff and with lower ranking officials who operate perhaps largely outside the public view. There we do need structures in place to ensure that they do not willingly or unwittingly run afoul of the ethics laws.

Mr. HORN. Well, your comments have been very helpful. There might be a few questions that staff will followup with that relate to specific drafting or something as we reread it for the 10th time that we are not quite clear on ourself as to the scope. We plan to put the bill in within the next week, and we certainly appreciate all the advice and help you have given us. Thank you very much for coming.

Mr. POTTS. Thank you, Mr. Chairman.

Mr. WALDEN. Thank you.

Mr. HORN. You are welcome.

Let me just thank the staff that have helped prepare this hearing. We start with the staff director, J. Russell George, who is modestly sitting over there, without which nothing would get done; Anna Miller on my left, the professional staff member responsible for this particular hearing; John Hynes, who is not here, professional staff member for communications; Andrea Miller is our clerk, who does a terrific job; and the minority we have David

McMillen and Mark Stephenson, professional staff members; Jean Gosa is clerk; and our court reporters, Mindi Colchico, I guess it is pronounced, and Joe Strickland. Thank you very much.

The hearing is adjourned.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned.]